

**TRUST AGREEMENT**

**BCMA HEALTH BENEFITS TRUST FUND**

THIS AGREEMENT is effective as of November 23, 2005

BETWEEN:

BRITISH COLUMBIA MEDICAL ASSOCIATION

(hereinafter referred to as the "BCMA")

OF THE FIRST PART

- and -

Dr. Michael McCann, Dr. David Jones and Dr. Lori Vogt

(hereinafter referred to collectively as the "Trustees")

OF THE SECOND PART

WHEREAS the BCMA and the Trustees wish to establish a health benefits trust fund (the "Fund") to enable physicians who are members of the BCMA ("Physicians") to obtain health benefits for themselves, their spouses and dependents, and their employees;

AND WHEREAS it is intended that the Fund will offer to the Physicians a private health services plan, as such term is used and defined in the *Income Tax Act* (Canada) and the regulations thereto (the "Tax Act") and it is also intended that the Fund will constitute a health and welfare trust as such term is used and defined in the Tax Act;

AND WHEREAS the Trustees have agreed to act as the initial trustees of the Fund and to be bound by and observe all of the terms, conditions and covenants contained in this Agreement (the "Trust Agreement") to be observed or performed by the Trustees;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and in consideration of the covenants and provisions hereinafter set forth, the parties hereto covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 Definitions. In the interpretation and application of this Agreement, the definitions hereinafter set out shall govern except to the extent that the context or subject matter otherwise requires.

(a) "Benefits" shall mean the benefits to be provided pursuant to the Plan;

- (b) "Contributions" shall mean the money paid to the Fund in accordance with an applicable Participation Agreement;
- (c) "Employee" means any employee of an Employer, which the Employer, on or after November 23, 2005, under the terms of an employment agreement with the Employee, has made or is required to make a contribution to the Plan, which contribution, by the terms of such agreement, is required or permitted to be paid into the Fund hereby created, and any other person who, by the terms of this Agreement, is deemed to come within the meaning of the term "Employee";
- (d) "Employer(s)" means a Physician (whether an individual, partnership, or corporation) who or which employs one or more Employees;
- (e) "Fund" means the trust fund created and established by this Agreement including all money and things of value comprising the corpus thereof and all interest and additions thereto;
- (f) "Medical Office Benefit Plan" or "MOBP" means the Group Benefit Plan effective January 1, 2003 described in the "Employee Benefits Booklet" made effective January 1, 2003 and provided through the group insurance contracts between Sun Life Assurance Company of Canada and BCMA, being Sun Life Contract 20593, and between BCMA and Industrial-Alliance Pacific Life Insurance Company, being Contract 10001112;
- (g) "Participation Agreement" means an agreement between a Physician or an Employer and the Trustees which obligates the Physician or Employer to pay Contributions or Special Contributions to the Fund (or any insurer of the Trustees retained by the Trustees in order to provide Benefits) in respect of the Physician and his or her spouse, dependents and Employees (if any);
- (h) "Plan" means the program or programs established or to be established under the authority of this Agreement, whereby benefits allowed by a "private health services plan", as that term is now or hereafter defined in the *Income Tax Act* of Canada, are to accrue to and for Physicians, Employees, and their respective spouses and dependents;
- (i) "Professional Corporation" means a corporation licensed as such by the College of Physicians & Surgeons of British Columbia;
- (j) "Special Contributions" shall mean any monies paid or payable to the Fund for the purposes of obtaining Benefits under the Plan, in accordance with an agreement or other arrangement (other than a Participation Agreement) obligated or permitting such payments to be made. The term "Special Contributions" shall include money paid or payable to the Fund by an Employee for the purposes of obtaining Benefits under the Plan in accordance with an arrangement established by the Trustees which obligates or permits such payments to be made.

Amendment  
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- 1.2 Reference to "Employer". Where the context requires, a reference in this Trust Agreement to "Employer" includes a Physician who carries on the practice of medicine as a sole proprietor (and not in partnership or through a Professional Corporation) and who does not have any Employees.
- 1.3 Reference to "Plan". If the BCMA and the Board of Trustees agree that the Medical Office Benefit Plan is to be transferred to the Fund, and thereafter the benefits then being provided under the Medical Office Benefit Plan will be provided by the Fund, then where the context requires, a reference in this Trust Agreement to "Plan" includes the Medical Office Benefit Plan, as it may be subsequently amended, supplemented, or terminated, in whole or in part.

## ARTICLE 2 TRUST FUND

- 2.1 Creation and Name. There is hereby created the "BCMA Health Benefits Trust Fund", which shall consist of all Contributions and Special Contributions as above defined, made to or for the Plan and Fund hereby created, and all interest, income, capital gain and other returns thereon of any kind whatsoever. If the Medical Office Benefit Plan is transferred by the BCMA to the Fund, and the Trustees assume the obligation to provide the benefits of the Medical Office Benefit Plan, then the Plan and Fund hereby created shall also consist of the Medical Office Benefit Plan, and all property, rights, interest, income, capital gain and other returns thereon of any kind whatsoever, and all of the liabilities and obligations of the Medical Office Benefit Plan assumed by the Fund.
- 2.2 Principal Office. The Fund shall have its principal office in the City of Vancouver, in the Province of British Columbia.
- 2.3 General Purposes. In deciding upon specific Benefits, the Trustees shall be governed by the general purpose of the Fund and it is hereby agreed that such general purpose is the acquisition and maintenance through a properly licensed insurance carrier and/or by the direct provision of a plan covering all or some of the items or benefits which a Private Health Services Plan may offer, now or in the future, provided however that the Trustees are not obligated to institute benefits under the Plan for all of such benefits and shall have full discretion within the limitations set forth in this section. The Fund shall also be used for the financing of the expenses of the Trustees and the operation and administration of the Fund and the Plan in accordance with this Agreement.
- 2.4 Medical Office Benefit Plan. In deciding upon specific Benefits if the Medical Office Benefit Plan is assumed by the Fund, or in deciding upon any amendment, supplement or termination of the Benefits then or thereafter offered under the Medical Office Benefit Plan, the Trustees shall be governed by the general purpose of the Fund as described in Article 2.3 of this Trust Agreement, provided however that the Trustees are not obligated to continue to provide all or any of the benefits which are or have been provided by the Medical Office Benefit Plan, and the Trustees shall have full discretion to amend, supplement or terminate, in whole or in part, the Medical Office Benefit Plan, or to

combine or merge the Medical Office Benefit Plan with one or more of the programs established or to be established under the authority of this Agreement as the Plan. The Fund, including that portion of the Fund which arises or results from the Medical Office Benefit Plan, shall also be used for the financing of the expenses of the Trustees and the operation and administration of the Fund and the Plan in accordance with this Agreement.

- 2.5 Contributions not Wages or Salary. Contributions to the Fund which relate to Employees shall not constitute or be deemed to be wages or salaries of employees with respect to whose work such payments are made, and no Employee shall be entitled to receive any part of the Contribution made or required to be made to the Fund except to the extent that he or she may benefit under the Plan.
- 2.6 Interest in Fund Limited by Terms of Agreement. None of the Employers, the BCMA, the Physicians, any Employee, any beneficiary of the Plan, or any other person or entity shall have any right, title or interest (whether reversionary or otherwise) in the Fund other than as may be provided in this Agreement.
- 2.7 Not Liable for Individual Debts. Neither the Fund nor any Contributions due, or accruing, due or paid to the Fund, shall be in any manner liable for or subject to the debts, contracts or liabilities of the BCMA, the Physicians, Employers or any Employee.
- 2.8 Situs. The Province of British Columbia shall be deemed to be the situs of the Fund and all questions pertaining to the Fund, Plan and this Agreement shall be determined in accordance with the laws of British Columbia and shall be deemed to be within the competency and jurisdiction of the Courts of British Columbia.
- 2.9 Not Assignable or Attachable. No monies, property or equity, of any nature whatsoever, in the Fund, or policies or benefits or monies payable therefrom, shall be subject in any manner by an Employee, or person, claiming through such Employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, security interest, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void; provided, however, that the Trustees may establish a procedure whereby any Physician or Employee may direct that benefits due to the Physician or Employee be paid to an institution in which the Physician or Employee is hospitalized or confined in consideration for medical, nursing or hospital services rendered or to be rendered.
- 2.10 Parties and Participants Not Responsible for Fund Debts. Neither the BCMA, any Employer, nor any Employee shall be liable or responsible for any debts, liabilities or obligations of the Fund.
- 2.11 Reimbursement to Employees. Notwithstanding Article 2.8 of this Agreement, the Trustees may establish as a part of the Plan a procedure whereby any Physician or Employee may claim reimbursement for eligible health benefits from the Fund. The Trustees may make special rules and regulations respecting such reimbursement to the Employees, including limits in the time periods for which such reimbursement may be

claimed and the amount and nature of the health benefits for which reimbursement may be claimed.

- 2.12 Special Contributions. Neither a Physician nor an Employee (which includes the heirs, executors, administrators, successors and assigns of the Physician or Employee) who has made Special Contributions to the Fund, nor any person who has made such Special Contributions to the Fund on behalf of a Physician or an Employee, shall be entitled to receive any part of such Special Contributions made or required to be made to the Fund except as may be allowed by the Trustees acting pursuant to Article 2.11 of this Agreement. For greater certainty, the reference to "Contributions" in Article 2.6 of this Agreement and the reference to "monies, property or equity" in Article 2.8 of this Agreement shall mean and include Special Contributions made to the Fund by a Physician or an Employee, or a person on behalf of an Employee.

### ARTICLE 3 CONTRIBUTIONS

- 3.1 Contribution Rate. In order to effectuate the purposes hereof, each Physician or Employer shall contribute to the Fund the amount specified by the Trustees from time to time, or as may be required by the applicable Participation Agreement or other agreement. The contribution rate whether for Contributions or Special Contributions shall be determined by the Trustees from time to time.
- 3.2 Obligation to Contribute. All Contributions so required by the applicable Participation Agreement or other agreements shall continue to be paid as long as the Physician or the Employer is so obligated pursuant to such agreement.
- 3.3 Contributions Payable as Determined by Trustees. All Contributions shall be payable to the Fund and shall be paid in the manner and form determined by the Trustees.
- 3.4 Delinquency.
- (a) The parties recognize and acknowledge that the regular and prompt payment of Contributions and Special Contributions to the Fund is essential to the proper operation of the Plan;
  - (b) Each Contribution or Special Contribution to the Fund not made on the due date as above required shall be deemed to be delinquent (collectively or individually the "Delinquent Contribution");
  - (c) If a Delinquent Contribution respects the premium which is payable in respect of that Employer or Physician for those Benefits which are insured Benefits, then the Trustees shall extend to such Employer or Physician the same time period to pay the Delinquent Contribution as is allowed for under the terms of the insurance policy or policies respecting the insured Benefits (the "Insurance Policy Grace Period"). During the Insurance Policy Grace Period, the Trustees shall not charge any interest, late charges, penalties or other pecuniary assessments in respect of

the Delinquent Contribution, nor shall the Trustees terminate the participation of the Employer or Physician during the Insurance Policy Grace Period in respect of such insured Benefits;

- (d) The Trustees may, but are not obligated to, charge interest on a Delinquent Contribution after the expiry of the Insurance Policy Grace Period in respect of Delinquent Contributions that relate to insured Benefits, and from and after the due date in respect of all other Delinquent Contributions. The interest rate that shall accrue and be payable shall be at the rate of 10% per annum. The Trustees may, by resolution, change the rate of interest to be applied to Delinquent Contributions under this Article 3.4(d) from time to time as the Trustees deem appropriate. Upon the Trustees resolving to change the rate of interest, the rate of interest shall then be calculated on all Delinquent Contributions at the new rate of interest set by the Trustees from the effective date prescribed by the Trustees in such resolution; and
- (e) An Employer or Physician shall pay to the Trustees, on their demand, all reasonable costs and expenses incurred by the Fund, including legal costs and expenses on a solicitor and client basis, where such costs and expenses have been incurred by the Fund in connection with or resulting from an inspection or audit of any Physician's or Employer's employment records of payroll and wage records, or have been incurred in obtaining access to such records, or have been incurred in any other manner whatsoever by the Fund in enforcing the obligation of an Employer or Physician to make contributions on a timely basis to the Fund.

- 3.5 Reports. Each Employer or Physician shall make such reports with respect to Contributions or Special Contributions and other matters material to this Agreement as are reasonably required by the Trustees, and the Trustees may (but are not obligated to do so), at any reasonable time, have, at the expense of the Employer or Physician, an inspection or audit conducted of the employment records, payroll and wage records of any Employer or Physician by the Auditor of the Fund, an independent Chartered Accountant or other qualified person, or the Administrator. Notwithstanding the foregoing provision of this Article 3.5, the Trustees may, at their discretion and upon considering all the circumstances of any given case, waive all or any part of the costs which would otherwise be payable by an Employer or Physician under this Article.

#### **ARTICLE 4 BENEFITS**

- 4.1 Certain Authority of Trustees. Subject to Article 2.3 of this Agreement, the Trustees shall have full authority to determine all questions of nature, amount and duration of benefits to be provided based on what it is estimated the Fund can provide without undue depletion or excessive accumulation of funds; provided, however, that the Trustees may, in exercising their discretion under this section, take into consideration such other proper considerations as they deem appropriate.

Amendment #1 [4.2] Benefits Limited. Benefits may be provided only for a Physician or an Employee and subject always to the terms of the Plan, the spouse and dependents of a Physician and an Employee.

4.3 Trustees to Set Eligibility Requirements. Subject always to the express terms of this Agreement, the Trustees shall have full authority to determine eligibility requirements for Benefits and to adopt rules and regulations relating to and setting forth the same, and such rules and regulations shall be binding on the parties hereto, Physicians, Employees and their spouse and dependents. The Trustees may at their sole discretion at any time and from time to time:

- (a) Terminate or amend either the amount or condition with respect to any Benefit even though such termination or amendment affects claims which have already accrued; or
- (b) Alter or postpone the method of payment of any Benefit; or
- (c) Establish or maintain a separate or distinct Plan (the "Retiree Benefit Plan") for Physicians who are retired from the practice of medicine or Physicians who continue to practice medicine but who by reason of age are not eligible to participate in an insured benefit plan (such Physician in each case being referred to as a "Retiree" or "Retirees"), including a spouse or dependent of such a Retiree, and amend the amount or condition with respect to any Benefit in the Retiree Benefit Plan, even though such amendment may affect a claim which has already accrued, or alter or postpone the method of payment of any Benefit in the Retiree Benefit Plan, or terminate the Retiree Benefit Plan, in whole or in part.

4.4 Further Discretion of Trustees. Benefits shall be provided and maintained by such methods and means as the Trustees in their sole discretion may determine and the same may be varied by the Trustees from time to time.

Amendment #2 [4.5]

## ARTICLE 5

### EXTENSION OF AGREEMENT

5.1 Rules Governing. The parties hereto agree that, subject always to the discretion of the Trustees, this Agreement may be extended so as to include such other parties as in this section is permitted, and the Benefits of the Plan and Fund may be extended so as to cover such further employees as allowed herein, all without further agreement by or amongst the existing parties hereto, such employees being:

- (a) The officers and employees of the Administrator; and
- (b) The officers and employees of the BCMA;

provided that the Administrator or the BCMA becomes bound to this Agreement in a manner satisfactory to the Trustees.

## ARTICLE 6 TRUSTEES

- 6.1 Board of Trustees Generally. The Fund shall be administered by a Board of Trustees which shall consist of not less than two (2) and no more than three (3) Trustees.
- 6.2 Appointment of Trustees. The initial Trustees of the Fund are the individuals who are parties to this Agreement named as "Trustees".
- 6.3 Removal of Trustees. The BCMA shall have the right, on written notice to the Board of Trustees to remove, and replace all or any of the Trustees, including the initial Trustees, subject however to the limitation on the number of Trustees contained in Article 6.1 of this Agreement.
- 6.4 Declaration of Trust. The Trustees shall immediately meet and sign this Agreement (which shall also be deemed a Declaration of Trust insofar as the Trustees and their successors are concerned). The Trustees, by affixing their signatures at the end of this Agreement agree to accept the trusteeship and act in such capacity in accordance with the provisions of this Agreement. Any person duly appointed a successor Trustee shall immediately upon his acceptance in writing of the terms of this Agreement, be vested with all the rights, responsibilities, powers and duties of a Trustee hereunder.
- 6.5 Termination and Removal. Each initial Trustee, and each successor Trustee, shall continue to serve as such until his or her death, incapacity, resignation or removal.
- 6.6 Evidence of Change. In case any Trustee shall be removed, replaced or succeeded, a statement in writing by an officer of the BCMA shall be sufficient evidence of the action taken by the BCMA. Any resignation by a Trustee shall be in writing, addressed to the Fund, and delivered personally or by registered mail, or by facsimile or by electronic transmission.
- 6.7 Intention. The parties intend, but the BCMA is not obligated, that the BCMA will appoint to the Board of Trustees, from time to time, one (1) Trustee who is a member of the Audit and Finance Committee of the BCMA and two (2) Trustees who are members of the Insurance Committee of the BCMA.
- 6.8 Chair of the Board. The BCMA shall also have the power to select one of the Trustees to act as the Chair of the Board. The BCMA may, from time to time, select another Trustee to act as Chair of the Board, to serve as such until his or her successor is appointed by the BCMA. In the event that the Trustee who is serving as Chair of the Board of Trustees is no longer a Trustee, then he or she shall automatically cease to be the Chair of the Board.



**ARTICLE 7**  
**POWERS, DUTIES AND OBLIGATIONS OF TRUSTEES**

- 7.1 Operation of Fund and Plan. The operation and administration of the Fund and the Plan shall be the responsibility of the Trustees and they are hereby given the authorization and power so to do, subject always to the limitations and conditions contained in this Agreement.
- 7.2 Miscellaneous Powers. The Trustees are authorized and empowered to lease or purchase such lands, premises, materials, supplies and equipment, and to hire and employ and retain such legal counsel, consultant, investment counsel, administrative, accounting, actuarial, clerical and other agents or employees as in their discretion they may find necessary or appropriate in the performance of their duties, and to pay the reasonable expenses or compensation therefor; and to delegate to any agents or employees such duties as they consider appropriate.
- 7.3 Collecting and Depositing. The Trustees shall use all reasonable means to collect and receive all Contributions and Special Contributions due to the Fund, and shall, promptly after receipt, deposit such Contributions and Special Contributions in a special trust fund account or accounts established in a reputable bank or banks, or financial institution or institutions in the city wherein the principal office of the Fund is situated.
- 7.4 Power to Construe Agreement. The Trustees shall have power to construe the provisions of this Agreement and Declaration of Trust and the terms herein used and any construction adopted by the Trustees in good faith shall be binding upon the BCMA, the Physicians, and the Employees and their spouses, dependents, beneficiaries and/or legal representatives.
- 7.5 Use of Funds, etc. The Trustees shall use the monies available in the Fund to pay all reasonable expenses and to establish and maintain the Plan and benefits thereunder as required or permitted under the terms of this Agreement. The Trustees shall have power to enter into contracts and procure insurance policies necessary to place into effect and maintain the Plan, to terminate, modify or renew any such contracts or policies, and to exercise and claim all rights and benefits granted to the Trustees or the Fund by any such contracts or policies. Any such contract may be executed in the name of the Fund, and any such policy may be procured in such name.
- 7.6 Further Specific Powers. The Trustees are hereby granted the following powers, which shall be in addition to such other powers as are set forth herein or are conferred by law:
- (a) To establish and administer the Plan on behalf of the Physicians and Employees as defined in this Agreement;
  - (b) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and for the administration of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable;

- (c) To compromise, settle, arbitrate and release claims or demands in favour of or against the Fund or the Trustees on such terms and conditions as the Trustees may deem advisable;
- (d) To establish and accumulate as part of the Fund such reserves as, in the opinion of the Trustees, is in the best interests of the Plan and the Fund;
- (e) To pay out of the Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Fund or any money, property or securities forming a part thereof;
- (f) To receive contributions or payments from any source whatsoever to the extent permitted by law;
- (g) To invest and reinvest all or part of the assets or reserves of the Fund and to take any and all action with respect to holding, buying, selling or exchanging such investments as are permitted by the *Trustee Act* (British Columbia);
- (h) To hold in uninvested cash without any liability for interest thereon such sums as they deem necessary or advisable for the reasonably current cash requirements of the Fund;
- (i) In their discretion and to the extent they deem it wise, beneficial, or necessary, to appoint an individual, partnership, or corporation which carries on the business of investment management, to be designated as "Investment Manager" and to enter into and execute an agreement or agreements with such Investment Manager to provide for the investment and re-investment of the assets or reserves of the Fund, subject always to the terms of this Agreement and with such other limiting or regulatory provisions incorporated therein as may be deemed to the Trustees to be desirable, and upon such execution to convey and transfer to a bank or banks or trust company or trust companies, or an insurer or insurers, to be designated as "Corporate Trustee" any assets of the Fund which are to be managed by the Investment Manager, together with as full or lesser power to the Corporate Trustee to administer, invest and re-invest such assets as the Trustees themselves enjoy under the terms of this Agreement;
- (j) To establish a system or means whereby the Fund is self-insuring either in whole or in part;
- (k) To supplement any Plan, or the benefits payable thereunder, by specifically directing that all or part of any income earned by the Fund or any portion thereof, including reserves for any period, be paid or made available so as to increase the benefits which would otherwise be payable hereunder by the amount of such income earned;

- (l) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder;
- (m) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of enabling the Physicians, the Employers, the Employees, and Retirees to obtain Benefits in the most efficient and economical manner; and
- (n) To obtain such insurance policies or bonds as the Trustees deem necessary or desirable with respect to any liability which may be incurred as a result of or with respect to the performance, or purported performance of, or their failure to perform their duties and the exercise, or purported exercise of, or their failure to exercise their powers hereunder, and in particular may obtain such insurance with respect to any liability which may arise out of a failure to meet the standard of care imposed under the Trust Agreement or otherwise by operation of law, or on Trustees generally. The cost of premiums for such insurance policies or bonds shall be paid out of the Trust Fund.

7.7 Enforcement. The Trustees shall have the power to demand and enforce the prompt payment of Contributions and Special Contributions to the Fund and the payments arising from delinquencies as provided in Article 3. If any Physician or Employer defaults in the making of such Contributions or Special Contributions or payments, and if the Trustees consult legal counsel with respect thereto, or file any suit or claim with respect thereto, there shall be added to the obligation of the Physician or Employer who is in default, taxable court costs and all other reasonable expenses incurred by the Trustees in connection with such suit or claim.

7.8 Administrator. The Trustees shall appoint the BCMA as Administrator of the Plan. The BCMA is not obligated to be the Administrator of the Plan, and if the BCMA declines to be the Administrator of the Plan the Trustees may appoint some other person, firm or corporation as the Administrator, or make such other arrangements as the Trustees deem appropriate. If the BCMA is appointed as Administrator of the Plan, the BCMA is not obligated to remain as the Administrator of the Plan and may, subject to any agreement between the Trustees and the BCMA, cease to act as the Administrator. Similarly, if the BCMA is appointed as the Administrator of the Plan, the Board of Trustees is not obligated to continue to retain the BCMA as Administrator of the Plan, and subject to any agreement between the BCMA and the Trustees, the Trustees may terminate the BCMA as the Administrator of the Plan. In either event, if the BCMA is no longer the Administrator of the Plan, the Trustees shall appoint some other person, firm or corporation as the Administrator, or make such other arrangements as the Trustees deem appropriate, either as specifically allowed by this Article 7.9 or as may be generally allowed by Article 7.1 of this Agreement.

7.9 Bonding. The Trustees shall procure fidelity bonds for the Trustees or other person authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be either on an individual basis or otherwise as the

Trustees may decide and shall be in such reasonable amount or amounts and be obtained from such source or sources as the Trustees shall determine. The cost of such bonds shall be paid out of the Fund.

- 7.10 Auditor. The Trustees shall promptly appoint and at all times maintain a Chartered Accountant as the Auditor for the Fund. Any Chartered Accountant so appointed shall serve until its successor is appointed. The Auditor for the Fund shall not be dismissed and a successor appointed except upon at least THIRTY (30) days' prior written notice being given to such Auditor, the proposed successor and to the BCMA. The Auditor may be the auditor of the BCMA.
- 7.11 Records. The Trustees shall maintain suitable and adequate records of and for the administration of the Fund and the Plan. The Trustees may require the Physicians, the Employers, any parties bound by this Agreement, any employee or any other beneficiary under the Plan to submit to them any information, data, report or documents reasonably relevant to and suitable for the purposes of such administration; provided, however, that the BCMA shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Trustees for any such information, data, report or documents.
- 7.12 Yearly Audit. The books of account and records of the Trustees, including the books of account and records pertaining to the Fund, shall be audited at least once each year by the Auditor of the Fund. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable place as the Trustees may designate from time to time. Copies of such statement shall be delivered to the BCMA and each Trustee within TEN (10) days after the statement is prepared and approved by the Trustees.
- 7.13 Delegation. Subject always to Sections 7.15 and 7.16 of this Agreement, the Trustees may delegate to the Administrator, either generally or specifically, such duties relating to the management and administration of the Fund and the Plan as they deem expedient.
- 7.14 Signing. Any document, agreement, assurance or writing requiring formal execution by the Trustees, shall be signed by the Chair and at least one other Trustee, or if the Trustees so direct, in such other manner as the Trustees may direct.
- 7.15 Banking. All withdrawals of monies from any account of the Fund or of the Trustees shall be made only by cheques signed by such person or persons as are so authorized in writing by the Trustees.

The Trustees may, in their discretion, designate and authorize an employee or employees of the Administrator to sign cheques upon such accounts as the Trustees may designate and establish for such purpose.

- 7.16 Directions and Decisions. Directions, decisions, instructions, authorizations and delegations of the Trustees shall be conclusively deemed to have been properly made and given in accordance with the terms thereof, if they are either:
- (a) In writing and signed by all Trustees; or
  - (b) Contained in a copy of minutes of a duly constituted and held meeting of the Trustees, signed by all the Trustees or certified to be true and correct by the Secretary and the Chair of the Board of Trustees.
- 7.17 Reliance on Instruments by Third Parties. Every instrument executed by the Board of Trustees or by its direction may be relied on by parties dealing with the Board as being conclusive in respect to the following:
- (a) That at the time of the delivery of the instrument, this Agreement was in full force and effect;
  - (b) That the instrument was executed in accordance with the terms and conditions of this Agreement; and
  - (c) That the Board was duly authorized to execute the instrument or direct its execution.
- 7.18 May Use Fund Name. The name of the Fund may be used to designate the Trustees collectively, and all instruments may be executed by or for the Trustees in such name.

## ARTICLE 8 CERTAIN RESPONSIBILITIES OF TRUSTEES

- 8.1 Certain Liability Limitations and Indemnity. The Trustees shall incur no liability, either collectively or individually, in acting upon any papers, documents, data or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties. The Trustees may delegate any of their administrative powers or duties to any of their agents or employees. No Trustee shall incur any liability for negligence, lack of oversight or carelessness in connection with the performance of his or her duties as such Trustee. No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall indemnify and save harmless the Trustees (including former Trustees) and each of them, of, from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, arising out of their performance or purported performance of their duties or responsibilities hereunder, except that this indemnity shall not in any way extend so as to protect any Trustee or former Trustee with respect to any matter or thing arising out of his or her own dishonesty, wilful misconduct or gross negligence.

8.2 Further Saving Clauses. None of the BCMA, the Physicians, the Employers, or any of the Trustees shall be responsible or liable for:

- (a) The validity of this Agreement or the Plan;
- (b) The form, validity, sufficiency or effect of any contract or policy for Benefits which may be entered into;
- (c) Any delay occasioned by any restriction or provision in this Agreement, the Plan, the Rules and Regulations of the Trustees issued hereunder, any contract or policy procured in the course of the administration of the Fund, or by any other proper procedure in such administration; or
- (d) The making or retention of any deposit or investment of the Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Fund, or any position thereof, or any loss or diminution of the Fund, except, as to the particular person involved, such loss as may be due to the dishonesty, gross negligence or wilful misconduct of such person.

8.3 Separate Status of Trustees. None of the BCMA, or the Physicians, or the Employers shall be liable in any respect for any of the obligations or acts of the Trustees because such Trustees are in any way associated with or are members of the BCMA or employees of the BCMA.

8.4 Certain Expense Rules. Each Trustee is entitled to be reimbursed, either from the BCMA, or from the Trust Fund if the Trustees and the BCMA jointly agree to have the Trust Fund make such reimbursement, such reasonable expenses as are incurred by such Trustee in the performance of his or her duties under this Agreement.

The terms and conditions of the reimbursement of expenses shall be as determined by the BCMA, if the BCMA is reimbursing such expenses, or by the Trustees, if the Trust Fund rather than the BCMA reimburses the expenses. In no case shall a Trustee be reimbursed by both BCMA and by the Trust Fund for the same expense. If the Trust Fund is reimbursing the expenses of the Trustees, the Trustees may, from time to time, establish a schedule or tariff of expense payments to be allowed for any duty or duties performed or to be performed by the Trustees under this Agreement.

8.5 Honorarium. In addition to the reimbursement of expenses provided for in Article 8.4 of this Agreement, each Trustee is entitled to receive, either from the BCMA, or from the Trust Fund if the Trustees and the BCMA jointly agree to have the Trust Fund make such payment, an honorarium in recognition of the service provided by each Trustee in acting as a Trustee of the Trust Fund.

The terms and conditions of the amount and payment of the honorarium shall be as determined by the BCMA, if the BCMA is paying the honorarium, or by the Trustees, if the Trust Fund rather than the BCMA pays the honorarium. If the Trust Fund pays the honorarium, then the terms and conditions of the amount and payment of the honorarium

shall be reasonable and shall also be consistent with the honorarium policies of the BCMA in effect at the time of payment.

- 8.6 In Event of Termination. Any Trustee who resigns or is removed from office shall forthwith turn over to the Chair of the Board of Trustees at the principal office of the Fund any and all records, books, documents, monies and other property in his or her possession or under his or her control which belong to the Fund or which were received by him or her in his capacity as such Trustee.
- 8.7 Legal Counsel. The Trustees may consult as required with the legal counsel for the Fund and shall be fully entitled to act upon such advice and shall not be responsible in any way for the results of so acting.

## ARTICLE 9 CERTAIN PROCEDURES OF TRUSTEES

- 9.1 Rules re Meetings of Board. The Board of Trustees shall determine the time and place for regular periodic meetings of the Board. Either the Chair or any member of the Board may call, or cause to be called, a special meeting of the Board by giving notice in writing to all other Trustees of the time and place of such meeting at least FIVE (5) days before the date set for the meeting, subject always to a shorter period of notice in the cases provided for in Article 9.5 below. Any such notice of special meeting shall be sufficient if sent by registered mail or by personal delivery addressed to the Trustee at the Trustee's address as shown in the records of the Board. Any meeting at which all Trustees are present, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the giving of any notice.
- 9.2 Secretary. The Board shall appoint a Secretary who shall keep minutes of records of all meetings, proceedings and acts of the Board. Such minutes need not be verbatim. Such secretary need not be a Trustee.
- 9.3 Quorum. At all meetings of the Trustees, two (2) Trustees shall constitute a quorum for the transaction of business.
- 9.4 Certain Further General Rules. All decisions and actions by the Trustees shall be by majority vote of the Trustees. Such majority vote shall govern not only this Article but any portion of this Agreement which refers to decisions or action by the Trustees.
- In the event that any matter cannot be decided because of a deadlock, the matter may then be submitted to arbitration as hereinafter provided.
- 9.5 Action Without Meeting. Action by the Trustees may also be taken by them in writing without a meeting; provided, however, that in such cases there shall be unanimous written concurrence by all of the Trustees.
- 9.6 Place of Meeting. All meetings of the Board shall be held at the principal office of the Fund, unless another place is specifically designated by the Board.

- 9.7 Meetings by Telephone. If all the Trustees consent, a Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a Trustee participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Trustees and of committees of the Trustees held while a Trustee holds office.

## ARTICLE 10 ARBITRATION

- 10.1 Basic Provisions. In the event that the Trustees deadlock on any matter arising in connection with the interpretation or application of this Agreement, or the administration of the Fund or the Plan, upon the request of any ONE (1) Trustee, the Trustees shall agree upon a neutral person to serve as an impartial umpire to decide the dispute. The umpire so appointed shall then set the time and place for a hearing of the matter in question and each Trustee shall have the right to appear and be heard at such hearing. Subject always to the terms of this Agreement, the said umpire shall have the right to establish such reasonable procedures for the conduct of the hearing as he or she deems appropriate. The decision of the said umpire shall be final and binding upon the Trustees, the parties and the beneficiaries of the Agreement and the Plan. Any matter in dispute and to be arbitrated hereunder shall be submitted in writing to the said umpire and in making his or her decision the umpire shall be bound by the provisions of this Agreement and the Plan, and shall have no authority to alter or amend the terms of any such document. If the Trustees cannot jointly agree upon a statement submitting said matter to arbitration, each group shall prepare and state in writing its version of the dispute and the question or questions involved. The decision of the said umpire shall be rendered in writing within THIRTY (30) days after the submission of the dispute, or such extended time as the Trustees may unanimously establish.
- 10.2 Procedure if Decision on Arbitration Delayed. If no agreement on an impartial umpire is reached within TEN (10) days, or within such further time as the Trustees may unanimously allow for such purpose, such umpire shall, on petition of any THREE (3) Trustees, be appointed by a judge of the British Columbia Supreme Court.
- 10.3 Expense of Arbitration. The expenses of any such arbitration, including any necessary Court proceedings to secure the appointment of an umpire or the enforcement of the arbitration award (excluding the cost of any Counsel other than the Counsel of the Fund) shall be a proper charge against the Fund.

## ARTICLE 11 AMENDMENT AND TERMINATION

- 11.1 General Rules. This Agreement and Declaration of Trust may be amended from time to time by:



- (a) The Trustees, providing any such amendment does not alter the basic principles of this Agreement, or is not contrary to the law; and
  - (b) The BCMA and the Trustees, providing any such amendment is not contrary to law.
- 11.2 Authentication of Amendments. All amendments to this Agreement shall be properly authenticated by the required signatories of those effecting the amendment.
- 11.3 Distribution of Amendments. Whenever an amendment is made in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify all necessary parties and take such other steps and proceedings as may be necessary to fully implement the amendment so made.
- 11.4 Continuation of Trust Agreement. This Agreement shall continue in force for as long as any Participation Agreement, or any extension or renewal thereof, or any other applicable Agreement, provides for Contributions to this Fund.
- 11.5 Termination. This Agreement may be terminated at any time by the BCMA and the Trustees by an instrument in writing and properly executed by them.
- 11.6 Limitation on Duration. In no event shall the Trust established by this Agreement continue for a longer period than is permitted by law.
- 11.7 Certain Rules Upon Termination. In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall apply the Fund to pay or to provide for the payment of any and all obligations of the Fund and shall distribute and apply any remaining surplus in such manner as will in their opinion best effectuate the purpose of the Fund; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Physicians and their Employees, their spouses, beneficiaries or dependents, or the administrative expenses of the Fund or for other payments in accordance with the provisions of this Agreement. Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of the BCMA or to the Employers (solely in their role as employers).
- 11.8 Notification. Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify the BCMA and the Physicians and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

- 12.1 Notice. Any notice required to be given under the terms of this Agreement shall (unless otherwise provided in this Agreement) be deemed to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope,

postage prepaid, to such person at his or her last known address as shown in the records of the Fund. If any such notice is mailed it shall be deemed to have been duly given to and received by the addressee five days after the mailing thereof in the aforesaid manner.

- 12.2 Effect of Any Partial Illegality. If any provision of this Agreement, the Plan, the Rules and Regulations made pursuant thereto, or any step in the administration of the Fund or the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement, the Plan or the said Rules and Regulations, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Agreement and the Plan. In the event of any such holding, the parties will immediately commence negotiations to remedy any such defect.
- 12.3 Context. Wherever the singular and/or masculine and/or neuter is used throughout this Agreement the same shall be construed as meaning the plural and/or feminine or a body corporate where the context or the parties hereto so require.
- 12.4 Addresses. The address of each of the parties hereto and each of the Trustees shall be as follows:

BCMA:

British Columbia Medical Association  
115 - 1665 West Broadway  
Vancouver, BC V6J 5A4

Attention: Chief Operating Officer

THE FUND:

BCMA Health Benefits Trust Fund  
c/o British Columbia Medical Association  
115 - 1665 West Broadway  
Vancouver, BC V6J 5A4

Attention: Chair

or such other address as the respective parties hereto may from time to time appoint in writing. Any change of address shall be effected by notice in writing to the Trustees sent by registered mail or personally delivered to the principal office of the Fund.

- 12.5 Headings. The headings used herein are for ease of reference only and shall not be deemed to form part of this Agreement.
- 12.6 Dissolution of Any Party. In the event of dissolution, winding-up or liquidation of any of the BCMA, the association, or entity immediately succeeding the BCMA shall take its place as a party hereto for all purposes as if it had been a party originally named herein.

12.7 Annual Meeting. Commencing with the year 2007, the Trustees shall hold at least one meeting each year which shall be designated as the Annual Meeting of the Trustees. The Chair shall be responsible for setting the date of each such annual meeting.

12.8 Requirements at Annual Meetings. At each Annual Meeting of the Trustees:

- (a) A financial statement from the auditors of the Fund shall be presented and this statement shall cover the period from the date of the last auditors' statement up to a date not more than ONE HUNDRED AND EIGHTY (180) days prior to the date of the annual meeting;
- (b) The Chair shall submit his or her report relating to the period since the inception of the Fund or from the date of the last preceding Annual Meeting as the case may be; and
- (c) The Administrator shall submit its report relating to the period since the inception of the Fund or from the date of the last preceding Annual Meeting as the case may be.

IN WITNESS WHEREOF the undersigned do hereunto cause this Agreement to be duly executed as of the day and year first above written.

**BRITISH COLUMBIA MEDICAL  
ASSOCIATION**

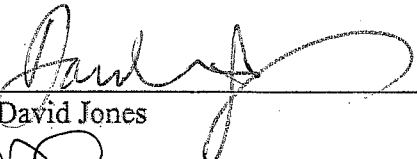
By:   
Chief Operating Officer CHRISTIANE AHPIN

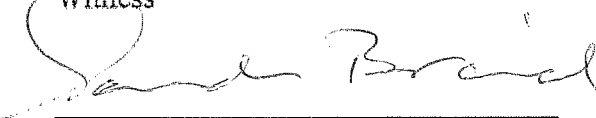
**THE INITIAL TRUSTEES**

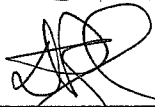
  
Witness

  
Name: Dr. Michael McCann

  
Witness

  
Name: Dr. David Jones

  
Witness

  
Name: Dr. Lori Vogt

**ACCEPTANCE AND DECLARATION OF TRUST**

We, the undersigned, hereby agree to act as Trustees in accordance with the foregoing Trust Agreement. We acknowledge that we have read the Trust Agreement and understand it, and we agree to abide by the terms and conditions of the Trust Agreement so far as those terms and conditions affect each of us as the first Trustees of BCMA Health Benefits Trust Fund. This Acceptance and Declaration of Trust may be signed by each of us in counterpart.

DATED as of this 23<sup>rd</sup> day of November, 2005.

Witness

Name: Dr. Michael McCann

Witness

Name: Dr. David Jones

Witness

Name: Dr. Lori Vogt

**ACCEPTANCE AND DECLARATION OF TRUST**  
**(FOR A SUCCESSOR TRUSTEE)**

I, the undersigned, hereby agree to act as Trustee in accordance with the foregoing Trust Agreement. I acknowledge that I have read the Trust Agreement and understand it, and I agree to abide by the terms and conditions of the Trust Agreement so far as those terms and conditions affect me as a Successor Trustee of BCMA Health Benefits Trust Fund.

DATED as of this [Insert Date]

Witness

[Name and Signature of Successor Trustee]

AMENDMENT NO. 1 DATED AS OF JANUARY 1, 2007 AMENDING THE TRUST  
AGREEMENT DATED NOVEMBER 23, 2005, ESTABLISHING BCMA HEALTH  
BENEFITS TRUST FUND

AND WHEREAS Article 11.1 of the Trust Agreement dated November 23, 2005 (the "Trust Agreement") allows the Trustees (the "Trustees") of the BCMA Health Benefits Trust Fund (the "Fund") to amend from time to time the Trust Agreement, provided that any such amendment does not alter the basic principles of the Trust Agreement, namely to provide benefits to those entitled under the terms thereof, and is not contrary to law;

AND WHEREAS the Trustees are satisfied that the amendments set out in this Amendment No. 1 are within the power of the Trustees;

NOW THEREFORE the undersigned, being all of the Trustees, hereby agree that the Trust Agreement shall stand amended effective as of January 1, 2007, in the following manner:

1. Article 4.2 shall be deleted and shall be replaced by the following:

"4.2 Benefits Limited. Benefits may only be provided for a Physician or an Employee and subject always to the terms of the Plan, the spouse and the dependants of a Physician and an Employee, and the spouse and dependents of a deceased Physician."

2. Article 4.3(c) shall be amended by adding the phrase "or a spouse or a dependant of a deceased Retiree" immediately after the phrase "including a spouse or dependant of such a Retiree".
3. In all other respects, the Trust Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, we, the undersigned, being all of the Trustees of BCMA Health Benefits Trust Fund made and passed this Amendment with effect as of January 1, 2007, as evidenced by our signatures set out below in counterpart. When a counterpart of this Amendment has been signed by each of the Trustees, this Amendment No. 1 will take effect as of January 1, 2007.

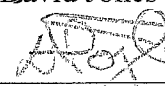
  
WITNESS

  
WITNESS

  
WITNESS

  
Dr. Michael McCann

  
Dr. David Jones

  
Dr. Lori Vogt

AMENDMENT NO. 2 DATED AS OF APRIL 16, 2008 AMENDING THE TRUST  
AGREEMENT DATED NOVEMBER 23, 2005, ESTABLISHING BCMA HEALTH  
BENEFITS TRUST FUND

AND WHEREAS Article 11.1 of the Trust Agreement dated November 23, 2005 (the "Trust Agreement") allows the Trustees (the "Trustees") of the BCMA Health Benefits Trust Fund (the "Fund") to amend from time to time the Trust Agreement, provided that any such amendment does not alter the basic principles of the Trust Agreement, namely to provide benefits to those entitled under the terms thereof, and is not contrary to law;

AND WHEREAS Article 7.6(j) grants to the Board of Trustees the power to establish a system or means whereby the Fund is self-insuring either in whole or in part, and the Trustees intend to exercise such a power;

AND WHEREAS the Trustees are satisfied that the amendments set out in this Amendment No. 2 are within the power of the Trustees;

NOW THEREFORE the undersigned, being all of the Trustees, hereby agree that the Trust Agreement shall stand amended effective as of April 16, 2008, in the following manner:

1. There shall be added to the Trust Agreement Article 4.5 as follows:

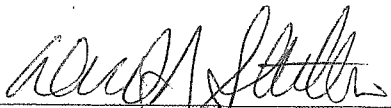
**"4.5    Self-Insured Benefits**

In the event that pursuant to Article 7.6(j) of this Agreement, the Trustees established a system or means whereby the Fund is self-insuring either in whole or in part the Benefits (referred to in this Article 4.5 as the "Self-Insured Benefits"), then and in such event:

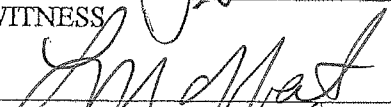
- (a) A Physician and an Employee, and his or her respective spouse and dependents, is, and shall be, entitled to indemnification by the Fund for the payment of such Self-Insured Benefits;
- (b) The Trustees may, with the advice of the Consultant if desired, establish from time to time reserves necessary to pay or indemnify such Self-Insured Benefits; and
- (c) In no event shall the Trustees, or any of them, be liable personally for the payment or indemnification of any Self-Insured Benefit, but rather the payment or indemnification of such Self-Insured Benefit is limited to the property and assets of the Fund, as such property and assets exist from time to time."

2. In all other respects, the Trust Agreement shall continue in full force and effect.


IN WITNESS WHEREOF, we, the undersigned, being all of the Trustees of BCMA Health Benefits Trust Fund made and passed this Amendment with effect as of April 16, 2008, as evidenced by our signatures set out below in counterpart. When a counterpart of this Amendment has been signed by each of the Trustees, this Amendment No. 2 will take effect as of April 16, 2008.



WITNESS



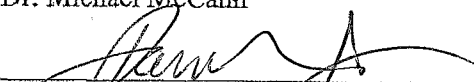
WITNESS



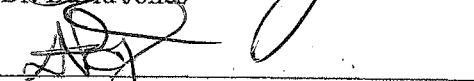
WITNESS



Dr. Michael McCann



Dr. David Jones



Dr. Lori Vogt

AMENDMENT NO. 3 DATED AS OF FEBRUARY 8, 2011 AMENDING THE TRUST  
AGREEMENT DATED NOVEMBER 23, 2005, ESTABLISHING BCMA HEALTH  
BENEFITS TRUST FUND

AND WHEREAS Article 11.1 of the Trust Agreement dated November 23, 2005 allows the Trustees (the "Trustees") of the BCMA Health Benefits Trust Fund (the "Fund") to amend from time to time the Trust Agreement, provided that any such amendment does not alter the basic principles of the Trust Agreement, namely to provide benefits to those entitled under the terms thereof, and is not contrary to law;

AND WHEREAS the Trust Agreement has been previously amended by Amendment No.1 dated as of January 1, 2007 and by Amendment No. 2, dated as of April 16, 2008 (which is collectively referred to as the "Trust Agreement");

AND WHEREAS the Trustees are satisfied that the amendment set out in this Amendment No. 3 is within the power of the Trustees;

NOW THEREFORE the undersigned, being all of the Trustees, hereby agree that the Trust Agreement shall stand amended effective as of February 8, 2011, in the following manner:

1. The definition of "Employer" as set out in Article 1.1 (d) is deleted and replaced by the following

"(d) "Employer(s)" means a Physician (whether an individual, partnership, corporation, society, or another type of incorporated or unincorporated entity acceptable to the Trustees) who or which employs one or more Employees; "


2. In all other respects, the Trust Agreement shall continue in full force and effect.

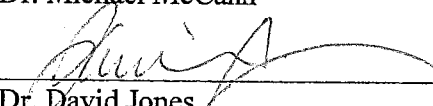
IN WITNESS WHEREOF, we, the undersigned, being all of the Trustees of BCMA Health Benefits Trust Fund made and passed this Amendment with effect as of February 8, 2011, as evidenced by our signatures set out below in counterpart. When a counterpart of this Amendment has been signed by each of the Trustees, this Amendment No. 3 will take effect as of February 8, 2011.

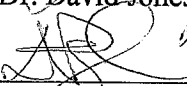
  
WITNESS

  
WITNESS

  
WITNESS

  
Dr. Michael McCann

  
Dr. David Jones

  
Dr. Lori Vogt