SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of		
THOMAS M. KOLB,		**Index No. 653464/2015**
Petitioner,		**AFFIDAVIT OF JACOB LICHY, M.D.**
For the Judicial Dissolution of		**IN OPPOSITION**
PRECISION IMAGING OF NEW YORK, P.C.		

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JACOB LICHY, being duly sworn, deposes and says:

1. I am the Chairperson and President of Precision Imaging of New York, P.C. ("Precision").

2. On behalf of Precision and myself, as a "person interested in the corporation," I submit this affidavit in opposition to Petitioner Thomas M. Kolb's ("Kolb" or "Dr. Kolb") Verified Petition for the judicial dissolution of Precision.

3. The Petition represents the culmination of Dr. Kolb's plan to misappropriate the medical practices that I built up over thirty-five (35) years. Dr. Kolb, who wanted to withdraw from the practices, embarked on a course of conduct – of which this dissolution proceeding is a part – to both "abscond" with the radiologic practices *and* to be paid for doing so by creating artificial causes for the liquidation of Precision.

4. As part of this conduct, Kolb breached a restrictive covenant, sullied my reputation among physicians, patients, and referrers, spread misleading rumors about my health, misappropriated trade secrets, illegally transmitted patient information

for his own use over the internet, used the medical practices' resources for his personal use, tortiously interfered with Precision's contractual relations and business relationships, and engaged in deceptive trade practices. Dr. Kolb's Petition is purposely intended to deflect the Court's attention from these acts.

BACKGROUND

5. I have been practicing radiologic medicine since 1974. I am board certified in diagnostic radiology and completed a fellowship in bone and joint disease. In 1980, I joined an existing medical practice in Manhattan. In October 1983 that practice was renamed "Floyd D. Roos, M.D. and Jacob Lichy, M.D. P.C." The practice was primarily engaged in performing mammograms (low dose x-rays for the detection of breast cancer) and other imaging procedures for women, such as pelvic and breast ultrasounds. It also performed arthrograms, a test that uses X-rays to obtain images of a joint after injection of a contrast material.

6. In 1991, Dr. Roos withdrew from the practice, which was thereafter renamed "Jacob Lichy, M.D., P.C." During the 1990s, changes in medical technology caused me to transition out of the arthrogram practice and to focus instead on reading and reporting magnetic resonance imaging ("MRI") studies. At that time, I entered into a relationship with Lenox Hill Radiology ("Lenox Hill") pursuant to which I read and reported on patients who underwent an MRI at Lenox Hill.

7. In 1998, Kolb joined the practice as a 50% shareholder and it was renamed "Jacob Lichy, M.D. and Thomas M. Kolb, M.D., P.C." ("LK"). At the time, Dr. Kolb was a less experienced physician and did not contribute any existing patient or

referral relationships to LK. Rather, LK's business model relied exclusively on my patients and business contacts.

8. Dr. Kolb and I signed a stockholders' agreement, dated December 21, 1998 ("LK Stockholders Agreement", attached hereto as Exhibit "A"). The LK Stockholders Agreement contain provisions (paragraph 1(a), Article 4, and paragraph 5(b)) prohibiting a stockholder from selling, assigning, transferring, or encumbering any stockholdings, except as provided in the Agreement, and declaring that an attempt to do so would be deemed an irrevocable offer to sell the stock to the remaining stockholder at a price, to be paid over thirty-six (36) months (with interest) based on, *inter alia*, book value, *without including accounts receivable or goodwill.*

9. On the same date, Dr. Kolb and I each signed separate employment agreements with LK (the "Lichy Employment Agreement" and the "Kolb Employment Agreement", respectively; Kolb Employment Agreement attached as Exhibit "B"). Article 4 of the LK Stockholders Agreement specifies that if Dr. Kolb is terminated from employment pursuant to the Article 10 Termination provisions of the Kolb Employment Agreement, Kolb would also be required to sell his stock to the remaining shareholder pursuant to the formula as set forth in the preceding paragraph.

10. Article 13 of the Kolb Employment Agreement contains a restrictive covenant prohibiting Dr. Kolb from practicing radiology in a narrow one square mile area for two years after leaving the practice.

11. Amendments to the employment agreements stipulated that income received from Lenox Hill would be deemed income of LK for purposes of determining total income under the employment agreements.

12. In July, 2012, Lenox Hill terminated the MRI relationship. On or about October 10, 2012, Kolb and I together formed Precision Imaging of New York, P.C. ("Precision"), which is the subject of this dissolution proceeding. Precision provides the same MRI services as Dr. Kolb and I did when working for Lenox Hill, and operates out of the same office used by LK at 222 East 68th Street, New York, New York 10065. Since Precision'S formation, I have been its chairperson and president, as set forth in the corporation's charter documents.

13. In our haste to form Precision, Dr. Kolb and I did not, at the time, enter into a written shareholders' agreement or employment agreements. However, Kolb and I agreed that the terms and conditions of the LKPC agreements would govern the Precision relationship.

14. Over the years, the Lichy-Kolb medical practices were enormously profitable, generating revenue in excess of $60 million. Over 90% of that revenue was generated from my patients or from my referral sources. A large majority of the revenue came from Lenox Hill and, subsequently, Precision (as opposed to LK).

15. On December 30, 2014, I was diagnosed with a partial grade 3, partial grade 4 glioblastoma, i.e., a brain tumor. Glioblastomas are extremely aggressive, as more than 50% of patients progressively worsen and pass away within fifteen months of diagnosis. Dr. Kolb sensed an opportunity, as he stood to benefit financially if I passed away because he would then be able to retain the entirety of both medical practices – including all patients and referral sources – for a relatively modest pay-out to my estate over the course of at least three years from proceeds derived from accounts receivables.

16. I underwent surgery on January 12, 2015 and was treated through radiation and chemotherapy for six weeks thereafter. While recovering from surgery and other treatment, I expressly advised Dr. Kolb that I intended to return to work as soon as possible.

17. Much to Kolb's dismay, I returned to work in April 2015 and my glioblastoma has gone into and remains in remission. I have been, and am, fully capable to practice medicine since my return to work.

18. Deprived of his opportunity to obtain the practices "on the cheap," Kolb embarked on a course of conduct – of which this dissolution proceeding is a part – to both "abscond" with the radiologic practices *and* effectively be paid for doing so by creating artificial causes for the dissolution and liquidation of Precision which he hopes will allow him to obtain, *inter alia*, enormous accounts receivables to which he might not otherwise be entitled.

19. In late June or early July of 2015, Kolb, complaining that I was "always bossing [him] around," informed me that he was going to resign his employment and withdraw from LK and Precision. No specific date was set for Dr. Kolb's withdraw/resignation.

20. As part of this conduct, Kolb refused to sign an agreement embodying our oral understanding that the LK Stockholders Agreements' terms and conditions would apply to Precision. As previously noted, he also breached the Kolb Employment Agreement by violating a restrictive covenant therein, sullied my reputation, spread misleading rumors about my health, misappropriated trade secrets, illegally transmitted patient information for his own use over the internet, used LK and Precision

resources for his personal use, tortiously interfered with Precision's contractual relations and business relationships, and engaged in deceptive trade practices.

21. More specifically, Kolb engaged in the following acts:

a. During and after my medical absence, Dr. Kolb irresponsibly and inappropriately notified many patients, referring physicians and referring lawyers of my medical condition, information that was clearly confidential and the dissemination of which could only hurt LK and Precision, a violation of Dr. Kolb's fiduciary duty as a shareholder in LK and Precision.

b. During and after my medical absence, Kolb repeatedly told certain patient and referring lawyers and physicians that I would not return to practice, though Kolb knew this was not the case.

c. Once Dr. Kolb announced his intent to withdraw, he suddenly began appearing at the office with greater frequency, stayed later in the evenings, worked more on weekends and while on vacation, and allowed office personnel to leave early on Fridays. It became apparent that Dr. Kolb was using this extra time, often alone in the office, to copy patient health information, undermine LK and Precision, and me, in anticipation of Kolb's departure.

d. In the summer of 2015, Dr. Kolb began reading substantially more MRIs, to the point that there were no MRIs for me to read. Kolb was using this time to "get his name out there" in front of referring physicians and lawyers, and to create an impression that I was reducing my practice or retiring. Indeed, one referring attorney thought that I had retired because he had not seen any reports from me in such a long time.

e. When I was not in the office, Dr. Kolb began using my signature stamp to finalize draft reports authored by me even though I had not finalized the reports.

f. Dr. Kolb modified MRI reports generated more than six (6) months before to include non-substantive modifications in order to enhance their value in personal injury litigation, in order to ingratiate himself with referring attorneys at the expense of my reputation.

g. Kolb repeatedly told certain patients and referring lawyers and physicians that the existing medical practices would be moving to a new location in the near future, and gave out a "new" (i.e., his) phone number, though Kolb knew that there was no intent to move the existing practices.

h. In the summer of 2015, Dr. Kolb solicited to no avail current employees of the medical practices to work for him at a new practice that he intended on forming, and he continues to do so.

i. In the summer of 2015, Dr. Kolb began, on a daily basis, to photograph radiologic reports with his unencrypted iPhone and send them by email insecurely through the internet to his personal email account. He also faxed reports to his residence. The methods of transmission used by Dr. Kolb violated HIPAA rules. Dr. Kolb was asked to stop such activities, to no avail.

j. Dr. Kolb has stated to patients and referring doctors and lawyers that I am incapable of practicing medicine, that I would be dead within a matter of a few years, and that the affidavits I sign in connection with legal proceedings would thereafter be useless in a court of law.

k. In September 22, 2015, Dr. Kolb requested an export of patient names and addresses from the IT subcontractor used by LK and Precision. While the IT contractor was unable to provide that information, it instead showed him how to run a list of all patients and referring providers.

l. Dr. Kolb established Kolb Radiology P.C. on September 3, 2015, i.e., a radiology practice clearly intended to directly compete with LK and Precision, practices in which Kolb was an employee and remains a shareholder.

m. Dr. Kolb routinely worked on cases for his own personal account that were referred to him by an attorney. Not only did Dr. Kolb spend substantial time – indeed, generally including afternoons on Fridays – reading radiology studies and writing reports, he routinely required LK and Precision employees to assist him and used LK and Precision office resources. The time he expended in this endeavor increased over time. Earlier in 2015 he directed office personnel to prioritize his personal work over LK and Precision work. Though I told him this must stop, Kolb only stopped for a day or two and then resumed the same activities. While Kolb received all of the income for these activities, he gave out LK and Precision's tax ID numbers so that LK and Precision were forced or will ostensibly be liable to pay all taxes on this income.

n. At Dr. Kolb's insistence, Precision retained an expert to "market" the practice and paid him $2,500.00. I suspected that the true purpose of the relationship was for the marketing expert to be paid "through the back door" for patient referrals, which violates federal anti-kickback statutes. I insisted that

the relationship be terminated, and, as expected, all referrals from the marketing expert thereafter ceased.

o. It was clear to all of the employees that Dr. Kolb was "sneaking around" in an effort to bolster his practice after departing from LK and Precision, to the detriment of LK and Precision.

p. Upon information and belief, Dr. Kolb engaged in activities that damages the Precision's and LK's computer systems.

22. By engaging in the actions set forth above, Kolb (a) engaged in personal misconduct of such a material nature as to render his presence professionally detrimental to LK, Precision, and their employees; (b) failed to work harmoniously with the other employees of LK and Precision; and (c) failed to attend to the best interests and general welfare of LK and Precision.

23. Realizing that Dr. Kolb was undermining LK and Precision, damaging employee morale, divulging confidential corporate information to third-parties, disparaging me to third-parties, all the while claiming an intent to leave but never actually leaving, I attempted to prevent any further damages to LK and Precision by informing Dr. Kolb on October 13, 2015 that as of October 31, 2015 he would be denied access to the facilities.

24. On or about November 1, 2015, Kolb officially opened Kolb Radiology, P.C. ("KRPC"), the corporation that he formed two months earlier, well before I notified him that he must leave as an employee because his presence was damaging LK and Precision. Though a restrictive covenant in the Kolb Employment Agreement precludes Kolb from practicing radiology for two years in a very limited geographic area,

Kolb has emphatically ignored the restrictive covenant by setting up KRPC at 170 East 77th Street, New York, New York.

25. In addition, Kolb has informed "excess capacity providers" of the opening of his new practice and implored them to transfer to KRPC some of the excess capacity already contracted to Precision. (Because LK's facilities do not contain MRI equipment, Precision, in accordance with federal and state law, entered into "excess capacity agreements" with various excess capacity providers" that owned and operated MRI facilities which were not being utilized on a full-time basis.) This has resulted in a reduction of the capacity available to Precision.

26. Kolb has also contacted the doctors and lawyers that have for thirty-five years referred patients to LK and Precision, and misinformed them that I am no longer qualified to practice medicine, resulting in an almost immediate and dramatic loss of patients.

27. The "marketing expert" previously retained by Precision has been retained by KRPC, and, upon information and belief, at the direction of Dr. Kolb, has been informing referring physicians of LK and Precision of my cancer.

28. On November 26, 2015 I, along with LK and Precision, filed a complaint against Dr. Kolb and KRPC in New York Supreme Court based on the above facts (Index No. 653923-2015).

29. Kolb should not benefit by his nefarious conduct, especially in view of the circumstances of my illness and in violation of our agreements. While it is clear that Dr. Kolb and I have bitter disputes, dissolution of Precision under these circumstances is inequitable and not in the best interests of the parties. Precision remains an ongoing

business concern with 20 employees. It is fully capable of providing quality medical services. It is my understanding that liquidation of Precision would result in a massive 2016 tax bill of approximately five-million ($5,000,000) dollars, to be divided between Kolb and I, due to the amount of accounts receivables that can take several years and effort to collect and might not be collectible at all.

30. For the foregoing reasons, I respectfully request that the Court deny Thomas M. Kolb's petition for the judicial dissolution of Precision Imaging of New York, P.C.

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WHEREFORE, it is respectfully requested that the Court deny the petition for the dissolution of Precision Imaging of New York, P.C., and grant such other and further relief as this Court deems just and equitable.

JACOB LICHY

Sworn to before me on
December 3rd, 2015

Notary Public

SANDRA K. JOHNSON LUGO
Notary Public State of New York
No. 01JO6245119
Qualified in Nassau County
Commission Expires July 18, 2019