

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

CONTROL NUMBER: 11081051 (RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: 08/30/2011
<i>Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov</i>	

November Term, 2003
 Month Year
 No. 00946

NEVYAS ETAL VS MORGAN

Name of Filing Party:
ANITA NEVYAS-WALLACE-PLF
HERBERT J NEVYAS-PLF
NEVYAS EYE ASDSOCIATES-PLF

INDICATE NATURE OF DOCUMENT FILED:

- Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
 Is another petition/motion pending? Yes No

If the answer to either question is yes, you must identify the judge(s):
 HONORABLE VICTOR J. DINUBILE, JR.

TYPE OF PETITION/MOTION (see list on reverse side) PETITION FOR CONTEMPT	PETITION/MOTION CODE (see list on reverse side) PTFCT
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ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

<p>I. CASE PROGRAM</p> <p>NON JURY PROGRAM</p>	<p>II. PARTIES (required for proof of service) (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)</p> <p>HERBERT J NEVYAS 1528 WALNUT ST , PHILADELPHIA PA 19102</p> <p>ANITA NEVYAS-WALLAC 1528 WALNUT ST , PHILADELPHIA PA 19102</p> <p>NEVYAS EYE ASSOCIATES 1528 WALNUT ST , PHILADELPHIA PA 19102</p> <p>JEFFREY B ALBERT 48 OAKWOOD DRIVE , DRESHER PA 19025</p> <p>LEON W SILVERMAN 230 S. BROAD STREET 17TH FLOOR , PHILADELPHIA PA 19102</p> <p>CARL HANZELIK 1121 WESTBURY ROAD , JENKINTOWN PA 19046</p>
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III. OTHER

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

 (Attorney Signature/Unrepresented Party)

August 10, 2011
 (Date)

LEON W. SILVERMAN
 (Print Name)

 (Attorney I.D. No.)

**The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.
 No extension of the Answer/Response Date will be granted even if the parties so stipulate.**

PETER J HOFFMAN

ECKERT SEAMANS CHERIN MELLOTT TWO
LIBERTY PLACE 50 SOUTH 16TH ST 22ND
FLOOR , PHILADELPHIA PA 19102

DOMINIC J MORGAN

PO BOX 1011 , MARLTON NJ 08053

<hr/> HERBERT J. NEVYAS, M.D.	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D.	:	Philadelphia County
and	:	
NEVYAS EYE ASSOCIATES, P.C.	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO.: 946
vs.	:	
DOMINIC MORGAN,	:	
STEVEN FRIEDMAN	:	
Defendants.	:	

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2011, upon consideration of Plaintiffs' Petition for Contempt and Sanctions against Defendant Dominic Morgan, it is hereby ORDERED, that:

- (1) A Rule is issued upon Respondent Dominic Morgan to show cause why the Petitioners are not entitled to the relief requested;
- (2) Respondent Dominic Morgan shall file an answer to the Petition within twenty (20) days;
- (3) A Hearing or Argument shall be scheduled at the discretion of the Assigned Judge; and
- (4) Notice of the entry of this Order shall be provided immediately to all parties by the Petitioner.

BY THE COURT:

J.

STEIN & SILVERMAN, P.C.
BY: Leon W. Silverman, Esquire
I.D. No. 04244
230 South Broad Street, 17th Floor
Philadelphia, PA 19102
(215) 985-0255

Attorney for Plaintiffs,
Dr. Herbert Nevyas and
Dr. Anita Nevyas-Wallace

<hr/> HERBERT J. NEVYAS, M.D.	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D.	:	Philadelphia County
and	:	
NEVYAS EYE ASSOCIATES, P.C.	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO.: 946
vs.	:	
DOMINIC MORGAN,	:	
STEVEN FRIEDMAN	:	
Defendants.	:	

PLAINTIFFS' PETITION FOR CIVIL CONTEMPT
AND FOR SANCTIONS AGAINST DEFENDANT DOMINIC MORGAN

Plaintiffs/Petitioners Herbert J. Nevyas, M.D., Anita Nevyas-Wallace, M.D. and Nevyas Eye Associates, P.C., by and through their undersigned counsel, hereby petition this Honorable Court to enter an Order holding Defendant Dominic Morgan in contempt for violating this Court's Order dated March 16, 2011, specifically enforcing the contract between Plaintiffs/Petitioners and Morgan and enjoining Morgan from continuing to publish statements criticizing Plaintiffs'/Petitioners' professional actions and integrity. In support of their Petition, Plaintiffs/Petitioners aver as follows:

1. This Court entered an Order dated March 16, 2011, specifically enforcing the contract between Plaintiffs/Petitioners and Morgan and enjoining Morgan from continuing to publish statements criticizing Plaintiffs'/Petitioners' professional actions and integrity. A true and correct copy of this Order is attached as Exhibit 1.

2. The Court entered this Order following a bench trial before the Honorable Victor J. DiNubile, Jr. Exhibit 1.

3. The right of Plaintiffs/Petitioners to Injunctive Relief was established by the Superior Court of Pennsylvania in an opinion which affirmed, in part, an earlier holding by the Honorable Eugene Maier, finding that an enforceable agreement had been entered between Plaintiffs/Petitioners and Morgan that Morgan would not publish statements of the type that he had agreed to remove in July 2003. A true and correct copy of the Superior Court's Opinion is attached as Exhibit 2. Exhibit 2 at 14.

4. On remand, the Superior Court directed the trial court to consider whether the statements which were the subject of this lawsuit were of the same type as the statements which Morgan had agreed to remove in July 2003, and if not, whether those statements were defamatory. Exhibit 2 at 14.

5. After a six day bench trial, the Court found in favor of Plaintiffs/Petitioners and against Morgan and granted the equitable relief requested. Exhibit 1.

6. The Court enjoined Morgan from "publishing any defamatory material pertaining to and against Plaintiffs, particularly regarding their professional actions as ophthalmologists and Lasik surgeons on any website owned, operated, controlled or possessed by Defendant Dominic Morgan." Exhibit 1 ¶ 1.

7. The Court also specifically prohibited Morgan from publishing "[s]tatements that the Plaintiffs "lied" or were deceitful to Dominic Morgan." Exhibit 1 ¶ 2(c).

8. Morgan is currently publishing on several websites which he owns false and defamatory statements about Plaintiffs/Petitioners in violation of this Court's March 16, 2011 Order.

9. These websites include NevyasLasik.com, HerbertNevyasLasik.com, AnitaNevyasLasik.com and lasikdecision.com.

10. These websites include, *inter alia*, the following prohibited statements:

a. Morgan republished a letter he wrote to the American Academy of Ophthalmology dated February 28, 2005 in its entirety. The letter is comprised of false and defamatory statements many of which also appear elsewhere on Morgan's websites and are set forth *infra*. The letter also includes additional prohibited statements including:

i. "Eventually, because of complaints, the FDA shut down use of the Nevyas laser;"

ii. "Data from the Nevyases simply cannot be trusted, and now that Nevyas data has helped Intacs get on the market. The consequences could be severe;"

iii. "I am concerned about Nevyas ethics;"

iv. "FDA had shut down Nevyas from using his laser. The FDA had been concerned about how Nevyas used the Nevyas laser;"

v. "the FDA has taken the position that it eliminated a danger to "public safety" when it shut down the Nevyas laser;"

vi. "I am concerned not only about Nevyas ethics with regard to the Nevyas laser, but about the safety of Intacs, which the FDA approved on the basis of data Nevyas. I am extremely concerned that the Intacs study may be flawed, and thus the Intacs approval flawed, because of Nevyas participation."

vii. Attaching as Exhibit 12 "e-mail Dr. Matthew Tarosky of the FDA sent to Mrs. Jo Wills, wife of another Nevyas laser casualty, Mr. Keith Wills;

viii. Claiming that the "May 10, 2001 report of an FDA investigator, concluding that Nevyas was not complying with the Investigator Agreement."

b. On that same website, introducing that letter, under the heading: "Help from the AAO & State Medical Boards," Morgan states that "The help received from them was none even though the documents clearly show deviations from the standard of care and many violations;"

Elsewhere on these websites (and many of these statements are repeated on multiple websites Morgan writes:

c. "I believe the Nevyases constantly misrepresented themselves and their study to both Schulman Associated (the Nevyases IRB) and the FDA.

d. "After damaging my eyes with refractive surgery, Drs. Herbert Nevyas' and Anita Nevyas-Wallace sued to silence me;"

- e. Claiming he can “further prove all allegations I brought against Anita Nevyas as documented on my previously owned website LasikSucks4u.com and now LaskiDecision.com.”
- f. “the courts were misled in many of their decisions and/or opinions regarding my medical malpractice lawsuit Morgan v. Nevyas and the current Nevyas v. Morgan lawsuit;”
- g. The often used heading “Nevyas’ deviation from Standard of Care;”
- h. The heading entitled “Deviations of Nevyas Eye Associates, as stated in letter from the FDA dated 01/07/99;”
- i. The heading entitled: “Nevyases Deviations and Discrepancies continue almost 5 years into their study;”
- j. The heading entitled: “IDE Deficiencies Request Letter from the FDA to Nevyases;”
- k. The statement calling the Nevyases’ laser a “black box laser;”
- l. The statement that the pre-operative examination “was not complete;”
- m. “I was NOT told that a change in prescription gave me a better than 20/50 Best Corrected Visual Acuity (BCVA) than I ever had, and that instead of Lasik, the new prescription would have worked just as well if not better than what I was seeing (refracted to 20/20-2 according to their records.)”
- n. “Bottom line is after reviewing ALL of my records since having had Lasik. I cannot be corrected because some of the damage was due to increased pressure from the suction cups used to lift the corneal flaps. Dr. Salz stated I SHOULD NOT HAVE EVER BEEN CONSIDERED A CANDIDATE FOR LASIK and submitted to my attorneys many reports.”
- o. “The charts submitted to the FDA listing adverse events and complications do NOT show data relevant to the number of medical malpractice claims filed against them during their study.” Morgan makes this statement despite having seen FDA Inspector Stokes’ report stating that the Nevyases’ data was complete;
- p. “I started some time ago to contact doctors on the LIST the Nevyases sent to the FDA as being co-investigators. Three of those contacted who responded have never even heard of the Nevyases;”
- q. The heading: “Dr. Terrence O’Brien’s Reports Concerning a Prior Patient, Also Damaged;”
- r. The heading: “Nevyas’ Deviation from Standard of Care -- Kenneth Kenyan”

s. In LasikDecision.com Morgan writes: “After my medical malpractice lawsuit I added the doctor’s names because I believed then (and still do) that as a matter of public safety, they should be named. Their investigational study, as proven by the information (documents) posted resulted in numerous lawsuits. I posted all the information I could get;”

t. “Because of the way my medical malpractice lawsuit was handled through the courts, I believe it necessary to document this case in its entirety;”

u. The statement that “the Nevyases’ attorney, misrepresenting the Philadelphia Court’s Order . . .;”

v. “Through threats of lawsuit, intimidation and (I believe) violation of my First Amendment rights . . .;”

w. “For those of you who have followed my situation throughout this ordeal know the truth, and the truth should not be silenced.” This statement, in conjunction with the sentences that follow it, are false and defamatory. The truth is that Morgan had more than 20 independent doctors examine his eyes and not one of them found any fault with the Lasik performed on Morgan by the Nevyases. The only doctors who ever found fault were the doctors hired by his attorney. No court has ever found that the Nevyases committed malpractice when they performed Lasik on Morgan;

x. “In July ‘99 Dr. Herbert Nevyas, the doctor who runs the laser center (Anita’s father) I went to told me “Deal with it . . . People lose their sight every day . . . I’ll see you in eight months.” Dr. Nevyas never made any such statement.

y. “the FDA was more concerned with being sued by the Nevyases for the information released than by doing the right thing.”

z. Statements complaining about “Nevyas’ Promotion of An Investigational Device” despite having seen the report of FDA Inspector Stokes who specifically found that all of the Nevyases’ promotions had been properly approved by the IRB;

aa. The republication in full of the expert reports used in the medical malpractice hearings, all of which resulted in defense verdicts for the Nevyases. While others may be permitted to publish these reports, Morgan is not based upon his contractual agreement with the Nevyases as affirmed by the Superior Court.

bb. The essay by Jo Wills, entitled “Lasik Gone Wrong – What Happened to Keith Wills.” Again, Morgan is not permitted to publish this essay based upon his contractual agreement with the Nevyases as affirmed by the Superior Court.

11. The websites, when printed, amount to many hundreds of pages which are too burdensome to attach in their entirety. Plaintiffs/Petitioners, rather than burden the Court with this volume of paper, attach the following: A true and correct copy of portions of

NevyasLasik.com is attached as Exhibit 3; a true and correct copy of portions of AnitaNevyasLasik.com is attached as Exhibit 4; a true and correct copy of portions of HerbertNevyasLasik.com is attached as Exhibit 5, and a true and correct copy of portions of LasikDecision.com is attached as Exhibit 6.

12. Many of the websites contain the same defamatory and prohibited statements. Plaintiffs/Petitioners have attempted to avoid duplication to the extent possible for the convenience of the Court.

13. Defendant Morgan is and was aware of this Court's March 16, 2011 Order and continued to publish the statements set forth above despite this knowledge.

14. Morgan was present in the courtroom on March 16, 2011 when Judge DiNubile announced his decision from the bench.

15. Further, counsel for Plaintiffs/Petitioners wrote to Morgan, specifically notifying Morgan that he was violating this Court's Order. A true and correct copy of Plaintiffs/Petitioners letters are collectively attached as Exhibit 7.

16. Morgan continued to refuse to comply with this Court's March 16, 2011, despite having had nearly five months to comply. A true and correct copy of Morgan's responsive letters are collectively attached as Exhibit 8.

17. Morgan's refusal to comply with the Order was volitional -- he had nearly five (5) months in which to comply by removing the statements regarding the Nevnyases from his websites and he refused to do so, despite repeated demands by Plaintiffs/Petitioners.

18. Morgan's refusal to comply with this Court's March 16, 2011 Order is wrongful. Morgan clearly intends to continue causing as much damage to the Nevnyases as possible. Despite having been told repeatedly that his vision loss was not caused by the Nevnyases, and

despite the fact (as he admitted at trial) that he continued to drive at night for many years after his lasik procedure, Morgan continues his campaign to destroy the Nevyases through his websites.

19. Plaintiffs/Petitioners therefore ask this Honorable Court to hold Morgan in civil contempt and to impose civil sanctions to compel compliance with the Court's March 16, 2011 Order and to compensate Plaintiffs/Petitioners for the cost of bringing this Petition.

20. A court may impose civil sanctions against a litigant who violates an order of the Court. Korean American Association of Greater Philadelphia, Inc. v. Chung, 871 A.2d 870 (Pa. Cmwlth. 2005); Gunther v. Bolus, 853 A.2d 1014 (Pa. Super. 2004).

WHEREFORE, Plaintiffs/Petitioners request that this Honorable Court enter an Order holding Dominic Morgan is in civil contempt, and imposing a suspended six month jail sentence which Morgan can avoid by removing all of the statements set forth in this Petition, removing his letter to the AAO and all medical expert reports concerning the Plaintiffs/Petitioners from all websites which he owns, operates or controls, and by paying Plaintiffs/Petitioners \$5,000 in compensatory damages for the costs and attorneys fees incurred bringing this Petition.

Respectfully submitted,

/s/ LEON W. SILVERMAN

LEON W. SILVERMAN, ESQUIRE

Dated: August 9, 2011

STEIN & SILVERMAN, P.C.
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Attorney for Plaintiffs,
Dr. Herbert Nevyas and
Dr. Anita Nevyas-Wallace

<hr/>	:	
HERBERT J. NEVYAS, M.D.	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D.	:	Philadelphia County
and	:	
NEVYAS EYE ASSOCIATES, P.C.	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO.: 946
vs.	:	
DOMINIC MORGAN,	:	
STEVEN FRIEDMAN	:	
Defendants.	:	
<hr/>	:	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' PETITION FOR
CONTEMPT AND SANCTIONS AGAINST DEFENDANT DOMINIC MORGAN**

Matter Before the Court:

Plaintiffs/Petitioners Herbert J. Nevyas, M.D., Anita Nevyas-Wallace, M.D. and Nevyas Eye Associates, P.C. ask this Court to find Defendant/Respondent Dominic Morgan in contempt of this Court's Order of March 16, 2011, specifically enforcing Morgan's agreement not to publish certain types of statements concerning the Petitioners on the internet, as that agreement was affirmed by the Superior Court. Plaintiffs/Petitioners request that this Court compel compliance with this Order and further order Morgan to compensate Petitioners for their costs and reasonable attorneys' fees incurred in bringing this Petition.

Statement of Questions Involved:

1. Whether Morgan violated this Court's March 16, 2011 prohibiting him from, *inter alia*, "publishing of any defamatory material pertaining to and against Plaintiffs, particularly regarding their professional actions as ophthalmologists and lasik surgeons"?

Suggested Answer: Yes

2. Whether Morgan had notice of this Court's March 16, 2011 order when Morgan was present in Court when this Order was issued and when Morgan received a copy of this Order directly from the Honorable Victor J. DiNubile, Sr. on March 16, 2011?

Suggested Answer: Yes

3. Whether Morgan's publication of the contents of his various websites in violation of this Court's March 16, 2011 Order was volitional?

Suggested Answer: Yes

4. Whether Morgan acted with wrongful intent when he published the contents of his various websites in violation of this Court's March 16, 2011 Order?

Suggested Answer: Yes

Facts:

Dominic Morgan owns and operates many websites, including NevyasLasik.com, HerbertNevyasLasik.com; AnitaNevyasLasik.com and LasikDecision.com. On each of these websites Morgan is publishing and continues to publish false and defamatory statements concerning the Petitioners' professional actions as ophthalmologists and lasik surgeons, and their ethics, honesty and trustworthiness.

Morgan, following a six day bench trial, was enjoined by this Court from publishing such statements on any website which he owned, operated, controlled or possessed. The Court further ordered that: "[a]ny future publication in violation of this Order, after due notice to Defendant Morgan and after hearing before this Court in which a finding is made that there is such a violation, shall result in a finding of civil contempt of Court and the imposition of appropriate sanctions."

Brief Procedural History:

Morgan began his campaign to destroy the Petitioners in the summer of 2003, after he lost his medical malpractice lawsuit against Petitioners. Frustrated that he did not win in Court, Morgan sought to punish Petitioners by publishing false and defamatory statements about them on the internet, including claims that Petitioners had committed malpractice, were untrustworthy and deceitful, and had manipulated the Court in defeating Morgan's malpractice claim.

Petitioners were upset by Morgan's false and defamatory publications and sought to reach an agreement with Morgan to have Morgan remove these statements. Morgan initially agreed to remove certain types of statements about Petitioners from the internet and to refrain from publishing such statements in the future (the "Agreement.") Morgan promptly breached this Agreement in November 2003, and this lawsuit followed.

Petitioners' claims for specific performance of this Agreement were initially tried by the Honorable Eugene Maier in 2005, who found that an enforceable Agreement existed and entered an Order specifically enforcing this Agreement. Morgan appealed to the Superior Court, which affirmed, in part, Judge Maier, and found that an enforceable agreement did exist under which Morgan agreed to remove and not to re-publish the type of statements which he removed from his website in July/August 2003. The Superior Court then remanded this dispute. Exhibit 2.

Following remand, a six day bench trial was held before the Honorable Victor J. DiNubile, Jr. Judge DiNubile, following the Superior Court's opinion, entered an Order on March 16, 2011, precluding Morgan from publishing the type of defamatory material he had published and then initially removed in July 2003. Exhibit 1.

Despite the entry of this Court's March 16, 2011 Order, Morgan is currently publishing, on at least four (4) of his websites, the exact type of defamatory statements that he agreed not to

publish and that he was enjoined from publishing by this Court. Morgan refused to remove these statements, even after Petitioners wrote to Morgan, pointing out the specific statements which Morgan was publishing in violation of this Court's Order and demanding that he remove such statements. Exhibits 7, 8.

Petitioners now bring this Petition for Civil Contempt and for Sanctions against Morgan, asking this Honorable Court to compel compliance with its March 16, 2011 order and to order Morgan to compensate Petitioners for the costs and reasonable attorneys' fees incurred in bringing this Petition.

Morgan's Current False and Defamatory Publications:

Morgan, on his websites is currently publishing, *inter alia*, the following prohibited statements:

a. Morgan republished a letter he wrote to the American Academy of Ophthalmology dated February 28, 2005 in its entirety. The letter is comprised of false and defamatory statements many of which also appear elsewhere on Morgan's websites and are set forth *infra*. The letter also includes additional prohibited statements including:

i. "Eventually, because of complaints, the FDA shut down use of the Nevyas laser;"

ii. "Data from the Nevyases simply cannot be trusted, and now that Nevyas data has helped Intacs get on the market. The consequences could be severe;"

iii. "I am concerned about Nevyas ethics;"

iv. "FDA had shut down Nevyas from using his laser. The FDA had been concerned about how Nevyas used the Nevyas laser;"

v. "the FDA has taken the position that it eliminated a danger to "public safety" when it shut down the Nevyas laser;"

vi. "I am concerned not only about Nevyas ethics with regard to the Nevyas laser, but about the safety of Intacs, which the FDA approved on the basis of data Nevyas. I am extremely concerned that the Intacs study may be flawed, and thus the Intacs approval flawed, because of Nevyas participation."

vii. Attaching as Exhibit 12 “e-mail Dr. Matthew Tarosky of the FDA sent to Mrs. Jo Wills, wife of another Nevyas laser casualty, Mr. Keith Wills;

viii. Claiming that the “May 10, 2001 report of an FDA investigator, concluding that Nevyas was not complying with the Investigator Agreement.”

b. On that same website, introducing that letter, under the heading: “Help from the AAO & State Medical Boards,” Morgan states that “The help received from them was none even though the documents clearly show deviations from the standard of care and many violations;”

Elsewhere on these websites (and many of these statements are repeated on multiple websites) Morgan writes:

c. “I believe the Nevyases constantly misrepresented themselves and their study to both Schulman Associated (the Nevyases IRB) and the FDA.

d. “After damaging my eyes with refractive surgery, Drs. Herbert Nevyas’ and Anita Nevyas-Wallace sued to silence me;”

e. Claiming he can “further prove all allegations I brought against Anita Nevyas as documented on my previously owned website LasikSucks4u.com and now LaskiDecision.com.”

f. “the courts were misled in many of their decisions and/or opinions regarding my medical malpractice lawsuit Morgan v. Nevyas and the current Nevyas v. Morgan lawsuit;”

g. The often used heading “Nevyas’ deviation from Standard of Care;”

h. The heading entitled “Deviations of Nevyas Eye Associates, as stated in letter from the FDA dated 01/07/99;”

i. The heading entitled: “Nevyases Deviations and Discrepancies continue almost 5 years into their study;”

j. The heading entitled: “IDE Deficiencies Request Letter from the FDA to Nevyases;”

k. The statement calling the Nevyases’ laser a “black box laser;”

l. The statement that the pre-operative examination “was not complete;”

m. “I was NOT told that a change in prescription gave me a better than 20/50 Best Corrected Visual Acuity (BCVA) than I ever had, and that instead of Lasik, the new prescription would have worked just as well if not better than what I was seeing (refracted to 20/20-2 according to their records.)”

n. “Bottom line is after reviewing ALL of my records since having had Lasik. I cannot be corrected because some of the damage was due to increased pressure from the suction cups used to lift the corneal flaps. Dr. Salz stated I SHOULD NOT HAVE EVER BEEN CONSIDERED A CANDIDATE FOR LASIK and submitted to my attorneys many reports.”

o. “The charts submitted to the FDA listing adverse events and complications do NOT show data relevant to the number of medical malpractice claims filed against them during their study.” Morgan makes this statement despite having seen FDA Inspector Stokes’ report stating that the Nevyases’ data was complete;

p. “I started some time ago to contact doctors on the LIST the Nevyases sent to the FDA as being co-investigators. Three of those contacted who responded have never even heard of the Nevyases;”

q. The heading: “Dr. Terrence O’Brien’s Reports Concerning a Prior Patient, Also Damaged;”

r. The heading: “Nevyas’ Deviation from Standard of Care -- Kenneth Kenyan”

s. In LasikDecision.com Morgan writes: “After my medical malpractice lawsuit I added the doctor’s names because I believed then (and still do) that as a matter of public safety, they should be named. Their investigational study, as proven by the information (documents) posted resulted in numerous lawsuits. I posted all the information I could get;”

t. “Because of the way my medical malpractice lawsuit was handled through the courts, I believe it necessary to document this case in its entirety;”

u. The statement that “the Nevyases’ attorney, misrepresenting the Philadelphia Court’s Order . . .;”

v. “Through threats of lawsuit, intimidation and (I believe) violation of my First Amendment rights . . .;”

w. “For those of you who have followed my situation throughout this ordeal know the truth, and the truth should not be silenced.” This statement, in conjunction with the sentences that follow it, are false and defamatory. The truth is that Morgan had more than 20 independent doctors examine his eyes and not one of them found any fault with the Lasik performed on Morgan by the Nevyases. The only doctors who ever found fault were the doctors hired by his attorney. No court has ever found that the Nevyases committed malpractice when they performed Lasik on Morgan;

x. “In July ‘99 Dr. Herbert Nevyas, the doctor who runs the laser center (Anita’s father) I went to told me “Deal with it . . . People lose their sight every day . . . I’ll see you in eight months.” Dr. Nevyas never made any such statement.

y. “the FDA was more concerned with being sued by the Nevyases for the information released than by doing the right thing.”

z. Statements complaining about “Nevyas’ Promotion of An Investigational Device” despite having seen the report of FDA Inspector Stokes who specifically found that all of the Nevayas’ promotions had been properly approved by the IRB;

aa. The republication in full of the expert reports used in the medical malpractice hearings, all of which resulted in defense verdicts for the Nevayas. While others may be permitted to publish these reports, Morgan is not based upon his contractual agreement with the Nevayas as affirmed by the Superior Court.

bb. The essay by Jo Wills, entitled “Lasik Gone Wrong – What Happened to Keith Wills.” Again, Morgan is not permitted to publish this essay based upon his contractual agreement with the Nevayas as affirmed by the Superior Court.

Morgan’s violation of this Court’s March 16, 2011 Order is comprehensive. Morgan has not been deterred by this Court’s Order. He continues his campaign to destroy the Nevayas. He should be found in civil contempt and appropriate sanctions should be imposed to compel compliance and to compensate Petitioners for their costs and reasonable attorneys’ fees incurred in seeking to enforce the March 16, 2011 Order.

Argument:

A party to an Order of the Court may be found in contempt for violating that Order. Korean American Association of Greater Philadelphia, Inc. v. Chung, 871 A.2d 870 (Pa. Cmwlth. 2005); Gunther v. Bolus, 853 A.2d 1014 (Pa. Super. 2004). A party cannot escape its duty to comply with an Order of the Court by claiming a right to free speech. The Commonwealth Court rejected just such a free speech defense to a contempt finding, holding that such an argument “is absurd.” Chung, 871 A.2d at 875.

“A court may exercise its civil contempt power to enforce compliance with its orders for the benefit of the party in whose favor the order runs . . .” Garr v. Peters, 773A.2d 183, 189 (Pa. Super. 2001) quoting Sinaiko v. Sinaiko, 664 A.2d 1005, 1009-10. “The complaining party has the burden of proving by the preponderance of the evidence that a party violated the court order.” Id.

This Court's March 16, 2011 Order, specifically enforcing the Agreement between Morgan and Petitioners, as affirmed in part by the Superior Court, is for the benefit of Petitioners who are entitled to the benefit of their bargain. Morgan does not and cannot claim that the statements set forth in the Petition and in the Fact section above currently appear on his website.

To establish civil contempt, the moving party must prove that (1) the contemnor had notice of the specific order that he disobeyed; (2) the act constituting the violation was volitional; and (3) the contemnor acted with wrongful intent. Gunther v. Bolus, 853 A.2d at 1017.

Morgan cannot and does not claim that he did not have notice of this Court's March 16, 2011 Order. Morgan was present in the Courtroom when Judge DiNubile announced his decision from the bench, and Morgan was given a copy of the Order by Judge DiNubile.

Nor can Morgan claim that his publication of the statements set forth in the Petition was an "accident" or in any way not volitional. Morgan owns, operates and controls many websites. His publication on these websites is detailed, voluminous and sophisticated. Moreover, Petitioners specifically put Morgan on notice that the statements complained of were on his websites and Morgan did not claim that the statements were on his websites as the result of any accident. Exhibits 7 and 8.

Morgan's ongoing refusal to comply with his Agreement with the Nevyases and to comply with this Court's March 16, 2011 Order shows his wrongful intent. Morgan wants to destroy the Petitioners. He is acting to maximize the amount of damage he can do to them. The lasik procedure that Morgan is complaining about occurred in 1998 – thirteen years ago. The laser that was used for the procedure was retired in 2001 – more than ten years ago and Morgan knows this.

Judge Maier found that Morgan had entered into an enforceable agreement with the Petitioners. The Superior Court agreed that Morgan had entered into an enforceable agreement with the Petitioners. Judge DiNubile, following these earlier decisions, entered the March 16, 2011 Order. Morgan knows that he is not permitted to continue to publish statements that the Petitioners committed malpractice or violated the standard of care, that the Petitioners are bad doctors, that the Petitioners are deceitful or untrustworthy, or that the Petitioners used an unapproved or “black box” laser.

Morgan’s violation of the Court’s March 16, 2011 Order was willful and done with the intent to inflict as much damage on the Petitioners as he possibly can. He cannot agree to remove statements that the Nevyases are “untrustworthy” and then believe that it is permissible to publish statements that the Nevyases cannot be trusted. Morgan has violated and continues to violate this Court’s March 16, 2011 Order and he should be found to be in civil contempt.

“The purpose of civil contempt is to compel performance of lawful orders, and in some instances, to compensate the complainant for the loss sustained.” Gunther v. Bolus, 853 A.2d at 1018. Petitioners ask this Court to compel Morgan to comply with the March 16, 2011 Order and to compensate Petitioners for the reasonable attorneys’ fees they have incurred in bringing this Petition.

Courts often impose a jail sentence which the contemnor can avoid by complying with the Court’s order. Garr v. Peters, 773A.2d 183; Gunther v. Bolus, 853 A.2d 1014. Thus this Court could impose a jail sentence on Morgan which Morgan can avoid by removing the objectionable statements from his website and by paying Petitioners’ reasonable attorneys fees. Morgan cannot complain that he cannot comply with the Court’s Order because he is legally

blind. He manages to operate and maintain numerous websites. If Morgan can post the prohibited statements he can also remove them.

Moreover, Morgan has numerous assets in the form of domain names that he owns which he can sell to pay Petitioners' reasonable attorneys fees. Morgan has forced Petitioners to spend great sums of money to enforce this Agreement, to obtain the March 16, 2011 Order and now to enforce the March 16, 2011 Order. Morgan should not be permitted to cause harm without having to compensate for the harm he has caused. Morgan should be held in contempt, and should be ordered to promptly remove all prohibited statements from his website and to pay Petitioners' reasonable attorneys' fees or face jail.

Relief Requested:

Petitioners request that a hearing be scheduled to determine whether Morgan is in contempt of this Court's March 16, 2011 Order. Petitioners further request that if Morgan is found to be in contempt that he be ordered to remove the objectionable statements within five (5) days and pay Petitioners' reasonable attorneys' fees or serve a jail sentence.

Respectfully submitted,

/s/ LEON W. SILVERMAN

LEON W. SILVERMAN, ESQUIRE

Dated: August 9, 2011

FILED

10 AUG 2011 10:33 am

Civil Administration

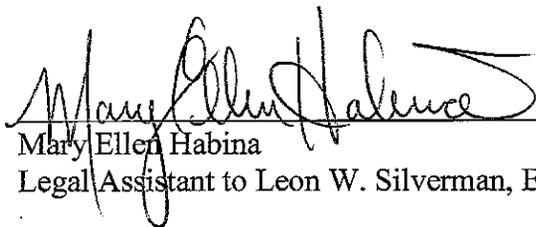
N. MONTE

CERTIFICATE OF SERVICE

I, Mary Ellen Habina, hereby certify that I have caused a true and correct copy of Plaintiffs' Petition for Civil Contempt and for Sanctions Against Defendant Dominic Morgan, to be served via email transmission to the following individuals.

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Legal Assistant to Leon W. Silverman, Esquire

Dated: August 10, 2011