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*Shirley B. Pappas*

*[Signature]*

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7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 NAVNEET NAROTUM SHARDA,  
11 Plaintiff,

CASE NO. A491456  
DEPT. NO. I

12 v.

13 DHAN KAUSHAL,  
14 Defendant.

DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT AND  
COUNTERCLAIM

15 DHAN KAUSHAL,  
16 Counterclaimant,

17 v.

18 NAVNEET NAROTUM SHARDA;  
19 DOES I through X; and ROE  
CORPORATIONS I through X  
20 Counterdefendants.

21 Defendant, DHAN KAUSHAL, by and through his attorneys, the law firm of Hutchison  
22 & Steffen, LLC, answers Plaintiff's Complaint as follows:

23 **FACTS COMMON TO ALL CLAIMS**

24 1. Answering paragraph 1 of Plaintiff's Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations contained  
26 in said paragraph and therefore generally and specifically denies the allegations contained  
27 therein.  
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**IV.  
THIRD CLAIM FOR RELIEF  
(Injunctive Relief)**

9. Answering paragraph 26 of Plaintiff's Complaint, Defendant repeats and re-alleges the answers in paragraphs 1 through 8 of this Answer as though each answer were fully set forth in this paragraph.

10. Answering paragraphs 27, 28, 29, 30, 31, 32 and 33 of Plaintiff's Complaint, Defendants generally and specifically denies all allegations of said paragraphs.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**Second Affirmative Defense**

Plaintiff's claims are barred by the applicable statute of limitations and/or the doctrine of laches.

**Third Affirmative Defense**

Plaintiff's damages, if any, are attributable to a third party or parties over whom Defendant had no control or responsibility.

**Fourth Affirmative Defense**

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

**Fifth Affirmative Defense**

Defendant has fulfilled its obligations in good faith and with due care.

**Sixth Affirmative Defense**

Any harm suffered by Plaintiff was not caused by any conduct on the part of Defendant.

**Seventh Affirmative Defense**

All damages alleged by Plaintiff are speculative, and therefore unrecoverable.

**Eighth Affirmative Defense**

Plaintiff failed to mitigate its damages, if any.

**Ninth Affirmative Defense**

Plaintiff is guilty of unclean hands.

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**Tenth Affirmative Defense**

Plaintiff's claims against Defendant are barred by a lack or failure of consideration on the part of Plaintiff.

**Eleventh Affirmative Defense**

If Defendant failed to perform any contractual obligation owed to Plaintiff, which Plaintiff expressly denies, there existed a valid excuse for such non-performance.

**Twelfth Affirmative Defense**

Defendant alleges that the damages, if any, were caused in whole or part, or were contributed to, by Plaintiff's wrongful conduct and/or negligence.

**Thirteenth Affirmative Defense**

Defendant's performance under the contract(s) was excused by Plaintiff's failure to perform all of its obligations under the contract(s).

**Fourteenth Affirmative Defense**

Defendant has not knowingly retained any benefits from Plaintiff that have not been fully paid for.

**Fifteenth Affirmative Defense**

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

**Sixteenth Affirmative Defense**

Plaintiff failed to satisfy a condition precedent in its contract.

**Seventeenth Affirmative Defense**

Defendant has at all times acted in good faith and dealt fairly with Plaintiff.

**Eighteenth Affirmative Defense**

Plaintiff's claims are barred by the Parole Evidence Rule.

**Nineteenth Affirmative Defense**

Defendant is not a proper party to this case, and Plaintiff's claims against Defendant are accordingly barred, because Plaintiff cannot show any reasonable basis for piercing the corporate veil or otherwise holding him personally liable for the debts of the corporations, which debts are expressly disputed by Defendant.

**Twentieth Affirmative Defense**

Defendant incorporates by reference the affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, this answering Defendant reserves the right to seek leave of this Court to amend this Answer and Counterclaim to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

**COUNTERCLAIM**

Defendant/Counterclaimant DHAN KAUSHAL ("Kaushal"), states and alleges against Plaintiff/Counterdefendant NAVNEET NAROTUM SHARDA ("Sharda") as follows:

**JURISDICTIONAL STATEMENT**

1. Kaushal is an individual and a resident of Clark County, Nevada.
2. Upon information and belief, Sharda is an individual and a resident of Clark County, Nevada.
3. The true names or capacities, whether individual, corporate, associate or otherwise, of Defendant DOES I through X and Defendant ROE CORPORATIONS I through X, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names.
4. Defendant/Counterclaimant is informed and believes and therefore states and alleges that each of the Counterdefendants designated herein as "DOES" or "ROE CORPORATIONS" is responsible in some manner for the events and happenings referred to herein and caused damages proximately thereby to Defendant/Counterclaimant as herein alleged. Defendant/Counterclaimant shall request leave of this Court to amend this Counterclaim to insert the true names and capacities of Counterdefendant DOES I through X and ROE CORPORATIONS I through X when they are ascertained, and will request to join such Counterdefendants in the action at that time.

**GENERAL ALLEGATIONS**

5. Defendant/Counterclaimant repeats and realleges the preceding paragraphs as though they were fully set forth at length herein.
6. Kaushal practices medicine as a medical oncologist with Cancer & Blood Specialist

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1 of Nevada in Clark County, Nevada, as he has done for many years.

2 7. Sharda has been practicing medicine as a radiation oncologist in Clark County,  
3 Nevada for approximately three years.

4 8. The financial success of Sharda's practice is dependent upon his receipt of patients  
5 referrals from other primary care providers and medical oncologists.

6 9. Prior to the filing of the complaint by Sharda, Kaushal would regularly refer patients  
7 to Sharda based upon his understanding that Sharda practiced responsible, honest and proper  
8 medicine.

9 10. After learning through personal, firsthand experience of multiple patient referrals  
10 where Sharda unnecessarily prescribed radiation therapy causing damage to such patients referred  
11 by Kaushal, Kaushal contacted Sharda to remind him of his ethical obligations and demand that  
12 he cease and desist from such behavior.

13 11. Sharda's response on each occasion was essentially that Sharda made more money  
14 prescribing and billing for such unnecessary radiation therapy and would not change his practice  
15 of doing so, even to the extent of discouraging such patients from receiving the known proper  
16 treatment.

17 12. On a number of occasions, Kaushal has communicated his concern regarding  
18 Sharda's unethical medical practice procedures to third parties.

19 13. Upon learning of Kaushal's communications concerning Sharda's questionable  
20 treatment methods to third parties, Sharda improperly canceled chemotherapy orders for patients  
21 referred by Kaushal, to the detriment of such patients and Kaushal's business reputation and  
22 financial status, and made defamatory communications to third parties regarding Sharda and his  
23 medical treatment policies and methods.

24 **FIRST CLAIM FOR RELIEF**  
25 (Fraud)

26 14. Defendant/Counterclaimant repeats and realleges all preceding paragraphs as though  
27 they were fully set forth at length herein.

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1           15.     Kaushal has intentionally made false representations to Sharda to induce continued  
2 referrals of Kaushal's patients to Sharda and his radiation oncology medical practice.

3           16.     The false representations Sharda has made to Kaushal include, without limitation,  
4 affirmative representations that Kaushal's referred patients would be treated in a medically  
5 responsible and proper manner and that Sharda would act in the best interests of the referred  
6 patients and not his own financial self-interest.

7           17.     Kaushal reasonably relied on the false representations of Sharda to his and his  
8 referred patients' substantial detriment.

9           18.     The misrepresentations of Sharda, as described in the preceding paragraphs, were  
10 false and Sharda knew or should have known they were false when he made them.

11          19.     Sharda intentionally made the misrepresentations to induce Kaushal to continue to  
12 refer his patients to Sharda, all to the detriment of Kaushal.

13          20.     The intentional misrepresentations of Sharda have been the direct and proximate  
14 cause of damages to Kaushal in an amount in excess of Ten Thousand Dollars (\$10,000).

15          21.     The actions of Sharda are intentional, willful, and malicious, and Kaushal is entitled  
16 to punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000).

17          22.     It has been necessary for Kaushal to retain the services of an attorney to prosecute  
18 this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred herein.

**SECOND CLAIM FOR RELIEF**  
**(Negligent Misrepresentation)**

19  
20          23.     Defendant/Counterclaimant repeats and realleges all preceding paragraphs as though  
21 they were fully set forth at length herein.

22          24.     Kaushal has negligently made false representations to Sharda to induce continued  
23 referrals of Kaushal's patients to Sharda and his radiation oncology medical practice.

24          25.     The false representations Sharda has made to Kaushal include, without limitation,  
25 affirmative representations that Kaushal's referred patients would be treated in a medically  
26 responsible and proper manner and that Sharda would act in the best interests of the referred  
27 patients and not his own financial self-interest.  
28

1 26. Kaushal reasonably relied on the false representations of Sharda to his and his  
2 referred patients' substantial detriment.

3 27. The misrepresentations of Sharda, as described in the preceding paragraphs, were  
4 false and Sharda knew or should have known they were false when he made them.

5 28. Sharda negligently made the misrepresentations to induce Kaushal to continue to  
6 refer his patients to Sharda, all to the detriment of Kaushal.

7 29. The negligent misrepresentations of Sharda have been the direct and proximate  
8 cause of damages to Kaushal in an amount in excess of Ten Thousand Dollars (\$10,000).

9 30. It has been necessary for Kaushal to retain the services of an attorney to prosecute  
10 this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred herein.

11 **THIRD CLAIM FOR RELIEF**

12 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

13 31. Plaintiff repeats and realleges all preceding paragraphs as though they were fully  
14 set forth at length herein.

15 32. In Nevada, every contract contains an implied covenant of good faith and fair  
16 dealing.

17 33. The patient referral relationship between Kaushal and Sharda contained an implied  
18 covenant of good faith and fair dealing.

19 34. Sharda owed Kaushal a duty to act in good faith and a duty of fair dealing.

20 35. Sharda, by his actions established in the preceding paragraphs, violated and  
21 breached his duties of good faith and fair dealing to Kaushal.

22 36. The actions or omissions of Sharda have been the direct and proximate cause of  
23 damages to Kaushal in an amount in excess of Ten Thousand Dollars (\$10,000).

24 37. It has been necessary for Kaushal to retain the services of an attorney to  
25 prosecute this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred  
26 herein.

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**FOURTH CLAIM FOR RELIEF**  
**(Negligence Per Se--Violations of Stark Laws and Anti-Kickback Laws)**

38. Defendant/Counterclaimant repeats and realleges all preceding paragraphs as though they were fully set forth at length herein.

39. At all times hereto, Sharda and Kaushal were subject to the laws and regulations relating to Stark I and Stark II, as well as related anti-kickback laws and other laws governing the proper methods and procedures for referring patients among medical service providers.

40. Sharda, by his actions established in the preceding paragraphs, violated relevant Stark and Anti-Kickback Laws and caused Kaushal to unknowingly become involved in potential violations of the same.

41. The Stark and Anti-Kickback Laws are designed to protect classes of individuals such as Kaushal and his patients.

42. The violations of the Stark and Anti-Kickback Laws constitute negligence per se by Sharda.

43. The actions of Sharda have been the direct and proximate cause of damages to Kaushal in an amount in excess of Ten Thousand Dollars (\$10,000).

44. It has been necessary for Kaushal to retain the services of an attorney to prosecute this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred herein.

**FIFTH CLAIM FOR RELIEF**  
**(Negligence)**

45. Defendant/Counterclaimant repeats and realleges all preceding paragraphs as though they were fully set forth at length herein.

46. Sharda owed a duty of reasonable care to Kaushal and his referred patients.

47. Sharda, in failing to exercise due care by his actions established in the preceding paragraphs, breached his duty of reasonable care to Kaushal and his referred patients.

48. The actions of Sharda have been the direct and proximate cause of damages to Kaushal in an amount in excess of Ten Thousand Dollars (\$10,000).

49. It has been necessary for Kaushal to retain the services of an attorney to prosecute this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred herein.

**SIXTH CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty)**

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3 50. Defendant/Counterclaimant repeats and realleges all preceding paragraphs as though  
4 they were fully set forth at length herein.

5 51. Sharda, as a recipient of patient referrals from Kaushal, owed a fiduciary duty to  
6 exercise the utmost good faith, professionalism, honesty and competent medical practices to  
7 Kaushal and his referred patients.

8 52. Sharda's actions established in the preceding paragraphs constitute a breach of his  
9 fiduciary duties.

10 53. As a result of Sharda's actions, Kaushal has been damaged in an amount in excess  
11 of Ten Thousand Dollars (\$10,000).

12 54. It has been necessary for Kaushal to retain the services of an attorney to prosecute  
13 this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred herein.

**SEVENTH CLAIM FOR RELIEF**  
**(Intentional Interference with Prospective Economic Advantage)**

14  
15 55. Defendant/Counterclaimant repeats and realleges all preceding paragraphs as though  
16 they were fully set forth at length herein.

17 56. Kaushal enjoyed prospective economic advantages with other medical service  
18 providers and patients by providing superior medical oncology services and referring patients to  
19 radiation oncology medical professionals such as Sharda who could be trusted to give such referred  
20 patients proper medical care and treatment, of which Sharda was aware.

21 57. By his actions established in the preceding paragraphs, Sharda intentionally  
22 interfered with these prospective economic advantages and caused such referred patients and other  
23 medical professionals in the community to stop seeing Kaushal for medical services and to stop  
24 referring their own patients to Kaushal.

25 58. Sharda knew or should have known his actions would have a severe, detrimental  
26 effect on Kaushal's then existing and prospective relationships with his patients and referring  
27 physicians.

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1           70.     These communications tended to injure Kaushal in his trade, business and  
2 professional as a medical oncologist by imputing that he is unqualified, incompetent and unfit to  
3 practice medicine.

4           71.     These communications were false because Kaushal is a Board Certified, qualified  
5 and highly skilled medical oncologist who performs his utmost to help patients and referring  
6 physicians.

7           72.     These communications were defamatory because they tend to lower Kaushal in the  
8 estimation of the medical community, excite derogatory opinions about Kaushal and hold him up  
9 to contempt.

10          73.     These communications were understood by those who heard and saw them in a way  
11 that damaged Kaushal.

12          74.     These defamatory communications of Sharda have been the direct and proximate  
13 cause of damages to Kaushal in an amount in excess of Ten Thousand Dollars (\$10,000).

14          75.     The actions of Sharda are intentional, willful, and malicious, and Kaushal is entitled  
15 to punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000).

16          76.     It has been necessary for Kaushal to retain the services of an attorney to prosecute  
17 this action, and Kaushal is entitled to reasonable attorneys' fees and costs incurred herein.

18           WHEREFORE, Defendant/Counterclaimant respectfully requests that the Court enter  
19 judgment against the Plaintiff/Counterdefendant as follows:

- 20           1.     That Plaintiff/Counterdefendant take nothing by way of his complaint;
- 21           2.     For general, consequential, incidental, expectational and special damages in
- 22                 excess of Ten Thousand Dollars (\$10,000);
- 23           3.     For punitive damages in excess of Ten Thousand Dollars (\$10,000);
- 24           4.     For injunctive relief as requested;

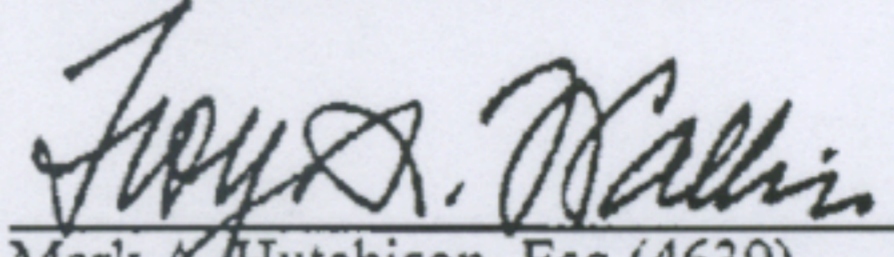
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- 5. For attorneys fees and costs;
- 6. For any other relief that the Court deems just and proper.

DATED this 29<sup>th</sup> day of September, 2004.

HUTCHISON & STEFFEN, LLC




---

Mark A. Hutchison, Esq (4639)  
 Troy A. Wallin, Esq. (7202)  
 The Lakes Business Park  
 8831 West Sahara Avenue  
 Las Vegas, Nevada 89117

Attorneys for Defendant/Counterclaimant

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CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
and that on this 29 day of September, 2004, I caused the above and foregoing document  
entitled: **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND  
COUNTERCLAIM**, to be served as follows:

- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- to be hand-delivered; to the attorneys listed below at the address and/or facsimile number indicated below:

Samuel B. Benham, Esq.  
Terry John Care, Esq.  
HUNTERTON & ASSOCIATES  
333 South Sixth Street  
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Attorneys for Plaintiff

An Employee of Hutchison & Steffen, LLC

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