Patient Ledger

Place of Service: C-Spine Ortho
29255 NorthWestern Hwy #101
Southfield, MI 48034-1018

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 |
PMS: 109224PAT000000270
4432 FOURTH STREET
WAYNE, MI 48184
(734) 502-5918

Remit Payment: C-Spine Ortho
4111 E Valley Auto Drive #202
Mesa, AZ 85206-4605

DOA: 5/23/2018

Account Balance $37,667.36

Bill					James Thomas Gilas MD | C-Spine Orthopedic		
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
10/02/2019	**—**	**PIP0001JT8**	**421.58**	**0.00**	**0.00**	**421.58**	**0.00**
10/02/2019	10/03/2019	99213 - OFFICE OUTPATIENT VI...	421.58	0.00	0.00	421.58	0.00

Bill					James Thomas Gilas MD | C-Spine Orthopedic		
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/25/2019	**—**	**PIP00017M7**	**5,864.31**	**0.00**	**0.00**	**5,864.31**	**0.00**
09/25/2019	09/26/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/25/2019	09/26/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/25/2019	09/26/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/25/2019	09/26/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00
09/25/2019	09/26/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	C9290 - Injection, bupivacaine lip...	40.00	0.00	0.00	40.00	0.00
09/25/2019	09/26/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/25/2019	09/26/2019	J2001 - Injection, lidocaine hcl for ...	120.00	0.00	0.00	120.00	0.00

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Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/12/2019	**—**	**PIP0000VV8**	**5,944.31**	**0.00**	**0.00**	**5,944.31**	**0.00**
09/12/2019	09/13/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/12/2019	09/13/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/12/2019	09/13/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/12/2019	09/13/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/12/2019	09/13/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
09/12/2019	09/13/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/21/2019	**—**	**PIP0000F12**	**15,165.34**	**0.00**	**0.00**	**15,165.34**	**0.00**
08/21/2019	08/28/2019	99214 - OFFICE/OUTPATIENT VI...	617.05	0.00	0.00	617.05	0.00
08/21/2019	08/28/2019	64493 - INJ PARAVERT F JNT L/...	8,050.50	0.00	0.00	8,050.50	0.00
08/21/2019	08/28/2019	64494 - INJ PARAVERT F JNT L/...	4,113.90	0.00	0.00	4,113.90	0.00
08/21/2019	08/28/2019	96372 - THER/PROPH/DIAG INJ ...	93.89	0.00	0.00	93.89	0.00
08/21/2019	08/28/2019	J1030 - Methylprednisolone 40 m...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1100 - Dexamethasone sodium p...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1885 - Ketorolac tromethamine inj	80.00	0.00	0.00	80.00	0.00
08/21/2019	08/28/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/21/2019	08/28/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00

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Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/15/2019	**—**	**PIP00068G6**	**9,651.36**	**0.00**	**0.00**	**9,651.36**	**0.00**
08/15/2019	08/15/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
08/15/2019	08/15/2019	27096 - INJECT SI JOINT ARTH...	7,476.75	0.00	0.00	7,476.75	0.00
08/15/2019	08/15/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/15/2019	08/15/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00
08/15/2019	08/15/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1100 - Injection, dexamethasone ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
08/15/2019	08/15/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/07/2019	**—**	**PIP00068F9**	**620.46**	**0.00**	**0.00**	**620.46**	**0.00**
08/07/2019	08/07/2019	99203	620.46	0.00	0.00	620.46	0.00

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 | **PMS:** 109224PAT000000270

Account Balance $37,667.36

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C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment incudes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee. I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature
Cruz-Muniz, Jose — Patient Printed Name
10/2/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

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Bulk Purchase and Sale Agreement for Accounts Receivable

This BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNTS RECEIVABLE ("**Agreement**") is entered into as of August 2, 2019 by and between **MedFinance Servicing, LLC and/or Well States Healthcare, LLC** ("**Buyer**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and Sea Spine Orthopedic, LLC, a company organized and existing under the laws of the State of Florida, with a principal place of business located at 3107 W Hallandale Beach Blvd, Suite 101, Pembroke Park, FL 33009 (the "**Seller**") (collectively the "**Parties**").

WHEREAS, Seller operates a medical practice located in the State of Florida; and

WHEREAS, Seller has provided medical treatment, services, and products (hereinafter collectively referred to as "**Medical Treatment**") to individuals for whom Seller has deferred collection of payment for the Medical Treatment, pending resolution of claims and/or lawsuits which the Patients have brought or will bring against third parties, where the individuals are seeking compensation related to the causation of the injuries or other medical conditions for which the Medical Treatment was provided ("**Patient**" or "**Patients**"); and

WHEREAS, as a condition of deferring the collection of payment for the Medical Treatment provided, Seller has entered into an agreement with each Patient which guarantees that payment for the Medical Treatment provided by Seller will be paid from funds recovered from any source, whether as a result of settlement or trial, relating to the claims and/or lawsuit against a third party who allegedly caused Patient's injuries (hereinafter "**Medical Lien**" and/or "**Letter of Protection**"); and

WHEREAS, The Medical Lien and/or Letter of Protection specifically encumbers the proceeds to be or already realized by Patient from any recovery received from the claims/lawsuit and specifies that the Patient may remain responsible for any outstanding balance owed to Seller for the Medical Treatment until fully paid; and

WHEREAS, Seller desires, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, to sell, transfer, assign, and convey Seller's legal and equitable rights and interests ("**Rights, Title, and Interest**") in each Medical Lien, Letter of Protection, and/or Accounts Receivable (defined below) as identified on the Schedule of Accounts attached hereto as Exhibit A ("**Accounts**"); and

WHEREAS, Buyer desires to purchase, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, Seller's Rights, Title, and Interests in each Medical Lien, Letter of Protection, and/or Accounts Receivable listed on Exhibit A.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Agreement by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Seller's Accounts Receivable**. Seller owns certain accounts receivable created by Seller providing Medical Treatment to a Patient for injuries suffered as the result of an accident or incident caused by a third-party ("**Accounts Receivable**"). The Accounts Receivable are secured by a Medical Lien, Letter of Protection, or other document between the Seller and the Patient whereby the Patient agrees to satisfy the Account with the Seller from future monies recovered as a result of a settlement or trial judgment with a third party against whom the Patient has a claim, including a third party's insurance carrier, or Patient's insurance company, and which provides that in the event that there is no settlement or monies recovered, or the amount received is insufficient to pay the Account, Patient may remain liable for all amounts due to the Seller.

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2. **Purchase and Sale of Accounts Receivable**. Buyer wishes to purchase, and Seller wishes to sell, subject to the terms herein, Seller's Rights, Title, and Interests in certain Accounts Receivable on which Seller has not yet received payment from any other source. Attached hereto as Exhibit A is a Schedule of Accounts identifying Accounts Receivable on which Seller has not received payment from any source. Seller represents and warrants that the total value of, and amount due and owing on, the Accounts Receivable is $ 2,083,942.71 . Buyer shall purchase from Seller, and Seller shall sell, transfer, assign, and convey to Buyer, Seller's Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A, as well as Seller's Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A. Upon closing on the **Closing Date** (as defined below), Buyer and Seller shall reflect such sale in their financial records. At all times thereafter, Buyer shall retain the Rights, Title, and Interests to the Accounts Receivable listed on Exhibit A, and all Medical Liens or Letters of Protections connected thereto. Buyer at all times will retain full legal right to sell, convey, and/or assign the Accounts Receivable purchased from Seller to a third party.

MMO _____ _____

3. **Consideration**. In consideration for the purchase of the Accounts Receivable identified on Exhibit A, Buyer shall issue payment to Seller in the amount of $_____ ("**Consideration**"). Upon receipt of such Consideration by Seller, Seller's Rights, Title, and Interests in the Accounts Receivable, Medical Liens, and/or Letters of Protection shall be deemed transferred, assigned, and sold to Buyer.

MMO _____ _____

4. **Servicing**. Seller acknowledges that on the **Closing Date**, (as defined in Section 12 below) Buyer will take over servicing of all Accounts without limitation. As of the **Cutoff Date** (as defined in Section 12 below), Seller shall not settle, solicit, or accept collections on any of the Accounts Receivable. If Seller receives any communications or inquiries in connection with any Accounts Receivable sold to Buyer, Seller shall direct the same to Buyer within 72 hours after Seller's receipt of said communication or inquiry.

5. **Power of Attorney**. In order to support the Buyer's collection efforts with regard to the Accounts Receivable, Seller hereby makes, constitutes, and appoints Buyer, with full power of substitution, its true and lawful attorney in fact, for it and its name, place and stead, to make, execute, sign, acknowledge, swear to, deliver, record, and file any document or instrument which may be considered necessary or desirable by Buyer to carry out the provisions of this Agreement, including, but not limited to, enforcement of any Medical Lien or Letter of Protection in the name of Seller with respect to an Account Receivable and issuing payment instructions with respect to any proceeds paid or payable of such Account Receivable ("**Power of Attorney**"). The foregoing Power of Attorney is coupled with an interest and shall be irrevocable. Without limiting the generality of the Power of Attorney, at the request of Buyer, Seller shall promptly execute and deliver such further documents and instruments as the Buyer reasonably determines to be necessary to enable or facilitate the Buyer's collection efforts with regard to the Accounts Receivable.

6. **Seller's Payment Obligations**.

   a. Payment Received: When Seller receives credits, payments, or other consideration distributed or paid by or on behalf of a Patient with respect to any Accounts Receivable listed in Exhibit A, Seller shall report such payments to Buyer and shall transfer and/or deliver such payments to Buyer via wire transfer or company check along with a copy of the payment received by Seller **within three (3) business days of receipt** until the Guaranteed Return has been satisfied. All payments received by Seller or Buyer for

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payment on any Account for which there are multiple, potentially conflicting liens held by any party shall first be applied to pay in full all amounts due and owing to Buyer.

7. **Seller's Representations and Warranty**. As of the date of this Agreement and the Closing Date Seller represents and warrants to Buyer as follows:

a. Seller represents and warrants that it is the sole and unconditional owner of all Accounts Receivable sold to Buyer, and that it has the legal authority to sell and transfer ownership of all Accounts Receivable to Buyer. Seller additionally represents and warrants that all Accounts Receivable sold to Buyer are now and will at all times after Buyer's purchase of the same, remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Seller has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its medical practice as now being conducted and to provide the Medical Treatment which generated the Accounts Receivable. Such Authorizations were in full force and effect at time the Medical Treatment was provided and remain in full force and effect as of the Closing Date (as defined below).

c. Seller's employees, contractors, and agents, each of which have all licenses and permits required by law, if any, to perform the Medical Treatment which generated the Accounts Receivable. All such licenses and permits were in full force and effect at time the Medical Treatment was provided and, to the best Seller's knowledge, remain in full force and effect as of the Closing Date.

d. The execution and delivery of this Agreement and the performance hereunder have been duly authorized, by all necessary actions on the part of Seller, and no provision of applicable law or regulation, the charter or bylaws of Seller, any agreement, judgment, injunction, order, decree, or other instrument binding upon Seller is or will be contravened by Seller's execution and delivery of this Agreement or Seller's performance hereunder.

e. No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration, or registration with, any governmental agency, regulatory authority, or any other body is required to be obtained by Seller in connection with the execution, delivery, or performance by Seller of this Agreement.

f. Seller certifies that each Account Receivable assigned hereunder is being transferred free and clear of any lien and/or encumbrance other than a Medical Lien and/or Letter of Protection. Any Accounts Receivable assigned to Buyer by Seller shall be true, accurate, and complete. Each Medical Lien and/or Letter of Protection shall reflect reasonable and customary charges for bona fide and medically necessary medical procedures and/or treatments actually rendered. All charges, fees, and/or costs for the Medical Treatment underlying the Accounts Receivable are reasonably and customarily priced based on the current relative value of the Current Procedural Terminology ("**CPT**") code associated with the Medical Treatment Seller rendered or provided to the Patients.

g. Seller hereby acknowledges and represents that the assignment of the Accounts Receivable hereunder: (i) is not made in contemplation of the insolvency of Seller; (ii) is not made with the intent to hinder, delay, or defraud the creditors of Seller; (iii) has been approved by an officer of Seller with the authority to approve the assignment contemplated herein; (iv) will be recorded in the records of Seller; and (v) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, Buyer is neither an insider nor an affiliate of Seller.

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h. To the best of Seller's knowledge and belief, each of the Accounts Receivable has been originated, maintained, and serviced by Seller in compliance with all applicable local, state, and federal laws.

i. None of the Accounts Receivable being assigned are subject to pending litigation or arbitration against the Seller, nor has Seller been notified of any demand or dispute regarding the Medical Treatment that was performed.

j. None of the Accounts Receivable are subject to any fees owed to any third parties, unless otherwise disclosed to Buyer herein.

k. Except with regard to a representation or warranty related to Seller's operations, formation, or continued existence, all representations and warranties contained in this Section shall survive the execution of the Agreement and the Closing Date.

l. Seller represents and warrants it has provided to Buyer complete and unfettered access to information regarding the Accounts Receivable and, in particular, has informed Buyer of the risks associated with the collectability (and ultimate collection) of the Accounts Receivable.

m. The information supplied to Buyer by Seller concerning the Accounts Receivable is materially true and accurate.

n. This Agreement constitutes a legal, valid, and binding obligation of the Seller and shall remain enforceable, in law and equity, against the Seller.

o. This Agreement constitutes a valid assignment to the Buyer of all Rights, Title, and Interests of the Seller in the Accounts Receivable and the proceeds thereof, and following such assignment, the Buyer shall own all Rights, Title, and Interest to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable.

p. Seller owns all necessary legal and contractual rights to pursue collection on all Accounts Receivable and against all Patients and there are no contractual restrictions, written or oral, or other restrictions of any kind between Seller and any Patient which would restrict Seller or Buyer from pursuing the collection of any Accounts Receivable from any Patient.

q. Seller shall retain all liability for all actions and events of any kind which occurred on or prior to the Closing Date regarding any Accounts Receivable.

r. Seller shall provide any and all required support reasonably requested by Buyer in order to prove the Accounts Receivable are due, including but not limited to, documents, Account documents, depositions, live testimony in Court, and reports and/or memoranda necessary or desirable, in any court proceeding, arbitration proceeding, mediation, or settlement negotiations related to the Accounts Receivable due or any Patient's demand or lawsuit against Buyer, Seller, or any third party.

s. Seller has not failed in any obligation, if any, to file any claim with any medical insurance carrier known to Seller to provide or medical insurance coverage to the Patient at the time the Medical Treatment was received by Patient. None of the Accounts Receivable are subject to any Medicare, Medicaid or other governmental reimbursement program as to the payment of any portion of the Accounts Receivable being purchased by Buyer, nor are any of the Accounts Receivable subject to any capitation arrangement, fee schedule, discount formula, cost-reimbursement or other adjustment or limitation to the Seller's usual charge.

t. SELLER REPRESENTS, WARRANTS, ACKNOWLEDGES, AGREES, AND PROMISES THAT IT SHALL PAY TO BUYER THE FULL AMOUNT OF ANY

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PAYMENT RECEIVED BY SELLER ON ANY ACCOUNT INCLUDED, OR REQUIRED TO BE INCLUDED, ON EXHIBIT A.

8. **Buyer's Representations and Warranty**. As of the date of this Agreement and the Closing Date, Buyer represents and warrants to Seller as follows:

a. Buyer is duly organized, validly existing, and in good standing under the laws of the State of Utah with all requisite power and authority to carry on its business as now being conducted, to execute, deliver, and perform this Agreement and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby. Buyer is duly qualified to conduct business as a foreign entity and is in good standing in each jurisdiction in which business transacted by it as contemplated in this Agreement requires such qualification and in which the failure to do so would have a material adverse effect on its ability to perform its obligations under this Agreement or the enforceability thereof.

b. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Buyer, any resolution adopted by the members or managers of Buyer, or any other loan, credit agreement, contract, applicable law, or governmental approval applicable to Buyer, or any court order which affects or binds Buyer. No additional governmental approval and no consent or approval of any other person or entity is required on the part of Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

c. There is no actual pending litigation (i) that has been commenced by or against Buyer or that otherwise relates to or may affect Buyer's right to consummate the transactions contemplated by this Agreement, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with this Agreement or the transactions contemplated hereby. To the knowledge of Buyer, no litigation has been threatened, and no event has occurred, or circumstance exists that may give rise to or serve as a basis for the commencement of any litigation that in any way affects Buyer's ability to complete the transactions contemplated in this Agreement.

d. Buyer and its agents, representatives, and contractors, when performing under this Agreement, and as long as Buyer retains any Rights, Title, and Interests in the Accounts, or the right to collect on the same, will comply with each law that is applicable to Buyer, its agents, representatives, and contractors, on the servicing, ownership, collection on, or use of the Accounts, including, but without limitation, the Gramm-Leach-Bliley Act, HIPAA, HIECH, and all applicable consumer credit laws, if any.

e. Buyer has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of purchasing the Accounts and is, by virtue of having made other purchases of a similar nature and/or by reason of its business and financial experience or the business and financial experience of those individuals it has retained to advise Buyer with respect to its purchasing the Accounts.

f. The transactions contemplated by this Agreement do not involve, nor are they intended in any way to constitute, the assignment or sale of a "security" or "securities" within the meaning of any applicable securities or blue-sky laws, and none of the representation, warranties, or agreements of the Buyer shall create any inference that the transactions involve any "security" or "securities." Buyer understands that not all Accounts are secured

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by collateral or that any payment received is associated with any particular Account. Buyer understands that this purchase involves a high degree of risk.

9. **Events of Default**. Any one or more of the following constitutes an **Event of Default**:

   a. Seller files or has filed against it any bankruptcy proceedings or any assignment for the benefit of creditors, or appointment of a receiver or custodian for any of its Accounts;

   b. Seller becomes insolvent or is generally not paying its debts as they become due, or is left with unreasonably small capital;

   c. Any involuntary lien, garnishment, encumbrance, or attachment attaches to the Accounts Receivable;

   d. Seller breaches or fails to satisfy when due any covenant, agreement, obligation, warranty, or representation in this Agreement;

   e. Seller is in default under any document, instrument, or agreement evidencing any debt, obligation, or liability in favor of Buyer or its affiliates or vendors, regardless of whether the debt, obligation, or liability is direct or indirect, primary or secondary, or fixed or contingent;

   f. An event of default occurs under any guaranty or obligation of Seller to a third party, or any material provision of any guaranty given by Seller to a third party is not valid or enforceable in favor Seller, or is repudiated or terminated;

   g. A default or event of default occurs under any agreement between Seller and any creditor of Seller;

   h. Any creditor that has signed a subordination agreement with Buyer breaches any terms of the subordination agreement; or

   i. A material impairment in the perfection or priority of the Buyer's security interest in the Accounts; (ii) a material adverse change in the business, operations, or conditions (financial or otherwise) of the Seller occurs; or (iii) a material impairment of the prospect of repayment of any portion of the Accounts Receivable occurs.

10. **Seller's Obligation to Repurchase Accounts**. Upon written notice from Buyer, Seller will repurchase any Account to which any of the following conditions applies:

   a. Death of all Patients on or prior to the Cutoff Date (as defined below);

   b. The Account was not properly handled prior to sale, rendering the balance legally uncollectable;

   c. The filing of bankruptcy proceedings, or other proceeding which seeks liquidation, reorganization, or discharge of the Account, by the Patient after the Patient's Account origination date and on or prior to the Cutoff Date without subsequent dismissal;

   d. The Account was created as a result of fraud, forgery, or Seller's mistake, such that the Patient has no liability for such Accounts;

   e. On or prior to the Cutoff Date, Seller received payment in full settlement of the Account, but which was not deleted from the Account schedule by Seller;

   f. The Account is a duplicate record of any other Account being sold hereby;

   g. The Patient has initiated litigation, whether through an administrative or court action, suit, arbitration, or other proceeding, against Seller;

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h. The Account was disputed prior to the Cutoff Date in any way that would materially impair the validity or enforcement of any balance or reduce the amount payable under an Account from the balance thereof contained in and on Exhibit A;

i. The Patient has been released from liability, or the respective Account has otherwise been satisfied, compromised, settled, cancelled, released, or subordinated;

j. The Seller is not the sole owner of the account and does not have full right to transfer and sell the Account free and clear of any encumbrance, equity, lien, pledge, charge, claim, or security interest, except as otherwise contemplated herein;

k. The information contained in Exhibit A, in reference to a particular Account, is not true and correct;

l. In the event that it is determined by Buyer that Seller is in breach of any covenant, agreement, obligation, warranty, or representation as set forth herein relating to any Accounts purchased by Buyer, Buyer shall notify Seller in writing of the circumstances which Buyer has discovered, within five (5) days of the discovery, which thereafter creates Buyer's right to require Seller to repurchase the Accounts. If Seller does not cure the event within thirty (30) days of notification, Buyer shall have the right to require that Seller repurchase the Accounts from Buyer consistent with Section 11 below.

11. **Procedure for Account Repurchase**. For any Account that meets a condition set forth in Section 10, Buyer will reassign such Account to Seller. Seller shall refund to the Buyer the Consideration attributable to such Account, less any amounts collected by Buyer after the Cutoff Date and prior to Buyer's notification to Seller that the Account is subject to repurchase. The repurchase price shall be paid to Buyer within fourteen (14) days after Seller's receipt of the documents and instruments required to reassign such Account to Seller, and the appropriate information is received regarding any amounts collected on the account.

12. **Closing**. The **Closing Date** will be on August 2, 2019, or at such other time mutually agreed to by the Parties in writing. The following actions related to this Agreement will be taken by Seller and Buyer on, or immediately subsequent to, the Closing Date:

a. Pre-Closing Adjustments: Purchase is subject to adjustment to reflect:

i. The current balance actually due as of July 19, 2019 (the "**Cutoff Date**") (e.g., deductions for unapplied contractual adjustments/write-offs, or unreported payments received before the Cutoff Date); or

ii. Any Account that Buyer determines, in its sole discretion, to remove from the schedule of Accounts listed in Exhibit A prior to the Closing Date.

b. On the Closing Date, Buyer and Seller will execute this Agreement; and

c. Upon the full execution of the Agreement, Buyer shall pay to Seller the monies for the Accounts as described herein. Consideration shall be paid to Seller in immediately available funds, by wire transfer in accordance with the Wire Transfer Instructions attached hereto as Exhibit B.

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13. **Conditions Precedent**.

a. **Conditions Precedent to Seller's Obligations.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

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i. Representations and Warranties. The representations and warranties of Buyer in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Buyer shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law. Consummation by Seller of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any Law that applies to Seller.

iv. Deliveries at Closing. The Consideration shall have been paid and all documents to be delivered and actions to be taken on or before Closing by Buyer shall have been delivered or taken.

b. **Conditions Precedent to Buyer's Obligations**. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Seller in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Seller shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law or Litigation. Consummation by Buyer of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any law that applies to Buyer. No claim, action, suit, investigation, or proceeding is pending or has been threatened which is likely to restrict, prohibit, or otherwise have a material adverse effect on the transactions contemplated by this Agreement.

iv. Confirmation of Certain Items. Seller shall have confirmed to Buyer that Exhibit A fairly and accurately reflects, in all material respects, the information contained therein.

v. Deliveries at Closing. In accordance with this Agreement, all documents to be delivered and actions to be taken on or before Closing by Seller shall have been delivered or taken.

vi. No Material Adverse Change. There shall have been no material adverse change in the condition, financial or otherwise, of Seller or the Accounts. Through the Closing Date, the Seller and its agents have not effected any material change in their policies and procedures relating to the Accounts that could reasonably be expected to have a material adverse effect on any of the Accounts.

14. **Accounts Receivable in Good Standing**. The Accounts Receivable sold hereunder have been, or will be, made in good faith and authenticated by a representative of the Seller and the Patient, to the extent necessary. The treatment or services rendered, or goods sold, to the Patient on the Accounts Receivable have been, and will continue to be, medically reasonable and necessary and will not have been misrepresented to the Patient. The dollar amount of the Accounts Receivable will not exceed the reasonable and customary charges for the treatment, services, or goods provided to the Patient. Seller guarantees to fulfill all warranties and representations made to the Patient.

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15. **Priority**. Seller hereby agrees and acknowledges that any Accounts Receivable or sums otherwise due to Buyer for a Patient shall receive priority over any other accounts or sums due to Seller for such Patient. Buyer shall have the right to collect all amounts due from a Patient for any treatment, services, or goods received from Seller, including amounts related to accounts receivable not purchased by Buyer. In such an event, Buyer will first apply all collected amounts to the sums due and owing on Buyer's Accounts Receivable and thereafter disburse any remaining funds to Seller for any accounts receivable not purchased from the Seller by Buyer.

16. **Confidentiality**. The Parties agree to keep confidential all terms of this Agreement, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the payment terms set forth in this Agreement to anyone, except as required by law, in which case the disclosing party will give notice to the non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Seller and Buyer to any source. If any law requires disclosure of the payment terms between Seller and Buyer in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Agreement and any related agreement shall not be made part of the Patient's medical records.

17. **HIPAA**. The Parties agree to protect the privacy of all Accounts Receivable and medical documents and to comply with the Health Insurance Portability and Accountability Act ("**HIPAA**") guidelines.

18. **Further Assistances Assurances and Cooperation**. Seller, its agents, employees, members, shareholders, representatives, and/or doctors, shall cooperate in all respects with the collection, handling, management, and transfer of the Accounts Receivable. Seller agrees to furnish Buyer with one copy of all medical records, billing documentation, and all other information or documentation that may be necessary to support or assist Buyer's, or its assignee's or representative's, collection of any Accounts Receivable. Seller further agrees to maintain all medical records, billing records, and other books and records relating to the care provided to the Patient in accordance with good and commercially reasonable medical practices and all applicable laws. When requested by Buyer, Seller agrees to cooperate and assist Buyer, at no additional charge to Buyer, with the collection or defense of any Accounts Receivable. Moreover, each Party shall execute and deliver or cause to be executed and delivered to the other such further instruments and shall take such other action as the other may reasonably require to effectuate the contemplated transactions.

19. **Buyer's Indemnification**. From and after the Closing Date, Buyer shall indemnify and hold Seller harmless against and from any and all liability for, and from and against any and all losses or damages Seller may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Seller in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Seller to enforce this indemnification, which Seller shall incur or suffer as a result of:

a. Any act or omission of Buyer or Buyer's agents, assigns, or transferees in connection with the Accounts and its purchase of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Buyer's representations or warranties herein;

c. The material breach of any of Buyer's covenants herein; or

d. Any claim by any Patient regarding assignment, subsequent enforcement, servicing, or administration of the Accounts by Buyer or Buyer's agents.

The obligations of Buyer under this Section 19 shall survive the closing of the transactions herein contemplated.

20. **Seller's Indemnification**. From and after the Closing Date, Seller shall indemnify and hold Buyer harmless against and from any and all liability for, and from and against any and all losses or damages

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Buyer may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Buyer in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Buyer to enforce this indemnification, which Buyer shall incur or suffer as a result of:

a. Any act or omission of Seller or Seller's agents (but not including any independent contractors such as collection agencies or attorney or law firms retained to collect on Accounts) in connection with the Accounts and its sale of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Seller's representations or warranties herein;

c. The material breach of any of Seller's covenants herein; or

d. Any claim by any Patient regarding the origination, servicing, collection, or administration of the Accounts by Seller or Seller's agents.

The obligations of Seller under this Section 20 shall survive the closing of the transactions herein contemplated.

21. **Procedure for Indemnification**. Any party seeking indemnification ("**Indemnitee**") with respect to a claim or loss shall give prompt written notice thereof to the party against whom indemnification is sought ("**Indemnitor**"). Indemnitor shall have the right to assume the defense of any and all claims for which indemnification is sought hereunder, and Indemnitee agrees to cooperate with Indemnitor in any such defense. If the amount of any claim or loss shall, at any time subsequent to payment pursuant to this Agreement, be reduced by recovery, settlement, or otherwise, the amount of such reduction, less any expenses incurred in connection therewith, shall promptly be repaid by the Indemnitee to the related Indemnitor. If the Indemnitor elects to assume the defense, the Indemnitee shall retain the right to consent to the selection of counsel, the terms of settlement, and any use of Indemnitee's or its affiliate's name in any settlement or any notification, advertisement, or publication of the settlement.

22. **Choice of Law, Venue and Jury Waiver**. This Agreement and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Agreement, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. In the event that Seller breaches any part of this Agreement in a manner that causes irreparable injury to Buyer, Seller acknowledges that Buyer shall have no adequate remedy at law, and shall therefore be entitled to enforce each such obligation by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies which may be available at law or in equity. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Seller and Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

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23. **Attorneys' Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Agreement, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

24. **Confidentiality/Trade Secret**. This Agreement, its terms, conditions, substance of discussions between the parties, all documentation related to this Agreement, and any other information exchanged between the Parties that relates to this Agreement represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Agreement, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

25. **Relationship of the Parties**. The relationship between Seller and Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Agreement. Under no circumstance does this Agreement create any medical or healthcare obligation on the part of Buyer, as Buyer is neither a medical nor healthcare professional or provider of any kind. Buyer will not direct Patient medical care in any way, and all medical decisions are solely between Seller and the Patient. Seller and the Patient(s) are free to embark upon whichever courses of medical treatment or services they deem reasonable and necessary, but Buyer is not obligated to purchase any portion of any Accounts Receivable related to said treatment, services, or goods provided that is not listed on Exhibit A.

26. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

27. **Interpretation**. Each party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

28. **Rights Cumulative; Waivers**. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

29. **Construction**. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

30. **No Strict Construction**. This Agreement is the joint work product of Seller and Buyer, which has been negotiated by the parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provisions of this Agreement, this Agreement shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

31. **Binding Effect.** Subject to the provisions contained herein, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the

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Exhibits, addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

32. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Agreement.

33. **Endorsement and Deposit of Payments**. Buyer has the right to endorse and deposit checks which it receives from payers for Accounts Receivable which have been purchased by Buyer.

34. **Counterparts**. This Agreement may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. **Notice**. All notices and other communications that are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (a) when received if personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g., Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the others.

36. **Prior Understandings**. This Agreement supersedes any and all prior discussions and agreements between Seller and Buyer with respect to the purchase of the Accounts and other matters contained herein, and this Agreement contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

37. **Non-Merger/Survival**. Each and every covenant hereinabove made by Buyer or Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

38. **Non-Disclosure Agreement.** Buyer and Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

39. **Integrated Agreement**. With the exception of the NDA, this Agreement and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Buyer and the Seller. This Agreement shall not be altered or modified except by a subsequent writing, signed by Buyer and Seller.

40. **Successors and Assigns**. This Agreement shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Seller assign any of its rights and/or obligations pursuant to this Agreement to any third-party, absent prior express written consent of Buyer.

41. **Headings**. The headings of articles and sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

42. **No Third-Party Beneficiary**. This Agreement is for the sole benefit of the parties hereto, and nothing contained in this Agreement shall be construed to grant any person or entity, other than Seller and Buyer and their respective successors and permitted assigns, any right under or in respect of this Agreement or any provision hereof.

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43. **Other Agreements**. This Agreement may not adversely affect Buyer's rights under any other document or agreement. If there is a conflict between this Agreement and any agreement between Seller and Buyer, Buyer may determine in its sole discretion which provision applies.

44. **Further Assurances**. In connection with this Agreement and the transactions contemplated hereby, each party of this Agreement will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Agreement and the transactions contemplated or intended hereby.

45. **Amendments**. Any additions, deletions, or waivers to this Agreement shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement for Accounts Receivable on the date indicated in the introductory paragraph herein.

Buyer: MedFinance Servicing, LLC

Print Name: Nate Ormond

By (Signature): Nate Ormond

Date: 8/2/2019

Title: President

Seller:

Print Name: Mark Seda

By (Signature): M Seda

Date: 8/2/2019

Title: Ceo C Spinceoe ortho

Accounting Signoff

Print Name: Alan T. Macdonald

By (Signature): Alan T. Macdonald

Date: 8/2/2019

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EXHIBIT A: Schedule of Accounts

PATIENTS NAME	DOB	INSURANCE	CLAIM NUMBER	DOI	DOS	TOTAL BILLED	FUNDED AMOUNT	STATUS
[redacted]								

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Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$93.89	$18.78	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$250.00	$50.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$480.00	$96.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$480.00	$96.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$617.05	$123.41	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$1,000.00	$200.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$4,113.90	$822.78	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$8,050.50	$1,610.10	20.00%	ACCEPTED

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EXHIBIT A: Schedule of Accounts

PATIENTS NAME	DOB	INSURANCE	CLAIM NUMBER	DOI	DOS	TOTAL BILLED	FUNDED AMOUNT	STATUS
[redacted]								

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[redacted]

Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$15.13	$3.03	20.03% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$93.89	$18.78	20.00% ACCEPTED

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Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$160.00	$32.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$255.59	$51.12	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$2,004.90	$400.98	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$3,094.80	$618.96	20.00% ACCEPTED

[redacted]

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EXHIBIT A: Schedule of Accounts

PATIENTS NAME	DOB	INSURANCE	CLAIM NUMBER	DOI	DOS	TOTAL BILLED	FUNDED AMOUNT	STATUS
[redacted]								

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[redacted]

Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$255.59	$51.12	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$2,004.90	$400.98	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$3,094.80	$618.96	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$15.13	$3.03	20.03%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$40.00	$8.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$93.89	$18.78	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$120.00	$24.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	10/2/2019	$421.58	$84.32	20.00%	ACCEPTED

[redacted]

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LARA Corporations Online Filing System
Department of Licensing and Regulatory Affairs

ID Number: 802112929 Request certificate Return to Results New search

Summary for: C-SPINE ORTHOPEDICS, PLLC

The name of the DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY: C-SPINE ORTHOPEDICS, PLLC

Entity type: DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY

Identification Number: 802112929 **Old ID Number:** F23623

Date of Organization in Michigan: 08/29/2017

Term: Perpetual

The name and address of the Resident Agent:

Resident Agent Name: A JOSHUA APPEL MD
Street Address: 29255 NORTHWESTERN HWY
Apt/Suite/Other: STE 201
City: SOUTHFIELD State: MI Zip Code: 48034

Registered Office Mailing address:

P.O. Box or Street Address:
Apt/Suite/Other:
City: State: Zip Code:

Act Formed Under: 023-1993 Michigan Limited Liability Company Act

Managed By:

Members

View Assumed Names for this Business Entity

View filings for this business entity:

ALL FILINGS
ANNUAL REPORT/ANNUAL STATEMENTS
CERTIFICATE OF CORRECTION
CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR RESIDENT AGENT
RESIGNATION OF RESIDENT AGENT
CERTIFICATE OF ASSUMED NAME

View filings

Comments or notes associated with this business entity:

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D.VISION OF CORPOR□TIONS

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Detail by Entity Name

Florida Limited Liability Company
SEA SPINE ORTHOPEDICS INSTITUTE, LLC

Filing Information

Document Number	L10000007478
FEI/EIN Number	27-1726650
Date Filed	01/21/2010
Effective Date	01/20/2010
State	FL
Status	ACTIVE
Last Event	LC STMNT OF RA/RO CHG
Event Date Filed	10/07/2016
Event Effective Date	NONE

Principal Address

3107 WEST HALLANDALE BEACH BLVD.,
UNIT 100
PEMBROKE PARK, FL 33009

Changed: 01/02/2018

Mailing Address

3107 WEST HALLANDALE BEACH BLVD.,
UNIT 100
PEMBROKE PARK, FL 33009

Changed: 01/02/2018

Registered Agent Name & Address

APPEL, ANDREW JOSHUA
3107 WEST HALLANDALE BEACH BLVD
UNIT 100
PEMBROKE PARK, FL 33009

Name Changed: 01/02/2018

Address Changed: 01/02/2018

Authorized Person(s) Detail

Name & Address

Title MGRM

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APPEL, Andrew Joshua
3107 WEST HALLANDALE BEACH BLVD.,
UNIT 100
PEMBROKE PARK, FL 33009

Annual Reports

Report Year	Filed Date
2019	01/02/2019
2020	01/06/2020
2021	01/04/2021

Document Images

01/04/2021 -- ANNUAL REPORT	View image in PDF format
01/06/2020 -- ANNUAL REPORT	View image in PDF format
01/02/2019 -- ANNUAL REPORT	View image in PDF format
01/02/2018 -- ANNUAL REPORT	View image in PDF format
01/03/2017 -- ANNUAL REPORT	View image in PDF format
10/07/2016 -- CORLCRACHG	View image in PDF format
01/04/2016 -- ANNUAL REPORT	View image in PDF format
01/19/2015 -- ANNUAL REPORT	View image in PDF format
03/19/2014 -- ANNUAL REPORT	View image in PDF format
04/10/2013 -- ANNUAL REPORT	View image in PDF format
09/24/2012 -- Reg. Agent Change	View image in PDF format
04/17/2012 -- ANNUAL REPORT	View image in PDF format
04/25/2011 -- ANNUAL REPORT	View image in PDF format
01/21/2010 -- Florida Limited Liability	View image in PDF format

Florida Department of State, Division of Corporations

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Apogee Capital Fund 5, LLC: Exhibit A C-Spine Orthopedics, PLLC- 002

This Exhibit is entered into between C-Spine Orthopedics, PLLC and Apogee Capital Fund 5, LLC, made pursuant to the fully executed Agreement dated August 30, 2019, and subject to any and all terms located with the August 30, 2019 agreement between the parties.

Assignment will be made on this Exhibit per the Agreement unless C-Spine Orthopedics, PLLC notifies APOGEE CAPITAL FUND 5, LLC, in writing, within 24 hours of receipt of this Exhibit.

NO SIGNATURE IS REQUIRED ON THIS EXHIBIT.

Medical Provider hereby warrants and represents that all bills and invoices which were the basis for the Receivables are true and accurate in all respects and were generated with usual and customary amounts for the Services. Medical Provider hereby further warrants and represents that all Services rendered and billed and listed under Full Bill Charges were necessary (with respect to the applicable Patient), that the amounts charged for the Services were reasonable at the time and place of the Services provided, and related to injuries sustained in the accidents or other occurrences which are the basis of claims or litigation, and the Proceeds from which are subject to the Liens securing the Receivables in the Total Amount of Provider Receivables reflected herein.
The Medical Provider is the person in charge of it's records. Attached to this Purchase Order are records that provide an itemized statement of the service and the charge for the service that Medical Provider provided to Patient on the dates specified therein. The attached records are kept by Medical Provider in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by Medical Provider or an employee or representative of Medical Provider who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the service was provided. The records are the original or an exact duplicate of the original. The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

updated 08-30-2019

Provider	Patients Name	DOS	Billing Amount	Billing Amt. Purchased By Apogee	Purchase %	Purchase Amount
[redacted]						

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[redacted]

C-Spine	Cruz-Muniz, Jose	8/7/19	$620.46	$620.46	20%	$124.09
C-Spine	Cruz-Muniz, Jose	8/15/19	$255.59	$255.59	20%	$51.12
C-Spine	Cruz-Muniz, Jose	8/15/19	$7,476.75	$7,476.75	20%	$1,495.35
C-Spine	Cruz-Muniz, Jose	8/15/19	$1,000.00	$1,000.00	20%	$200.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$250.00	$250.00	20%	$50.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$160.00	$160.00	20%	$32.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$93.89	$93.89	20%	$18.78
C-Spine	Cruz-Muniz, Jose	8/15/19	$160.00	$160.00	20%	$32.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$15.13	$15.13	20%	$3.03

[redacted]

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COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ

This COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ ("**Assignment**") is entered into as of May 4, 2020 ("**Effective Date**") by and between **MedFinance Servicing, LLC** ("**Original Purchaser**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and **C-Spine Orthopedics, PLLC**, a company organized and existing under the laws of the State of Michigan with principal place of business located at 36700 Woodward Ave., Suite 202, Bloomfield Hills, Michigan 48304 ("**Original Seller**") (collectively the "**Parties**").

WHEREAS, Original Seller sold, transferred, assigned, and conveyed Original Seller's legal and equitable rights and Interests ("**Rights, Title, and Interest**") in various and numerous Dates of Service between August 21, 2019 and October 2, 2019 for Patient Jose Cruz-Muniz (the "**Patient**" and the "**Account**") to Original Buyer; and

WHEREAS, As of the Effective Date, though some payments may have been received on the Account, the Account remains largely if not wholly open and collectible; and

WHEREAS, In order to obtain payment on the Account, it is likely that a lawsuit or other means of collection activity will need to be filed against the insurance carrier or other responsible party ("**Lawsuit**"). The Parties agrees that the best method to accomplish the best result is for Original Seller to be involved in, pursue, and maintain an interest in the Lawsuit; and

WHEREAS, Original Buyer desires to transfer, assign, and convey a significant portion of Original Buyer's legal and equitable rights and interests, which were previously Original Seller's Rights, Title, and Interest, back to Original Seller, as more clearly and directly outlined herein.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Assignment by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Assignment of Rights back to Original Seller**. Original Buyer wishes to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. This shall include but is not limited to any right to pursue, negotiate, compromise, and settle, the Lawsuit, or at any time short of a Lawsuit. At all times hereafter, Original Seller shall retain the legal Rights, Title, and Interest to the Account, subject to the terms herein.

2. **Assignment of Rights back to Original Seller of Future Dates of Service**. From time-to-time, and in the normal course of business, the Patient may continue to seek treatment from Original Seller after the Effective Date, which may, also in the normal course of business, cause Original Seller to sell, transfer, assign, and convey the future Rights, Title, and Interest in future dates of service related to the Patient ("**Additional Rights, Title and Interest**") which thereby become subject to the Lawsuit. The Parties agree that it is their intent and wish that any such Additional Rights, Title, and Interest be subject to the terms of this Assignment. More specifically, Original Buyer intends that Original Seller maintain any and all rights to pursue, negotiate, compromise, and settle any and all Additional Rights, Title and Interest under the terms of this Assignment.

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3. **Consideration**. In consideration for the transfer, assignment, and conveyance of Original Buyer's Rights, Title, and Interest in the Account, as well s the Additional Rights, Title, and Interest, Original Seller agrees to provide Original Buyer, net of all fees and costs associated with the pursuit of payment through a Lawsuit or otherwise (including but not limited to attorney fees and costs, and collection/billing costs), the lesser of the sum of the full amount recovered on the account, or fifty (50%) percent of the total billed charges outstanding and collectible on the Account. Any amount, net of all fees and costs associated with the pursue of payment through a payment or otherwise, shall be the exclusive property of Original Seller.

4. **Original Buyer's Representations and Warranty**. As of the Effective Date, Original Buyer represents and warrants to Original Seller as follows:

a. Original Buyer represents and warrants that it has the legal authority to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. Original Buyer additionally represents and warrants that the Account being transferred, assigned, and conveyed to Original Seller are now and will at all times after the Effective Date remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Original Buyer has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its business now being conducted. Such Authorization was in full force and effect at all relevant times prior to the Effective Date.

c. The execution and delivery of this Assignment and the performance hereunder have been duly authorized, by all necessary actions on the part of Original Buyer, and no provision of applicable law or regulations, the charter or bylaws of Original Buyer, any agreement, judgment, injunction, order, decree, or other instrument binding upon Original Buyer is or will be contravened by Original Buyer's execution and delivery of this Assignment or Original Buyer's performance hereunder.

5. **Original Seller's Representations and Warranty**. As of the Effective Date, Original Seller represents and warrants to Original Buyer as follows:

a. Original Seller is duly organized, validly existing, and in good standing with all requisite power and authority to carry on its business as now being conducted to execute, deliver, and perform under this Assignment and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby.

b. The execution and delivery of this Assignment and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Original Seller.

6. **Confidentiality**. The Parties agree to keep confidential all terms of this Assignment, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the terms set forth in this Assignment to anyone, except as required by law, in which case the disclosing party will give notice to the

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non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Original Buyer and Original Seller to any source. If any law requires disclosure of the payment terms between Original Buyer and Original Seller in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Assignment and any related agreement shall not be made part of the Patient's medical file.

7. **Choice of Law, Venue and Jury Waiver**. This Assignment and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Assignment, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAVIE THEIR REPSECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS ASSIGNMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Original Seller and Original Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

8. **Attorneys Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Assignment, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

9. **Confidentiality/Trade Secret**. This Assignment, its terms, conditions, substance of discussions between the Parties, all documentation related to this Assignment, and any other information exchanged between the Parties that relates to this Assignment represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Assignment, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

10. **Relationship of the Parties**. The relationship between Original Seller and Original Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Assignment. Under no circumstances does this Assignment create any medical or healthcare obligation on the part of Original Buyer, as Original Buyer is neither a medical nor healthcare professional or provider of any kind. Original Buyer has not and will not direct medical care in any way, and all medical decisions are solely between Original Seller and the Patient. Original Seller and the Patient are free to embark upon whichever course of medical treatment or services they deem reasonable and necessary.

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11. **Severability**. If any provision of this Assignment is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

12. **Interpretation**. Each Party acknowledges that this Assignment has been the subject of active and complete negotiations, and that this Assignment should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Assignment.

13. **Rights Cumulative; Waivers**. The rights of each of the Parties under this Assignment are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

14. **No Strict Construction**. This Assignment is the joint work product of Original Buyer and Original Seller, which ahs been negotiated by the Parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provision of this Assignment, this Assignment shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

15. **Binding Effect**. Subject to the provisions contained herein, this Assignment and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the Exhibits addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned Parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

16. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Assignment.

17. **Counterparts**. This Assignment may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **Notice**. All notices and other communications that are required or may be given under this Assignment shall be in writing and shall be deemed to have been duly given: (a) when received in personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g. Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the other party.

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19. **Prior Understandings**. This Assignment supersedes any and all prior discussions and agreements between Original Seller and Original Buyer with respect to the purchase of the Account and other matters contained herein, and this Assignment contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

20. **Non-Merger/Survival**. Each and every covenant hereinabove made by Original Buyer or Original Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

21. **Non-Disclosure Agreement**. Original Buyer and Original Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

22. **Integrated Agreement**. With the exception of the NDA, this Assignment and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Original Buyer and Original Seller. This Assignment shall not be altered or modified except by a subsequent writing, signed by both Original Seller and Original Buyer.

23. **Successors and Assigns**. This Assignment shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Original Seller or Original Buyer assign any of its rights and/or obligations pursuant to this Assignment to any third-party, absent prior express written consent of the other Party.

24. **Headings**. The headings of articles and sections contained in this Assignment are for convenience only and shall not be deemed to control or affect the meaning or construction of any provisions of this Assignment.

25. **No Third-Party Beneficiary**. This Assignment is for the sole benefit of the Parties hereto, and nothing contained in this Assignment shall be construed to grant any person or entity, other than Original Seller and Original Buyer and their respective successors and permitted assigns, any right under or in respect of this Assignment or any provision hereof.

26. **Further Assurances**. In connection with this Assignment and the transactions contemplated hereby, each party of this Assignment will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Assignment and the transactions contemplated or intended hereby.

27. **Amendments** Any additions, deletions, or waivers to this Assignment shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

*****SIGNATURE PAGE TO FOLLOW*****

IN WITNESS WHEREOF, the Parties have executed this Assignment on the date indicated in the introductory paragraph herein.

Original Buyer: MedFinance Servicing, LLC

Print Name: Nate Ormond

By (Signature): _____

Title: President

Original Seller: C-Spine Orthopedics, PLLC

Print Name: Mark Seda

By (Signature): _____

Title: CEO

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FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 1, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 16, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

**** 4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

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by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/1/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/1/2020

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Schedule A

Conformed Agreement

[See attached]

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AFFIDAVIT OF PETER ROOD
MANAGING MEMEBER OF APOGEE CAPITAL FUND 5, LLC

COUNTY OF WAYNE)
) ss
STATE OF MICHIGAN)

I, Peter Rood, being first duly sworn, depose and say:

1. I am a Managing Member of Apogee Capital Fund 5, LLC.

2. C-Spine Orthopedics owns the right to sue for any unpaid balance arising out of treatment to Jose Cruz-Muniz.

The statements made in this affidavit are true to the best of my knowledge, information and belief and if I am asked to testify, I will attest to the same.

Further, affiant sayeth not.

Peter Rood, Managing Member

Subscribed and sworn to before me
this 1st day of July, 2021.

/s/

Miami-Dade County, Florida
Acting in the county of Miami-Dade
My commission expires: _____

JESSICA RUIZMARTINEZ
MY COMMISSION EXPIRES
NOVEMBER 16, 2023
#GG 355527
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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AFFIDAVIT OF MARK SEDA
CEO OF C-SPINE ORTHOPEDICS

COUNTY OF WAYNE)
) ss
STATE OF MICHIGAN)

I, Mark Seda, being first duly sworn, depose and say:

1. I am the Chief Executive Officer of C-Spine Orthopedics.

2. C-Spine Orthopedics' agreement with Well States Healthcare, LLC regarding Jose Cruz-Muniz's patient balance includes C-Spine Orthopedics' obligation to sue for unpaid balances.

3. C-Spine Orthopedics' agreement with MedFinance Servicing, LLC regarding Jose Cruz-Muniz's patient balance includes C-Spine Orthopedics' obligation to sue for unpaid balances.

4. C-Spine Orthopedics' agreement with Apogee Capital Fund 5, LLC regarding Jose Cruz-Muniz's patient balance includes C-Spine Orthopedics' obligation to sue for unpaid balances.

The statements made in this affidavit are true to the best of my knowledge, information and belief and if I am asked to testify, I will attest to the same.

Further, affiant saveth not.

Mark Seda, CEO

Subscribed and sworn to before me
this 1 day of JULY, 2021.

/s/ Danielle C Malley

BROWARD County, FLORIDA
Acting in the county of BROWARD
My commission expires: 9/924

DANIELLE C MALLEY
Notary Public-State of Florida
Commission # HH 40698
My Commission Expires
September 09, 2024

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AFFIDAVIT OF NATE ORMOND
PRESIDENT OF MEDFINANCE SERVICING, LLC AND
WELL STATES HEALTHCARE, LLC

COUNTY OF WAYNE)
) ss
STATE OF MICHIGAN)

I, Nate Ormond, being first duly sworn, depose and say:

1. I am the President of MedFinance Servicing, LLC and Well States Healthcare, LLC.

2. C-Spine Orthopedics owns the right to sue for any unpaid balance arising out of treatment to Jose Cruz-Muniz.

The statements made in this affidavit are true to the best of my knowledge, information and belief and if I am asked to testify, I will attest to the same.

Further, affiant sayeth not.

Nate Ormond, President

Subscribed and sworn to before me
this 19 day of July, 2021.

/s/ Ryan Bullard

Douglas County, ~~USA~~ CO
Acting in the county of Douglas
My commission expires: 3/31/2025

RYAN BULLARD
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20214012670
MY COMMISSION EXPIRES MAR 31, 2025

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STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN HAGERMAN and ELISABETH HAGERMAN,

Plaintiffs-Appellants,

v

NATIONSTAR MORTGAGE, L.L.C., and CITIBANK, N.A.,

Defendants-Appellees,

and

FEDERAL DEPOSIT INSURANCE CORPORATION,

Defendant.

UNPUBLISHED
February 17, 2015

No. 319271
Oakland Circuit Court
LC No. 2013-131729-CH

Before: FORT HOOD, P.J., and JANSEN and GADOLA, JJ.

PER CURIAM.

Plaintiffs, Stephen Hagerman and Elisabeth Hagerman, appeal as of right an opinion and order granting summary disposition to defendants, Nationstar Mortgage, L.L.C. and Citibank N.A., in this action to quiet title. We affirm.

In 2006, plaintiffs entered into a mortgage with Citizens First Mortgage for real property located in West Bloomfield, Michigan. The loan was modified in January 2009. In 2010, the State of Michigan closed CF Bancorp, which was the parent company of Citizens First Mortgage. The Federal Deposit Insurance Corporation (FDIC) was named the receiver. The FDIC assigned plaintiffs' mortgage to defendant Citibank, and the assignment was recorded. In 2012, plaintiffs defaulted on the mortgage, and in August 2012, defendant Nationstar Mortgage (the presumed servicer of the loan), provided plaintiffs with a foreclosure notice pursuant to MCL 600.3205a, signaling an intent to foreclose by advertisement. Plaintiffs attempted to negotiate a modification but were denied. Defendants proceeded with publishing a notice of foreclosure for four consecutive weeks, beginning December 12, 2012.

On January 18, 2013, plaintiffs filed an action to quiet title against defendants, alleging that the assignment of the mortgage to defendants was invalid and, thus, plaintiffs had superior

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title over defendants.[1] Defendants filed a motion for summary disposition asserting that (1) the assignment was validly recorded, and a mortgagee of record is entitled to foreclose, (2) plaintiffs did not have standing to challenge the assignment because they were not parties to the assignment, (3) the quiet title action lacked merit because plaintiffs did not have superior title, and (4) plaintiffs had unclean hands. The trial court granted defendants' motion in full, and plaintiffs now appeal.

Plaintiffs argue that the trial court erred in finding that plaintiffs lacked standing to challenge the assignment of the mortgage. We disagree.

A grant or denial of summary disposition based upon a failure to state a claim is reviewed de novo on appeal. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). A motion under MCR 2.116(C)(8) "tests the legal sufficiency of the pleadings alone." *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

Plaintiffs lack standing to challenge the assignment of the mortgage. The long-settled rule in Michigan is that a person who is not a party to an assignment lacks standing to challenge it. *Bowles v Oakman*, 246 Mich 674, 678; 225 NW 613 (1929). In *Bowles*, the Michigan Supreme Court held that a promissor could not challenge obligations under a promissory note by asserting that an invalid assignment had occurred. "The maker of a promissory note cannot, in an action brought against him by the indorsee or transferee thereof, litigate questions that can properly arise only between the holder and his immediate indorser." *Id*. at 679 (citation omitted). See also *Warth v Seldin*, 422 US 490, 499; 95 S Ct 2197; 45 L Ed 2d 343 (1975) (stating that "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."). In *Bowles*, the Court explained that challenges to the assignment by the nonparty plaintiff were limited to those which might give rise to double obligation on the debt. "A maker, when sued on such instrument, may defend on the ground that the plaintiff is not the owner of the instrument, does not have legal title to it, for the reason that the maker has a right to insist that he pay his obligation but once, and hence to the true owner." *Bowles*, 246 Mich at 677-678.

Federal courts have also analyzed this issue as it applies to Michigan law. In *Livonia Props Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC*, 399 F Appx 97, 102-103 (CA 6, 2010), the United States Court of Appeals for the Sixth Circuit affirmed the district court and held that the plaintiff mortgagor lacked standing to challenge an underlying assignment of the mortgage.

[1] There were other counts included in plaintiffs' complaint, which are not challenged on appeal.

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> [E]ven if there was a flaw in the assignment, [the plaintiff] does not have standing to raise that flaw to challenge [the defendant's] chain of title. As recognized by the district court, there is ample authority to support the proposition that "a litigant who is not a party to an assignment lacks standing to challenge that assignment." [*Livonia Props Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC*, 717 F Supp 2d 724, 736-737 (ED Mich, 2010).] An obligor "may assert as a defense any matter which renders the assignment absolutely invalid or ineffective, or void." 6A CJS Assignments § 132 (2010). These defenses include nonassignability of the instrument, assignee's lack of title, and a prior revocation of the assignment, none of which are available in the current matter. *Id*. Obligors have standing to raise these claims because they cannot otherwise protect themselves from having to pay the same debt twice. *Id*. [*Livonia Props*, 399 F Appx at 102.]

Here, plaintiffs admit they defaulted under the mortgage by failing to make their required payments, which triggered defendants' right to foreclosure. Thus, plaintiffs have no defenses to payment or foreclosure under the loan documents. By arguing only that the assignment of mortgage was invalid, plaintiffs seek to assert the rights of third parties, where there is no evidence that those parties object to the assignment. Furthermore, there is no evidence that plaintiffs' concerns about the assignment relate to the need to protect themselves from double liability. Thus, plaintiffs lack standing to challenge the underlying assignment.

We further reject plaintiffs' reliance on *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). Plaintiffs assert that a holding that plaintiffs lacked standing to challenge the assignment of the mortgage "is a clear contradiction to Michigan's standing doctrine." We disagree. In *Lansing Sch Ed Ass'n*, the Court stated:

> We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. . . . Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id.* at 372.]

Plaintiffs assert that they have general standing to bring an action to quiet title pursuant to MCL 600.2932. However, while plaintiffs may be able to bring a quiet title action pursuant to MCL 600.2932, the statute does not speak to the specific nature of the challenge brought by plaintiffs in this case—the invalidity of the underlying assignment. Further, plaintiffs lack a substantial interest that may be detrimentally affected by the assignment. While the assignment generally relates to their property, there is no question that the mortgagee, whoever that may be, had the right to seek foreclosure based on plaintiffs' default and failure to cure. Plaintiffs were not in further danger of losing their home because of the assignment. Thus, plaintiffs' argument fails.

Even assuming plaintiffs had standing to challenge the assignment of the mortgage, we

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further hold that summary disposition was appropriate on the merits of plaintiffs' claim to quiet title. In a quiet title action, the plaintiff has the initial burden of proof to establish that they have title to the land. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). It is then up to the defendant to prove that their title is superior to that of plaintiffs. *Id*. Here, it is clear that defendants have superior title to the property, evidenced by the assignment recorded in the Oakland County Register of Deeds. Pursuant to MCL 600.3204(3), defendants are able to foreclose because there is a record chain of title evidencing the assignment of the mortgage. Plaintiffs offer no evidence or even argument to challenge the recorded assignment. Plaintiffs, on the other hand, are in default on the mortgage. Therefore, defendants hold superior title over plaintiffs.

Based on our stated disposition, it is unnecessary to address plaintiffs' final issue relating to unclean hands.

Affirmed. Defendants, the prevailing parties, may tax costs. MCR 7.219.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Michael F. Gadola

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
December 8, 2022

No. 358170
Macomb Circuit Court
LC No. 2020-001710-NF

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

No. 358171
Macomb Circuit Court
LC No. 2020-000386-NF

Before: GLEICHER, C.J., and MARKEY and PATEL, JJ.

MARKEY, J. (*dissenting*).

In these consolidated appeals, plaintiff, C-Spine Orthopedics, PLLC (C-Spine), appeals by right the trial court's orders granting summary disposition in favor of defendant, Progressive Michigan Insurance Company (Progressive), in both cases. The suits involve C-Spine's efforts to collect personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., pursuant to certain assignments executed by persons injured in a motor vehicle accident who received medical treatment from C-Spine. The trial court determined that C-Spine lacked standing to sue. Although I am sympathetic to the view that Progressive should not be allowed to possibly avoid liability for the payment of PIP benefits, the pertinent court rules, statutes, and caselaw, when viewed in conjunction with the facts and procedural history of these cases, demand summary

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dismissal of C-Spine's complaints. Therefore, I would hold that the trial court did not err in granting summary disposition to Progressive. Accordingly, I respectfully dissent.

I. FACTUAL AND PROCEDURAL HISTORY

As acknowledged by the majority, there are "messy" factual aspects of this case. I believe it appropriate to delve into those facts, because they are relevant to the proper analysis of the issues on appeal. Moreover, these messy facts reveal questionable transactions and form the basis of some wholly meritless and disingenuous appellate arguments by C-Spine.

On May 23, 2018, Jose Cruz-Muniz and Sandra Cruz were injured in a motor vehicle accident.[1] C-Spine provided medical products, services, and accommodations to both Jose and Sandra in relation to their injuries arising from the accident. Progressive was the no-fault insurer responsible for paying PIP benefits with respect to their care and treatment. According to the complaints filed in this case and the attachments to the complaints, Sandra received medical services from C-Spine starting on August 7, 2019, and lasting through December 18, 2019. Sandra's total account balance for C-Spine's treatment and care during that period was $249,258.38. Jose received medical services from C-Spine starting on August 7, 2019, and lasting through October 2, 2019. And Jose's total account balance for C-Spine's treatment and care during that period was $37,667.36.

There is no dispute that Sandra and Jose executed multiple assignments of benefits, authorizing C-Spine to directly seek payment of PIP benefits from Progressive and giving C-Spine the power to pursue and settle claims. This case involves numerous agreements between C-Spine and third-party factoring companies.[2] Those factoring companies included: Well States Healthcare, LLC (Well States); MedFinance Servicing, LLC (MedFinance); Apogee Capital Fund 5, LLC, or Apogee Capital Partners, LLC (Apogee); MMD Investments, LLC (MMD); and EzMed, LLC (EzMed).

The numerous agreements between C-Spine and the factoring companies that are relevant to these appeals are somewhat difficult to navigate and understand because of issues concerning confidentiality and privacy, especially in connection with the Health Insurance Portability and Accountability Act (HIPPA), 42 USC 1320d *et seq*., along with the fact that C-Spine had entered into nondisclosure agreements with the factoring companies. In both suits, a stipulated protective order was entered in relation to the production and sealing of agreements. Aside from the

[1] C-Spine filed a complaint regarding Sandra's accounts receivable in LC No. 2020-000386-NF (Docket No. 358171). And C-Spine filed a separate complaint regarding Jose's accounts receivable in LC No. 2020-0001710-NF (Docket No. 358170).

[2] The business of "factoring" involves "[t]he buying of accounts receivable at a discount." *Black's Law Dictionary* (7th ed). "The price is discounted because the factor (who buys them) assumes the risk of delay in collection and loss on the accounts receivable." *Id.*; see also *S & H Packing & Sales Co, Inc v Tanimura Distrib, Inc*, 883 F3d 797, 799 n 2 (CA 9, 2018) (factoring is the commercial practice of converting receivables into cash through their sale at a discount).

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assignments between C-Spine and Jose and Sandra, there are effectively four types of documents or transactions in play in these cases.

First, there were bulk purchase and sales agreements between C-Spine and the factoring companies (hereafter "purchase" or "factoring" agreements), pursuant to which C-Spine sold, transferred, assigned, and conveyed its rights, title, and interests in accounts receivable to the factoring companies. No actual purchase agreements concerning Jose's and Sandra's accounts receivable are included in the lower court record. C-Spine did produce a purchase agreement that is contained in the record, but it is dated August 2, 2019, which was before Jose or Sandra began receiving medical services. Progressive describes it as a "sample" purchase agreement, and e-mail correspondence to Progressive's counsel indicated or suggested that all of the actual pertinent factoring agreements had "the exact same contractual language" as the August 2, 2019 purchase agreement. Counter-assignments, purchase-agreement amendments, and schedules of accounts, which I shall discuss below, also referred to underlying purchase agreements.

Second, the record contains some schedules of accounts. The purchase agreements referenced attached schedules of accounts, identifying them as Exhibit A to the agreements. These heavily-redacted schedules of accounts blocked out information about C-Spine patients other than Jose and Sandra. The schedules do show the dates of medical service, the associated charges on those dates, and the discounted amount paid by the factoring companies to C-Spine in regard to those charges. To be clear, because no directly pertinent purchase or factoring agreements are part of the record, the schedules of accounts are not connected to any particular purchase agreements.[3] Rather, C-Spine essentially supplied Progressive with schedules of accounts grouped together that broadly covered all of the numerous purchase agreements that were entered into by C-Spine and the factoring companies.

Third, the record contains several counter-assignments reflecting that C-Spine, under various purchase agreements, had previously sold, transferred, assigned, and conveyed its legal and equitable rights, title, and interests in Jose's or Sandra's accounts receivable to particular factoring companies. The counter-assignments anticipated the need to file suit against the insurer to obtain payment and stated that the best method to do so would be for C-Spine to pursue the action. The counter-assignments thus provided that the factoring companies were now transferring, assigning, and conveying the rights, title, and interests they had previously acquired from C-Spine back to C-Spine relative to medical services provided to Sandra and Jose. The counter-assignments included the right to pursue and settle lawsuits.

Fourth, and finally, the record contains amendments to two Apogee purchase agreements. The amendments acknowledged prior purchase agreements in which Apogee had obtained accounts receivable from C-Spine. The amendments appointed C-Spine as the "servicer" of the accounts receivable consistent with a capacity to litigate and compromise the accounts receivable.

[3] There is an exception regarding Apogee schedules of accounts, which can be tied to particular purchase agreements between C-Spine and Apogee. I will discuss it later in this opinion.

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I now move on to the specifics or details regarding Jose's and Sandra's accounts receivable. The record regarding Jose's accounts receivable and related transactions is much clearer than the record concerning Sandra's accounts receivable. Jose received medical services from C-Spine on August 7 and 15, 2019, and was charged $620.46 and $9,651.36, respectively.[4] On August 16 and 30, 2019, C-Spine conveyed accounts receivable to Apogee under purchase agreements, which, in part, encompassed the services provided to Jose on August 7 and 15, 2019. Jose then received medical services from C-Spine on August 21, 2019 ($15,165.34), September 12, 2019 ($5,944.31), September 25, 2019 ($5,864.31), and October 2, 2019 ($421.58). MedFinance acquired all of these accounts receivable pursuant to purchase agreements with C-Spine. By document dated May 4, 2020, C-Spine and MedFinance entered into a counter-assignment of accounts receivable relative to Jose. The counter-assignment indicated that C-Spine had previously sold, transferred, assigned, and conveyed to MedFinance its legal and equitable rights, title, and interests in medical services provided to Jose between August 21 and October 2, 2019. The counter-assignment stated that MedFinance was now transferring, assigning, and conveying the rights, title, and interests it had previously acquired from C-Spine back to C-Spine in regard to accounts receivable associated with medical services provided to Jose. The counter-assignment included the right to pursue and settle lawsuits.

On May 11, 2020, C-Spine filed a two-count complaint against Progressive with respect to services provided to Jose. In the complaint, C-Spine maintained that Progressive had unreasonably refused to make payment for the medical products, services, and accommodations provided to Jose. C-Spine contended that as Jose's assignee, it was the real party in interest and had a right to prosecute the action under MCL 600.2041 ("Every action shall be prosecuted in the name of the real party in interest"). In Count I, C-Spine alleged a claim for PIP benefits. And Count II of the complaint alleged a claim of breach of contractual and statutory duties. C-Spine sought payment of the total account balance with respect to medical services provided to Jose. Post complaint, on July 1 and 23, 2020, C-Spine and Apogee entered into amendments of the August 16 and 30, 2019 purchase agreements, appointing C-Spine as the "servicer" of Jose's accounts receivable consistent with a capacity to litigate and compromise the accounts receivable. Furthermore, it was eventually discovered that the counter-assignment between C-Spine and MedFinance regarding Jose's accounts receivable that was dated May 4, 2020, which date preceded the May 11, 2020 complaint, was actually executed in January 2021, long after the complaint was filed.

Sandra's accounts receivable are more complex and the transactional documents concerning those accounts are more difficult to follow. Sandra received medical services from C-Spine on August 7 and 15, 2019, and was charged $620.46 and $5,994.31, respectively. On August 16 and 30, 2019, C-Spine conveyed accounts receivable to Apogee under purchase agreements, which, in part, encompassed the services provided to Sandra on August 7 and 15, 2019. The preceding mimicked the clear transactions between C-Spine and Apogee relative to Jose. Sandra then received medical services from C-Spine on August 21, 2019 ($6,024.74), September 12, 2019 ($5,918.41), September 25, 2019 (617.05), October 2, 2019 ($9,451.36), October 9, 2019

[4] Again, Jose and Sandra essentially immediately assigned their rights to PIP benefits to C-Spine after they received medical services from C-Spine.

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($1,124.10), October 18, 2019 ($13,880.78), October 21, 2019 ($617.05), October 21, 2019 ($617.05),[5] November 1, 2019 ($9,638.93), November 6, 2019 ($421.58), November 15, 2019 ($24,134.72), November 19, 2019 ($136,158.25), November 19, 2019 ($34,039.59), November 20, 2019 (post-op follow-up, no charge), December 5, 2019 (post-op follow-up, no charge), and December 18, 2019 (post-op follow-up, no charge).

As gleaned by e-mails and schedules of accounts supplied by C-Spine to Progressive during discovery, along with documentary references in counter-assignments, Sandra's accounts receivable starting with medical services provided on August 21, 2019, and running through November 19, 2019, were apparently all transferred, sold, assigned, and conveyed to either MedFinance, EzMed, or MMD.[6] But, as discussed below, I am not entirely confident of this factual conclusion.

By document dated January 15, 2020, C-Spine and EzMed entered into a counter-assignment of accounts receivable relative to Sandra. The counter-assignment indicated that C-Spine had previously sold, transferred, assigned, and conveyed to EzMed its legal and equitable rights, title, and interests in medical services provided to Sandra. The counter-assignment stated that EzMed was now transferring, assigning, and conveying the rights, title, and interests it had previously acquired from C-Spine back to C-Spine with respect to accounts receivable associated with medical services provided to Sandra. The counter-assignment included the right to pursue and settle lawsuits. By document also dated January 15, 2020, C-Spine and MMD entered into a nearly-identical counter-assignment of accounts receivable relative to Sandra. And by document dated January 11, 2021, C-Spine and MedFinance also entered into a similar counter-assignment of accounts receivable with regard to Sandra's medical services.

I note that given some ambiguous language in these counter-assignments, it is difficult to connect each counter-assignment to particular dates in 2019 when Sandra received medical services from C-Spine. The MMD counter-assignment pretty clearly spelled out that MMD had purchased Sandra's accounts receivable related to medical services provided to her on November 19, 2019, and that the counter-assignment covered that transaction. The EzMed counter-assignment either pertained to medical services provided "between October 9, 2019 and November 15, 2019[,]" or to EzMed's purchases of Sandra's accounts receivable between those two dates. I find that the dates concerned dates of medical services and not sales because Sandra specifically received treatment on both October 9 and November 15, 2019. Finally, the MedFinance counter-assignment is the most confusing of all. It, like the EzMed counter-assignment, referenced a period of time, "between February 4, 2020 and August 27, 2020," without clearly indicating whether the dates regarded when medical services were provided or when purchase agreements were executed. It is not clear whether Sandra received medical services from C-Spine in 2020, and the complaint

[5] There are indeed two listings for October 21, 2019, for $617.05.

[6] I do note that the schedules of accounts showing the conveyed accounts receivable did not appear to include the two $617.05 charges for services provided on October 21, 2019. The trial court treated those accounts receivable as having been transferred by C-Spine, and the parties on appeal effectively accept the court's treatment by ignoring the matter. I shall, therefore, proceed on the basis that those accounts receivable were conveyed to a factoring company.

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only encompasses services provided in 2019. Progressive states that the MedFinance counter-assignment covered dates of service "from October 9, 2019 until August 27, 2020." I am unable to discern where Progressive finds the October 9, 2019 date; it is not in the MedFinance counter-assignment. This results in a lack of clarity as to what accounts receivable MedFinance actually purchased from C-Spine in 2019 (and thus which accounts were counter-assigned). And it leaves open the possibility that MedFinance did not first purchase any of Sandra's accounts receivable until February 2020, which, as shown momentarily, was after C-Spine filed its complaint regarding Sandra's accounts receivable. That said, the parties themselves appear to agree that the three Sandra-related counter-assignments covered all of the accounts receivable pertaining to Sandra and medical services that she received in 2019 and that had been sold to EzMed, MMD, and MedFinance. I shall, therefore, proceed on that basis.

On January 29, 2020, C-Spine filed a two-count complaint against Progressive with respect to services provided to Sandra. In the complaint, C-Spine maintained that Progressive had unreasonably refused to make payment for the medical products, services, and accommodations provided to Sandra. C-Spine contended that as Sandra's assignee, it was the real party in interest and had a right to prosecute the action under MCL 600.2041. In Count I, C-Spine alleged a claim for PIP benefits. And Count II of the complaint alleged a claim of breach of contractual and statutory duties. C-Spine sought payment of the total account balance with respect to medical services provided to Sandra. As with Jose's accounts receivable, post complaint, on July 1 and 23, 2020, C-Spine and Apogee entered into amendments of the August 16 and 30, 2019 purchase agreements, appointing C-Spine as the "servicer" of Sandra's accounts receivable consistent with a capacity to litigate and compromise the accounts receivable. Moreover, it was eventually discovered that the counter-assignments between C-Spine and EzMed and C-Spine and MMD regarding Sandra's accounts receivable that were dated January 15, 2020, which date preceded the January 29, 2020 complaint, were actually executed in January 2021, long after the complaint was filed.

On January 19, 2021, Progressive moved for summary disposition under MCR 2.116(C)(5) and (10) in both cases, arguing that C-Spine had assigned its interests in Sandra's and Jose's accounts receivable to the third-party factoring companies and that, therefore, C-Spine lacked standing to bring claims regarding those accounts. Progressive also contended that for purposes of MCR 2.116(C)(10), the documentary evidence demonstrated as a matter of law that C-Spine lacked the legal right to recover any of the charges set forth in the complaints. Finally, Progressive maintained that corporations such as C-Spine do not have the legal capacity to represent the interests of other persons under MCL 450.681, which prohibits the practice of law by corporations. Consequently, according to Progressive, C-Spine lacked the legal capacity to sue on the debts owned by another, i.e., the factoring companies, because it would entail the unauthorized practice of law. C-Spine responded that the agreements with the factoring companies constituted loans and not sales, with the factoring companies merely holding security interests in the accounts receivable. C-Spine also relied on the counter-assignments and purchase-agreement amendments.

The trial court denied Progressive's motions for summary disposition in extensive written opinions and orders that paralleled each other. The court first determined that even though Jose and Sandra had assigned their rights to C-Spine with respect to collecting insurance benefits from Progressive, C-Spine turned around and "sold or assigned its rights in the accounts to the factoring companies." The trial court rejected C-Spine's contention that the transactions between C-Spine

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and the factoring companies merely involved loans or grants of a security interest in exchange for capital. The court concluded that under the plain and unambiguous language of the purchase or factoring agreements, the factoring companies became the owners and real parties in interest in regard to the accounts receivable. But the trial court then acknowledged the various counter-assignments, finding that the counter-assignments had re-conferred an ownership interest in the accounts receivable to C-Spine, such that C-Spine again became the real party in interest and had standing to file suit.[7] The trial court additionally opined that enforcement of the counter-assignments did not result in C-Spine's engagement in the unauthorized practice of law on behalf of the factoring companies. Rather, C-Spine had reacquired a full ownership interest in the accounts receivable, leaving the factoring companies with no interest in the accounts. Accordingly, there could be no representative acts by C-Spine in furtherance of interests held by the factoring companies.

Approximately five months later, in June 2021, Progressive moved for summary disposition once again under MCR 2.116(C)(5) and (10). Progressive recounted the procedural history of the cases. Progressive noted that it had been wholly unaware of the counter-assignments and the amendments to the purchase agreements until after Progressive had filed the original motions for summary disposition. Progressive acknowledged that the trial court's earlier rulings on the motions for summary disposition were predicated on the counter-assignments and the dates indicated on the face of those counter-assignments. Progressive observed that discovery was reopened after the court denied the prior summary disposition motions. Progressive stated that after being forced to file several discovery motions and completing a deposition, C-Spine finally disclosed that the counter-assignments had not been created or executed until January 11, 2021. Only one of the counter-assignments accurately contained that date—the counter-assignment pertaining to MedFinance and Sandra's accounts receivable. The other three counter-assignments, on their face, were dated January 15, 2020 (Sandra), January 15, 2020 (Sandra), and May 4, 2020 (Jose), which dates predated the filing of the pertinent complaints. Stated otherwise, those three counter-assignments had been backdated. And Progressive asserted that C-Spine backdated the counter-assignments in an effort to mislead the trial court and to escape the consequences of filing suit absent any real interest at the time. Progressive argued that on the dates that the complaints were filed, C-Spine was not the real party in interest with respect to the accounts receivable and thus C-Spine lacked standing. Progressive also contended that medical services provided by C-Spine more than one year prior to January 11, 2021, were not compensable under the one-year-back rule, MCL 500.3145(2).

In response to the summary disposition motions, C-Spine took the position that while the counter-assignments were indeed executed after the complaints were filed, C-Spine and the factoring companies had "specified the effective dates" as indicated on the face of the counter-assignments. C-Spine further insisted "that the counter-assignments convey standing to [C-Spine] regardless of the date they were signed." C-Spine also supplied affidavits in support of a claim

[7] The trial court declined to take into consideration the two Apogee purchase-agreement amendments because the amendments occurred after both complaints had been filed. This leaves me puzzled with regard to the court's denial of the summary disposition motions in full.

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that C-Spine retained the exclusive right to sue on the outstanding accounts receivable.[8] C-Spine asserted that it was and had always been the real party in interest. According to C-Spine, the factoring companies assigned any rights that they had acquired from C-Spine in relation to the pertinent accounts receivable back to C-Spine, effective on the dates listed in the counter-assignments. C-Spine additionally argued that should the trial court decide that C-Spine did not have standing when the complaints were filed, the proper remedy was joinder of the factoring companies under MCR 2.205 and not summary dismissal of the lawsuits.

In a reply brief, Progressive contended that C-Spine did not acquire rights or interests from the factoring companies until execution of the counter-assignments and amendments to the purchase agreements, regardless of the so-called selected effective date. Progressive further argued that standing is determined at the time a suit is filed, that a standing deficiency cannot be cured retroactively, and that the joinder rules had no application under the circumstances presented.

At a joint hearing on the motions for summary disposition held on July 26, 2021, the trial court entertained brief oral arguments by the parties and then ruled in extremely cursory fashion that C-Spine lacked standing at the time that the complaints were filed. The court noted that "[i]t was done retroactively after." The trial court granted the two motions for summary disposition in favor of Progressive. Orders to that effect were entered on July 27, 2021. C-Spine appeals by right.

II. ANALYSIS

[8] Mark Seda, Chief Executive Officer (CEO) of C-Spine, averred in an affidavit that C-Spine's agreements with Well States, MedFinance, and Apogee regarding Jose's patient account balance included C-Spine's "obligation to sue for unpaid balances." In an affidavit executed by Peter Rood, Managing Member of Apogee, he averred that C-Spine owned "the right to sue for any unpaid balance arising out of the treatment to Jose . . . ." C-Spine also submitted an unsigned and unsworn affidavit by, purportedly, Nate Ormond, President of MedFinance and Well States, in which it was stated that C-Spine owned "the right to sue for any unpaid balance arising out of the treatment to Jose . . . ." C-Spine additionally submitted similar affidavits from Rood and Ormond with respect to Sandra's unpaid balance. Indeed, Ormond executed two affidavits on the matter, both fully signed and sworn. Ormond was President of EzMed, along with being President of MedFinance and Well States. Jay Bansal, CEO of MMD, executed an affidavit indicating that C-Spine owned "the right to sue for any unpaid balance arising out of the treatment to Sandra . . . ." Finally, in an unsigned and unsworn affidavit by C-Spine CEO Seda, he supposedly averred that C-Spine's agreements with Well States, MedFinance, Apogee, MMD, and EzMed regarding Sandra's patient account balance included C-Spine's "obligation to sue for unpaid balances." I note that these affidavits failed to provide context by not referencing any specific or particular agreements.

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C-Spine presents six specific arguments on appeal. Those arguments are identical in both cases.

A. STANDARD OF REVIEW

"Whether a party has standing is a question of law that is reviewed de novo." *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). "Further, the issue of whether a plaintiff is the real party in interest is a question of law that we review de novo." *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 411; 875 NW2d 242 (2015).

B. ARGUMENT CONCERNING MCR 2.116(C)(5)

C-Spine initially argues that MCR 2.116(C)(5) was not implicated by the arguments posed by Progressive in these cases. C-Spine maintains, correctly so, that MCR 2.116(C)(5) pertains to the "capacity to sue," not standing. A real-party-in-interest defense is not the same as a defense that a party lacks the legal capacity to file suit. *Cannon*, 311 Mich App at 411. An argument that a party lacks "standing" to sue may be raised in a motion for summary disposition under MCR 2.116(C)(8) or (10). *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 215; 880 NW2d 793 (2015); *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust v Pontiac No. 2*, 309 Mich App 611, 621; 873 NW2d 783 (2015). The same is true with respect to a defense that a party is not the real party in interest. *Cannon Twp*, 311 Mich App at 411.[9] In these cases, Progressive sought summary disposition on the basis that C-Spine lacked standing because it was not the real party in interest. Although Progressive cited MCR 2.116(C)(5) in support of the motions for summary disposition, Progressive additionally relied on MCR 2.116(C)(10). Moreover, the trial court's orders granting the motions for summary disposition did not reference any particular ground under MCR 2.116(C). Additionally, "an order granting summary disposition under the wrong subrule may be reviewed under the correct rule." *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395 n 3; 573 NW2d 336 (1997), citing *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). Because the trial court clearly relied on documentary evidence in making its ruling with respect to standing, MCR 2.116(C)(10) was implicated.[10] In sum, I conclude that C-Spine's argument does not warrant reversal.

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[9] "Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant's ability to raise the legal rights of another." *Pontiac Police & Fire*, 309 Mich App at 621-622.

[10] MCR 2.116(C)(10) provides for summary disposition when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion under subrule (C)(10) tests the factual support for a party's cause of action. *Ass'n of Home Help Care Agencies v Dep't of Health & Human Servs*, 334 Mich App 674, 684 n 4; 965 NW2d 707 (2020). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmoving party, demonstrate that there is no genuine issue with respect to any material fact. *Id.* "A genuine issue

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C. EVIDENCE OF TRANSFER OF INTERESTS BY C-SPINE TO FACTORING COMPANIES

C-Spine argues that there was a complete lack of documentary evidence demonstrating that C-Spine transferred any interests in accounts receivable to the factoring companies. C-Spine initially notes that all of the dates of service were subsequent to the June 11, 2019 effective date of the sweeping amendments to the no-fault act, MCL 500.3101 *et seq*. See 2019 PA 21 and 22. And MCL 500.3112 now provides that "[a] health care provider . . . may make a claim and assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." C-Spine further observes that on top of the statutory basis to file suit, it had also procured assignments from Jose and Sandra. I note that C-Spine, in its complaints, relied on the assignments of rights from Jose and Sandra for purposes of alleging that it was the real party in interest, absent any mention of statutory rights to directly sue Progressive under MCL 500.3112.

C-Spine specifically contends that there was no record evidence related to any transfer by C-Spine of interests in accounts receivable to MedFinance/Well States, considering that the purchase agreement executed by MedFinance/Well States involved a conveyance by Sea Spine Orthopedic, LLC, not C-Spine. This is a reference to the sample purchase agreement dated August 2, 2019, which reflected a conveyance of accounts receivable by Sea Spine Orthopedic to MedFinanace/Well States. The sample agreement was executed before Sandra and Jose even started treatment with C-Spine. There is no indication that this purchase agreement actually transferred any of the accounts receivable at issue in these cases. Rather, the purchase agreement was provided to Progressive as evidence revealing the general language used in all of the purchase agreements employed by C-Spine and the factoring companies with respect to the conveyances of Jose's and Sandra's accounts receivable. I note that attached to Progressive's appellate briefs is a ratification agreement dated November 8, 2019, which indicates that earlier purchase agreements between Sea Spine and MedFinance/Well States were intended to bind C-Spine and not Sea

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of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A trial court may not assess credibility, weigh the evidence, or resolve factual disputes, and when material evidence conflicts, it is not appropriate for the court to grant a motion for summary disposition. *Ass'n of Home Help Care Agencies*, 334 Mich App at 684 n 4. "Like the trial court's inquiry, when an appellate court reviews a motion for summary disposition, it makes all legitimate inferences in favor of the nonmoving party." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). "Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion . . . shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6); see also *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999) (a court may only consider substantively admissible evidence actually proffered by the parties when ruling on a motion).

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Spine.[11] But the ratification agreement was not presented to the trial court as part of the summary disposition proceedings.[12] Nevertheless, C-Spine's argument fails because the August 2, 2019 purchase agreement referencing Sea Spine was merely a sample agreement that did not entail a transfer of Jose's and Sandra's accounts receivable. Given the record, C-Spine's argument, in my view, is entirely disingenuous.

C-Spine further argues that the sales of accounts receivable to Apogee, EzMed, and MMD were not established as a matter of law because no purchase agreements were included in the record and therefore the purported transactions effectively remained a "mystery." C-Spine contends that the mere reference to those purchase agreements in other documents constitutes inadequate proof of the purchase agreements. Consequently, according to C-Spine, "it is legally impossible to determine who owns the cause of action." I find this argument to also be disingenuous. C-Spine provided a sample purchase agreement and schedules of accounts depicting the accounts receivable relative to Jose and Sandra that were conveyed to the factoring companies. The e-mail correspondence to Progressive that provided the schedules of accounts stated: "I put them in list form—which factoring companies are involved with the patient accounts." Moreover, C-Spine relied on and had executed counter-assignments and purchase-agreement amendments, which are part of the record, that expressly referred to the purchase agreements. The counter-assignments and amendments would make absolutely no sense absent the existence of underlying transactions between C-Spine and the factoring companies.

Furthermore, C-Spine does not specifically claim that the purchase agreements do not exist. In fact, in response to Progressive's motions for summary disposition, C-Spine did not deny the existence of the agreements; rather, it characterized the agreements as concerning loans and not sales. If not waived outright, the argument that there was no documentary proof of the transactions was certainly not preserved.[13] Regardless, there was uncontroverted evidence establishing that C-

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[11] There was a Florida entity named Sea Spine Orthopedic, LLC, which was owned by the same owner of C-Spine, A. Joshua Appel.

[12] I note that Progressive also attached to its briefs on appeal a purchase agreement dated September 13, 2019, between Sea Spine and MedFinance/Well States, which paralleled the August 2, 2019 purchase agreement. But, like the ratification agreement, I could not locate the September 13, 2019 purchase agreement in the lower court record, i.e., it was not attached to any parties' summary disposition briefs in the two cases.

[13] In *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008), our Supreme Court explained the rule on unpreserved issues in civil cases:

> Michigan generally follows the "raise or waive" rule of appellate review. Under our jurisprudence, a litigant must preserve an issue for appellate review by raising it in the trial court. Although this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice, generally a failure to timely raise an issue waives review of that issue on appeal.

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Spine entered into purchase agreements with the factoring companies, even though the agreements themselves are not part of the record.

D. ASSIGNMENT OF BENEFITS PAYABLE IN THE FUTURE

MCL 500.3143 provides that "[a]n agreement for assignment of a right to benefits payable in the future is void." C-Spine points out that Jose and Sandra first received medical services on August 7, 2019, which was after the August 2, 2019 execution of the purchase agreement between C-Spine (Sea Spine) and MedFinance/Well States. C-Spine contends that a right to PIP benefits accrues when an allowable expense is incurred. According to C-Spine, when "an assignment purports to transfer rights to claims that have not yet accrued, any such provision is void and ineffective [under MCL 500.3143] to transfer any rights at all[.]" C-Spine maintains that the August 2, 2019 purchase agreement concerned the assignment of benefits payable in the future, which was void under MCL 500.3143. This argument was not preserved for appeal.

I initially note that C-Spine attaches as an exhibit to its briefs on appeal the August 2, 2019 purchase agreement, followed immediately by schedules of accounts, making it look like the schedules were incorporated exhibits attached to the August 2, 2019 purchase agreement. Once again, the August 2, 2019 purchase agreement was executed before Jose and Sandra were even C-Spine patients—*it was a sample agreement*. Moreover, the schedules of accounts referenced specific dates of service that necessarily had already taken place. It would require clairvoyance for the August 2, 2019 purchase agreement to have covered accounts receivable for future medical services that already had particular dates associated with the services. I would hold that the record, as a matter of law, does not support the conclusion that C-Spine assigned any rights to future accounts receivable to any of the factoring companies.

E. JOINT PARTIES IN INTEREST

On this preserved issue, C-Spine argues that assignors and assignees are both real parties in interest after rights have been assigned; therefore, the factoring companies and C-Spine were parties in interest for purposes of the litigation. C-Spine, citing MCR 2.202(B), contends that

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> The principal rationale for the rule is based in the nature of the adversarial process and judicial efficiency. By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [Citations omitted.]

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"even if the trial court had been correct that [C-Spine] effectively transferred its rights to the benefits at issue, the appropriate remedy is merely to join any other entity that supposedly or allegedly has a duplicative interest in the cause of action." C-Spine maintains that Progressive's sole legitimate interest was avoidance of duplicate payment and that joinder would have protected that interest. C-Spine asserts that the reason for the "real party in interest" requirement is to prevent double recovery and multiple lawsuits. C-Spine claims that the only relief available to Progressive was joinder of the factoring companies, not dismissal of the lawsuit. But then C-Spine also argues:

> In this case, joinder is unnecessary and ultimately inappropriate for any factoring company, given the instruction above that joinder is only necessary where a judgment would not serve as a complete adjudication of the issues asserted or possibly asserted against a defendant. Here, all purported transfers of PIP benefits were executed more than a year ago. To the extent that the factoring companies ever had any interest, it has since extinguished pursuant to MCL 500.3145.[14]

Subject to certain circumstances, "[a]n action must be prosecuted in the name of the real party in interest . . . ." MCR 2.201(B). In *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013), this Court observed as follows:

> A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by any other party. [Quotation marks and citations omitted.]

An assignee of a cause of action becomes the real party in interest in relation to that particular cause of action, considering that the assignment vests in the assignee all the rights earlier held by the assignor. *Kearns v Mich Iron & Coke Co*, 340 Mich 577, 582-584; 66 NW2d 230 (1954); *Cannon Twp*, 311 Mich App at 412-413; *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). This caselaw does not support C-Spine's contention that an assignor remains a real party in interest after an assignment. Indeed, assignments divest assignors of any interest in the subject matter of the assignments. See *Ward v DAIIE*, 115 Mich App 30, 37; 320 NW2d 280 (1982); *Moore v Baugh*, 106 Mich App 815, 819; 308 NW2d 698 (1981); 6A CJS, Assignments, § 88. Critical to the proper analysis of these lawsuits, caselaw provides that standing is determined at the time a complaint is filed. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 595 n 54; 957 NW2d 731 (2020); *Girard v Wagenmaker*, 437 Mich 231, 244; 470 NW2d 372 (1991). And C-Spine and my colleagues in the majority do not argue to the contrary.

[14] MCL 500.3145(2) provides, in part, that a "claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."

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In support of its position that assignors and assignees remain real parties in interest after an assignment, C-Spine cites and quotes MCL 600.2041, which provides, in part:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, *a party with whom or in whose name a contract has been made for the benefit of another*, *or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action was brought* . . . . [Emphasis added.]

The emphasized language is the language that C-Spine emphasizes when making its argument. Similarly, MCR 2.201(B)(1) provides:

> (B) An action must be prosecuted in the name of the real party in interest, subject to the following provisions:
>
> (1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

With respect to contracts made for the benefit of another, this is plainly a reference to contracts with third-party beneficiaries, allowing a contracting party who does not receive a direct benefit to file suit if the other contracting party's promise directed at the third-party beneficiary is not fulfilled. See *Capital Mtg Corp v Mich Basic Prop Ins Ass'n*, 78 Mich App 570, 575; 261 NW2d 5 (1977) ("[A] party in whose name a contract has been made for the benefit of another may sue in his own name without joining the other party"). The purchase agreements or assignments to the factoring companies in these cases did not involve third-party beneficiaries. Rather, the purchase agreements between C-Spine and the factoring companies simply entailed C-Spine's straightforward sale of its interests and rights in accounts receivable to the factoring companies in exchange for immediate payment on those accounts at a discounted rate.

With respect to a party being authorized by statute to sue for the benefit of another, MCL 600.2041; MCR 2.201(B)(1), it is true that under the current version of MCL 500.3112, C-Spine was statutorily authorized to directly file a cause of action against Progressive. The majority concludes that C-Spine had statutory standing to bring the claims on the basis of MCL 500.3112. I initially note that even though the amendment of MCL 500.3112 adding a direct cause of action for healthcare providers was in effect, 2019 PA 21, C-Spine's 2020 complaints, as noted earlier, relied solely on Sandra's and Jose's assignments in pursuing the actions and in claiming that it was the real party in interest. "[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest rule, *they are distinct concepts*." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013) (emphasis added). Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id.* "[I]f a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits." *Id.*, citing *Miller v Allstate Ins Co*, 481 Mich 601, 608-612; 751 NW2d 463 (2008); see also *Grady v Wambach*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 354091); slip op at 3. Jurisdiction is not an issue in this case.

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In *Lansing Sch Ed Ass'n, MEA/NEA v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010), our Supreme Court, overruling several of its earlier opinions, enunciated the principles of standing in Michigan going forward:

> We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

While C-Spine had a statutory legal cause of action under MCL 500.3112, it chose not to pursue that route, relying instead on the assignments from Sandra and Jose to state a legal cause of action. Regardless, in either case, C-Spine still needed to be the real party in interest when the suits were commenced, and the majority appears to accept that premise.

The majority addresses the real-party-in-interest provision in MCR 2.201(B)(1), holding as follows:

> C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies.
>
> [C-Spine] is "vested with the right of action" against Progressive based on the assignments from the Cruzes, and is "authorized by statute" to sue in its own name under the plain language of MCL 500.3112. That the "beneficial interest" resided with the factoring companies did not eliminate C-Spine as a real party in interest.

In my view, this analysis ignores the fact that C-Spine assigned or sold all of its rights and interests in PIP benefits to the factoring companies before the suits were filed, thereby losing its status as a real party in interest under the authorities cited earlier. The factoring companies became the real parties in interest at that point, although there might have been legal impediments to them filing suit against Progressive.

I additionally believe that the majority's position reflects a misunderstanding of MCR 2.201(B)(1). The provision addresses circumstances in which (1) a fiduciary party sues for the benefit of a beneficiary, ward, or similarly-situated person, (2) a contracting party who executed an agreement sues for the benefit of a third-party beneficiary, or (3) a party authorized by statute sues for the benefit of another person. This third situation, which forms an integral part of the majority's holding through reliance on MCL 500.3112, plainly concerns statutory provisions that

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authorize a party to sue for the benefit of another person. Again, in its complaints, C-Spine did not allege a cause of action or standing under MCL 500.3112, but I shall proceed with my analysis assuming application of MCL 500.3112. As noted earlier, MCL 500.3112 states that "[a] health care provider . . . may make a claim and assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." This statute simply authorizes a healthcare provider such as C-Spine to sue for its own benefit or on its own behalf, i.e., to recover overdue PIP benefits for its products, services, or accommodations. At most, the statute can also be viewed as authorizing a healthcare provider to sue for the benefit of an injured person, considering that payment by an insurer to a healthcare provider can potentially preclude the healthcare provider from seeking payment from the injured person who enjoyed the benefit of healthcare services. But MCL 500.3112 in no form or manner authorizes a healthcare provider to sue for the benefit of factoring companies or others. Accordingly, MCR 2.201(B)(1) and MCL 600.2041 did not give C-Spine the status of a real party in interest at the time the suits were filed in light of the sales of all of C-Spine's interests and rights in the accounts receivable.

Next, MCR 2.202(B), which C-Spine also relies on in support of its position, provides as follows:

> If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c).

In these cases, it appears and the parties accept that C-Spine transferred its rights and interests in the accounts receivable to the factoring companies *before* the complaints were filed and not while the suits were ongoing or continuing. Although the counter-assignments and amendments to the purchase agreements were executed after the complaints were filed, this would provide a basis to join or substitute in C-Spine to a suit filed by the factoring companies, not visa versa, under MCR 2.202(B).

Although C-Spine does not raise an argument under MCR 2.205(A), the majority discusses the provision. MCR 2.205(A) provides, in part, that "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." The majority posits that had there been no counter-assignments, Progressive might have had a legitimate concern about facing subsequent lawsuits by the factoring companies; however, according to the majority, in that hypothetical situation, the necessary joinder rule, MCR 2.205(A), would have protected Progressive. I fail to understand this logic. At the time the suits were commenced, which is the timeframe that we must consider for purposes of standing and the real-party-in-interest rule, *League of Women Voters*, 506 Mich at 595 n 54; *Girard*, 437 Mich at 244, C-Spine had fully conveyed their rights and interests in PIP benefits in exchange for compensation, and there were no counter-assignments. Whether under the majority's hypothetical or upon examination of these cases at the time the complaints were filed, necessary *joinder* of the factoring companies would have entailed C-Spine remaining in the lawsuit and being

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joined with the factoring companies, but C-Spine would have *no* interest whatsoever such that it would be entitled to stay in the suit.

The majority concludes that *Cannon Twp*, 311 Mich App 403, supports its position. In that case, the township plaintiff did not suffer any damages or have to pay any monies itself, but it was assigned causes of action against the defendant school system by two other nonparties, with one assignment occurring before the township filed suit and one occurring after the township filed suit. *Id.* at 412. With respect to the post-complaint assignment, "the trial court granted the township leave to amend its complaint to properly reflect that it was litigating as the assignee of both [nonparties,]" and this Court found no error "in the trial court's grant of leave to amend." *Id.* at 412-413. In this case, C-Spine did not request leave to amend its complaints to reflect that it was litigating against Progressive on the basis of the counter-assignments and the amended purchase agreements. The *Cannon Twp* panel also found that with regard to the nonparty who assigned a cause of action to the township *before the lawsuit was filed*, the township could still be considered a real party in interest even though the township was seeking to collect a judgment for the nonparty's benefit. *Id.* at 413. This reasoning does not support C-Spine's position. The township was an assignee of a cause of action before and after it filed its complaint. Here, C-Spine sold its interests and rights to collect PIP benefits before filing the suits.

In sum, I would hold that there is no authority for the proposition that the appropriate remedy for the issues raised by Progressive in its motions for summary disposition was to deny the motions and to order joinder of the factoring companies. Joinder would not have magically transformed C-Spine into a real party in interest.

F. TRANSFER OF ACCOUNTS RECEIVABLE AND MAINTENANCE OF A CAUSE OF ACTION

C-Spine argues that to the extent that it transferred rights to a factoring company, regardless of when a transfer was made effective, the conveyances were merely of accounts receivable, which is simply a beneficial interest, with C-Spine retaining ownership of any and all causes of action. This issue was preserved for appeal.

I find it telling that C-Spine does not refer to any language in the standard purchase agreement. The purchase agreements, by way of sample, provided that C-Spine was selling, transferring, assigning, and conveying to the factoring companies its legal and equitable "[r]ights, [t]itle, and [i]nterests in the [a]ccounts [r]eceivable." This all-encompassing language plainly and unambiguously covered and conveyed a right of action to recover payment on an account receivable.[15] And any doubt on the issue is put to rest by additional language in the purchase

[15] In *Highfield Beach at Lake Mich v Sanderson*, 331 Mich App 636, 654; 954 NW2d 231 (2020), this Court set forth the basic principles of contract construction, explaining:

> The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties; to this rule all others are subordinate. In ascertaining the

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agreements regarding servicing, which provides that C-Spine "shall not settle, solicit, or accept collections on any of the [a]ccounts [r]eceivable." Therefore, I conclude that C-Spine's argument fails.

Progressive presents an argument under the Uniform Commercial Code (UCC) – Secured Transactions, MCL 440.9101 *et seq.*, specifically MCL 440.9318(1), which provides that "[a] debtor that has sold an account . . . does not retain a legal or equitable interest in the collateral sold." A "debtor" includes "[a] seller of accounts," MCL 440.9102(bb)(*ii*), and an "account" encompasses "a right to payment of a monetary obligation . . . for services rendered," including "health-care-insurance receivables," MCL 440.9102(b). And "collateral" is defined as "property subject to a security interest[,]" including "[a]ccounts . . . that have been sold." MCL 440.9102(*l*)(*ii*). The UCC article on secured transactions does apply to "[a] sale of accounts," MCL 440.9109(1)(c), and a "security interest" includes "any interest of a . . . buyer of accounts," MCL 440.1201(2)(ii). Editor's note 2 to MCL 440.9318 does state, in part, that "[t]he fact that a sale of an account . . . gives rise to a 'security interest' does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account . . . retains no interest whatsoever in the property to the extent that it has been sold." I note that the trial court seemingly agreed with Progressive's argument, even though the court primarily focused on the plain language of the purchase agreements. I conclude that it is unnecessary to reach the UCC argument because the plain language of the purchase agreements established that all interests, title, and rights in the accounts receivable were conveyed and that C-Spine could not be involved in collecting on the debts represented by the accounts receivable.

G. VESTING C-SPINE WITH CAUSES OF ACTION

C-Spine begins its final argument by noting that Michigan law provides that no contract exists unless there is a meeting of minds between the parties to the purported agreement. Relying on the affidavits of the various executive officers of C-Spine and the factoring companies, C-Spine contends that "[r]egardless of the plain language of the agreements at issue, both [C-Spine] and all . . . factoring companies are and always were under the impression that [C-Spine] has the right and, in fact, the obligation to sue to collect PIP benefits." C-Spine continues, arguing that either it was the only real party in interest or there was no contract and thus no conveyance of any rights. Apparently, C-Spine is arguing that either there were purchase agreements consistent with the affidavits or there were no valid enforceable agreements.

With respect to contract formation, "[a] meeting of the minds is judged by an objective standard, looking to the express words used by the parties and their visible actions, not the parties'

> meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument. Unless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. If the language of a contract is ambiguous, testimony may be taken to explain the ambiguity. [Quotation marks, citations, and brackets omitted.]

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subjective states of mind." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006) (quotation marks and citations omitted). Additionally, parol or extrinsic evidence is not admissible to vary a contract that is clear and unambiguous. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). Here, the affidavits cannot be used to undermine or circumvent the plain and unambiguous language of the purchase agreements; there was a meeting of the minds consistent with the clearly expressed language of the agreements. And the executives' subjective states of mind as revealed in their affidavits were irrelevant. The purchase agreements conveyed the right to sue on the accounts receivable covered by the agreements.

C-Spine also argues that Progressive, as a non-party to the purchase agreements, lacked standing to challenge the agreements. This argument lacks merit. Progressive was not suing anyone and did not challenge the agreements. Progressive merely argued that C-Spine lacked standing in light of the purchase agreements. I conclude that C-Spine's argument fails.

III. CONCLUSION

I would affirm the trial court's rulings granting summary disposition in favor of Progressive.[16] C-Spine has not presented any persuasive arguments on appeal. Instead, its arguments, for the most part, are cursory and undeveloped.

I respectfully dissent.

/s/ Jane E. Markey

[16] I note that this Court in an unpublished nonbinding opinion similarly found that a factoring agreement deprived a plaintiff of standing. In *Greater Lakes Ambulatory Surgical Ctr, LLC v Meemic Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued July 29, 2021 (Docket No. 353842), p 3, the panel ruled:

> Under the plain and unambiguous language of the sales agreement, it is clear that plaintiff assigned all of its rights in the accounts receivable to the servicing companies. The assignments divested plaintiff of any ownership interest in the accounts. Therefore, the trial court erred when it denied defendant's motion for summary disposition because there is no genuine issue of material fact that plaintiff lacked standing and was not the real party in interest related to the account receivable for Steen because plaintiff had assigned its rights to such to the servicing companies before it filed suit against defendant.

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STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 30, 2023

No. 360887
Macomb Circuit Court
LC No. 2020-002560-NF

Before: CAVANAGH, P.J., and MARKEY and BORRELLO, JJ.

MARKEY, J. (*concurring*).

I concur in the majority opinion solely because I am bound to do so under MCR 7.215(J)(1). For the reasons stated in my dissenting opinion in *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket Nos. 358170 and 358171); slip op at 9-19, I would hold, if not otherwise obligated, that C-Spine lacks standing in this case and is not the real party in interest.

I respectfully concur.

/s/ Jane E. Markey

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STATE OF MICHIGAN

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v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 30, 2023

No. 360887
Macomb Circuit Court
LC No. 2020-002560-NF

Before: CAVANAGH, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Plaintiff, C-Spine Orthopedics, PLLC (C-Spine), appeals by right the trial court's order granting summary disposition in favor of defendant, Allstate Insurance Company (Allstate). The lawsuit involves C-Spine's effort to collect personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., pursuant to certain assignments executed by Darryl Beavers, who was injured in a motor vehicle accident and had received medical treatment from C-Spine in relation to the injuries. Allstate insured the car in which Beavers was riding when he was injured, and there is no dispute that Allstate is the responsible no-fault insurer. The trial court ruled that C-Spine was not the real party in interest and lacked standing at the time the action was filed. The court reasoned that C-Spine had transferred all of its rights and interests in certain accounts receivable, including those in relation to services provided to Beavers, to third-party factoring companies before commencing the suit. C-Spine eventually obtained counter-assignments executed by the factoring companies, ostensibly conveying the accounts receivable back to C-Spine, but the trial court refused to consider the counter-assignments because they were not produced until after the close of discovery. We are compelled by binding precedent to reverse and remand for further proceedings under *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___; ___ NW2d ___ (2022) (Dockets Nos. 358170 and 358171).

The facts in this case largely parallel the facts in *C-Spine Orthopedics*—(1) auto accident victims obtained medical treatment and services from C-Spine for injuries incurred in the accidents; (2) the victims assigned their rights to obtain no-fault PIP benefits from responsible insurers to C-Spine; (3) C-Spine transferred all of its rights and interests in certain accounts receivable to third-party factoring companies, including those associated with the underlying auto-

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accident victims; (4) C-Spine then commenced civil suits against the no-fault insurers for payment of services rendered to the victims; (5) the insurers moved for summary disposition on the basis that C-Spine was not the real party in interest and lacked standing in light of the transfers; (6) C-Spine produced backdated counter-assignments from the factoring companies, conveying the accounts receivable back to C-Spine; and (7) the trial court eventually granted summary disposition in favor of the insurers. See *C-Spine Orthopedics*, ___ Mich App at ___; slip op at 2-3.

In this case, the trial court did not take into consideration the counter-assignments offered by C-Spine because they were produced after the close of discovery. And in *C-Spine Orthopedics*, the trial court effectively did not take into consideration the counter-assignments because they were not executed until after the litigation was commenced. *Id.* at ___; slip op at 3.

As indicated at the outset of this opinion, the majority opinion in *C-Spine Orthopedics* controls. In pertinent part, this Court held:

> Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest" subject to several qualifications. This procedural rule requires that a complaint be brought by the party to whom a claim belongs, or by a party who has a legal right to bring the action. This concept is distinct from standing, which asks whether a litigant has a right to have a court consider a claim.
>
> Standing is not a barrier to C-Spine's case because MCL 500.3112 grants C-Spine the right to "assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." As a provider, C-Spine has statutory standing to bring a claim on its own behalf. Statutory standing, which necessitates an inquiry into whether a statute authorizes a plaintiff to sue at all, must be distinguished from whether a statute permits an individual claim for a particular type of relief. Whether C-Spine has an actionable claim for relief is a different question than whether it has a right to litigate its current grievance in our courts.
>
> The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. MCR 2.201(B)(1) provides:
>
> "A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, *or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought*." [Emphasis added.]
>
> C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies.

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> This Court has explained the principle underlying MCR 2.201(B)(1) as follows: A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another. C-Spine is vested with the right of action against Progressive based on the assignments from the [injured motorists], and is authorized by statute to sue in its own name under the plain language of MCL 500.3112. That the beneficial interest resided with the factoring companies did not eliminate C-Spine as a real party in interest. [*C-Spine Orthopedics*, ___ Mich App at ___; slip op at 3-4 (quotation marks and citations omitted; emphasis in original).]

Applying *C-Spine Orthopedics*, we must conclude that C-Spine, having statutory standing under MCL 500.3112, has standing in this case and is the real party in interest. Accordingly, we reverse the trial court's ruling granting summary disposition in favor of Allstate. We do note that because the trial court did not take into consideration the counter-assignments given that they were not produced until after discovery, which ruling is not challenged on appeal, *C-Spine Orthopedics* would appear to dictate that the factoring companies be added to the suit on remand as necessary parties, MCR 2.205(A), to eliminate the risk of a second lawsuit by the factoring companies. *C-Spine Orthopedics*, ___ Mich App at ___; slip op at 4.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. We decline to award taxable costs under MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Stephen L. Borrello

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STATE OF MICHIGAN

COURT OF APPEALS

TIFFANY SHANTEL ROBINSON,

Plaintiff-Appellee,

v

JANET ELAINE SZCZOTKA, and THE ASU GROUP-ASU RISK MANAGEMENT,

Defendants,

and

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, also known as SMART.

Defendant-Appellant.

UNPUBLISHED
April 6, 2023

No. 359646
Wayne Circuit Court
LC No. 20-012733-NI

Before: K. F. KELLY, P.J., and MURRAY and SWARTZLE, JJ.

PER CURIAM.

Defendant-appellant, Suburban Mobility Authority for Regional Transportation (SMART), appeals by leave granted[1] the November 29, 2021 order granting in part and denying in part SMART's motion for partial summary disposition. In partially granting the motion, the court held that plaintiff, Tiffany Shantel Robinson, had the right to pursue personal insurance protection (PIP) benefits from SMART even though plaintiff had previously assigned her claims to several medical providers because (1) SMART had no standing to enforce those assignments between plaintiff and her medical providers, and (2) plaintiff and her medical providers executed valid revocations of

[1] *Robinson v Szczotka*, unpublished order of the Court of Appeals, entered April 7, 2022 (Docket No. 359646).

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those assignments, thereby returning the right to pursue those PIP benefits to plaintiff. We reverse the trial court's order and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Plaintiff was injured in an automobile accident and subsequently accrued medical bills related to her resulting injuries from Northland Radiology, Quest Physical Therapy, Aligned Chiropractic, Dependable Transportation, Michigan Business Management, and Garden City Hospital. Before plaintiff initiated this litigation, she assigned her rights to recover PIP benefits to several of her medical providers, including Northland Radiology, Quest Physical Therapy, Dependable Transportation, Aligned Chiropractic, and Elite Diagnostics.

Thereafter, on September 28, 2020, plaintiff filed a complaint to collect first-party no-fault PIP benefits, underinsured motorist benefits, and uninsured motorist benefits from both SMART and defendant ASU Risk Management. Two months later, the parties stipulated to the dismissal of ASU Risk Management as well as the claims for underinsured and uninsured motorist benefits, leaving at issue only plaintiff's claim for PIP benefits against SMART.

SMART eventually moved for partial summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), arguing that plaintiff had no standing to pursue a cause of action to recover claims that she had already assigned to her medical providers. SMART noted that one of plaintiff's medical providers, the Michigan Institute of Pain and Headache, PC, had already filed its own lawsuit to collect on its bills related to plaintiff's accident based on its assignment of benefits from plaintiff, and that the other medical providers were also free to do so.

In responding, plaintiff did not contest the factual or legal premises of SMART's motion but instead asserted that *after* she filed her complaint, she and a number of her medical providers executed "Mutual Revocation[s] of Assignment(s)." Plaintiff alleged that these contracts "revoked, rescinded, and nullified" the assignments *nunc pro tunc*, or retroactively, such that plaintiff recovered her rights to PIP benefits dating back to when she assigned them to her medical providers.[2] These assignments, plaintiff argued, should be considered to have never existed, and the medical providers waived any independent causes of action. Plaintiff acknowledged that her medical providers had failed to bring their claims to recover medical bills in a timely manner pursuant to the one-year-back rule, see MCL 500.3145(1), and stated that the only fair avenue for recovery of those medical bills was to revoke her assignments retroactively and litigate her own timely filed claims.

SMART reply made several points. First, it argued that it had standing to challenge the effect of the assignments because it had a real interest in claims that the medical providers might

[2] Each of the revocations, dated September 20, 2020, contained the following language:

The assignments are revoked nunc pro tunc the date the assignment(s) was/were entered into and should be considered as if it/they never existed and that both [parties of this revocation] wish to revoke and rescind any and all Assignment of Rights as if it never existed by the execution of this agreement.

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bring against it. Second, while admitting that it was not challenging the validity of the assignments, SMART argued that a valid assignment is one manifesting a present intent to transfer, where the assignor does not retain any power of revocation. Third, SMART asserted that when plaintiff filed her complaint, she had already executed assignments to her medical providers, and thus those claims belonged to those medical providers, who therefore bore responsibility for pursuing their claims in a timely manner pursuant to the one-year-back rule, MCL 500.3145(1). Because those medical providers failed to pursue their claims in a timely manner, their right to sue for PIP benefits was extinguished by operation of the one-year-back rule. To this point, SMART argued that these medical providers' claims were extinguished before the revocations were executed on September 20, 2020, and so there remained no claims to "give back" to plaintiff through the revocations. Essentially SMART asserted that once plaintiff's medical providers' claims had expired, the parties could properly not thereafter work around the one-year-back rule and effectively restore their expired rights by operating as though the assignments had never existed.

As noted, the trial court granted SMART's motion in part, concluding that plaintiff could not properly claim compensation for the medical bills of Michigan Institute of Pain and Headache (d/b/a Metro Pain Clinic), because that medical provider filed its own suit in district court. Relative to the other providers, the court ultimately held that SMART did not have the authority to enforce plaintiff's assignments with her providers and that those parties to the assignments could, and did, revoke those contracts:

> But in the end, I do believe that the contract is between [plaintiff] and the providers. And if they decide to revoke it, the Plaintiff can always get it.
>
> Now, as I said earlier, the insurance company, or in this case, SMART and/or Allstate, they're only going to have to pay once, if any. They don't have to pay twice 'cause two different entities are going after these bills.
>
> But a lot of times, I mean, I can see today where you're going to have a Plaintiff going after the bills and a provider. And they're going to duke it out at trial.
>
> And it could get confusing, I don't know. It's never happened before, but I think theoretically, it could happen. They can both go after the bills. But I would instruct the jury you only got to pay once, if you have to pay at all or something like that.
>
> So for those reasons, I think that I respectfully disagree with [defendant's] position, . . . but it was an interesting argument. And I will respectfully deny summary at this time.

II. ANALYSIS

The dispositive question on appeal is whether the revocation of the assignments allowed plaintiff to maintain her PIP claim that was filed prior to the revocation. This involves determining the meaning and effect of the assignments and revocations of those assignments, as well as the impact of those on plaintiff's ability to bring this claim.

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A. STANDARDS OF REVIEW

"Construction and interpretation of a contract are questions of law that we review de novo, meaning that we do so without deference to the trial court's decision." *Calhoun Co v Blue Cross Blue Shield Mich*, 297 Mich App 1, 12; 824 NW2d 202 (2012), citing *Comerica Bank v Cohen*, 291 Mich App 40, 46; 805 NW2d 544 (2010). In *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997), we explained:

> Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. The language of a contract should be given its ordinary and plain meaning. [Citations omitted.]

This Court also reviews de novo a motion for summary disposition. *Allen Park Retirees Ass'n, Inc v Allen Park*, 329 Mich App 430, 443; 942 NW2d 618 (2019). A motion under MCR 2.116(C)(7) is appropriate where there has been an "assignment or other disposition of the claim before commencement of the action." MCR 2.116(C)(7). In reviewing a motion under MCR 2.116(C)(7), "[t]he contents of the complaint must be accepted as true unless contradicted by the documentary evidence, which must be viewed in a light most favorable to the nonmoving party." *Allen Park Retirees Ass'n, Inc*, 329 Mich App at 444. "If there is no factual dispute, the determination whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law." *Id.*

Summary disposition is appropriate under (C)(8) when a party fails to state a claim on which relief can be granted and is appropriate under (C)(10) when there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. *Capitol Props Group, LLC v 1247 Ctr Street, LLC*, 283 Mich App 422, 425; 770 NW2d 105 (2009).

B. REAL PARTY IN INTEREST

Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest[.]" "A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013) (quotation marks and citation omitted). The real party in interest rule " 'requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim' that is asserted in the complaint." *Estate of Maki v Coen*, 318 Mich App 532, 539; 899 NW2d 111 (2017), quoting *In re Beatrice Rottenberg Trust*, 300 Mich App 339, 356; 833 NW2d 384 (2013). "A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." *Barclae*, 300 Mich App at 483 (quotation marks and citation omitted). The real party in interest doctrine is a "standing doctrine" that "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Id.* (quotation marks and citation omitted).

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"[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest rule, they are distinct concepts." *In re Beatrice Rottenberg Living Trust*, 300 Mich App at 355. Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id*. "[I]f a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits." *Id*., citing *Miller v Allstate Ins Co*, 481 Mich 601, 608-612; 751 NW2d 463 (2008); see also *Grady v Wambach*, 339 Mich App 325, 330; 984 NW2d 463 (2021). Jurisdiction is not an issue in this case.

With respect to assignments, the general rule is that "an assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp v Rockford Pub Schs*, 311 Mich App 403, 412; 875 NW2d 242 (2015). Once a valid assignment occurs, the assignee then stands in the shoes of the assignor and may enforce the rights assigned. "[A]n assignment divests the assignor of any interest in the subject matter of the assignment." 6A CJS, Assignments, § 88. Thus, because a legal assignment vests the right to enforce the rights in the assignee, an assignor retains no rights to enforce the rights after they have been assigned, i.e., the assignor loses the right that allows her to prosecute the claim.

C. FILING A LAWSUIT TO COLLECT ON MEDICAL BILLS WHEN THE RIGHT TO COLLECT WAS PREVIOUSLY ASSIGNED

Pursuant to the no-fault act,[3] insured individuals may recover PIP benefits for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). Under this provision, plaintiff could have pursued her PIP claims against SMART, but she did not. Instead, she assigned the right to bring those claims to her medical providers. Although medical providers also have an independent statutory right to bring a claim to recover for services rendered, under MCL 500.3112, that statute does not address the legal effect of an assignment on an insured's maintaining an action to collect benefits that were the subject of an assignment.

Though plaintiff had a statutory right to seek payment of certain medical benefits, she instead opted to transfer that right to the medical providers, an option she had and was free to exercise. *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017). "No particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation." *Burkhardt v Bailey*, 260 Mich App 636, 655; 680 NW2d 453 (2004) (quotation marks and citation omitted). SMART does not contest the validity of the assignments.

At the time plaintiff commenced this action, she was not the real party in interest because plaintiff's rights to recover the unpaid medical bills were divested by virtue of the assignments. See *Estate of Maki*, 318 Mich App at 539 (providing that the real party in interest rule "requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim

[3] MCL 500.3101 *et seq*.

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that is asserted in the complaint.") (alteration in original; quotation marks and citation omitted). As noted at the outset, following the assignment of these claims the "assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp*, 311 Mich App at 412. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt*, 260 Mich App at 653. That being the case, the medical providers as assignees held the right to seek to recover the unpaid medical bills, and plaintiff no longer had a cause of action to pursue, having transferred it away. *Cannon Twp*, 311 Mich App at 412 ("an assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor.").[4]

Although the medical providers, as the real parties in interest, owned the right to bring an action to recover the unpaid medical bills, the record shows that, except for one provider, none of the medical providers utilized the assignment by bringing suit within a year of providing the services. MCL 500.3145(1). Thus, the medical provider's rights under the assignment were statutorily barred. While plaintiff timely sued to recover the cost of the medical services, she had assigned those rights to the medical providers, who were now the real parties in interest. In order to remedy that situation, the revocations were signed during the course of the trial court proceedings and contained the "nunc pro tunc" language in an attempt to essentially eradicate the original assignments. The attempt, though creative, did not have the intended effect.

Nunc pro tunc refers to a court's inherent power to give modifications to its own orders and judgments retroactive effect in order to make a record of what actually occurred but that had been omitted from the order. Michigan Pleading & Practice (2d ed), § 19.43. See also *Shifferd v Gholston*, 184 Mich App 240, 243; 457 NW2d 58 (1990) ("An entry nunc pro tunc is proper to supply an omission in the record of action really had, but omitted through inadvertence or mistake") and *Grand Rapids v Coit*, 151 Mich 109, 109; 114 NW 880 (1908). "The function of such an order is to supply an Omission in the record of action previously taken by the court but not properly recorded; an order nunc pro tunc may not be utilized to supply previously omitted action." *Sleboede v Sleboede*, 384 Mich 555, 558-559; 184 NW2d 923 (1971).

The term "*nunc pro tunc*" has also been used in reference to licensing assignments in some federal patent and trademark decisions, holding that a *nunc pro tunc* assignment may not be used to cure a standing defect; rather, the party filing suit must have had standing to sue when the complaint was filed. See *Enzo APA & Son, Inc v Geapag AG*, 134 F3d 1090, 1093 (CA Fed, 1998) (one must hold legal title to the patent to sue for infringement of the patent; "nunc pro tunc assignments are not sufficient to confer retroactive standing") and *Gaia Technologies, Inc v Reconversion Technologies, Inc*, 93 F3d 774, 777, 779-780 (CA Fed, 1996) (like other personal

[4] Although a valid assignment is one in which the assignor "manifest[s] an intent to transfer and must not retain any control or any power of revocation," *Burkhardt*, 260 Mich App at 655, as a matter of contract plaintiff was free to subsequently negotiate with the medical providers to revoke the assignments or transfer the assignments to her to allow her to pursue those claims.

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property, patents, and trademarks may be assigned to others, and a *nunc pro tunc* assignment executed after a lawsuit is filed may not retroactively confer standing).

The court in *Enzo APA & Son,* 134 F3d 1090, came to the same conclusion:

> [A]s has been aptly stated, nunc pro tunc assignments are not sufficient to confer retroactive standing on the basis that:
>
> > As a general matter, parties should possess rights before seeking to have them vindicated in court. Allowing a subsequent assignment to automatically cure a standing defect would unjustifiably expand the number of people who are statutorily authorized to sue. Parties could justify the premature initiation of an action by averring to the court that their standing through assignment is imminent. Permitting non-owners and licensees the right to sue, so long as they eventually obtain the rights they seek to have redressed, would enmesh the judiciary in abstract disputes, risk multiple litigation, and provide incentives for parties to obtain assignment in order to expand their arsenal and the scope of litigation. Inevitably, delay and expense would be the order of the day. [*Id.* at 1093-1094, quoting *Procter & Gamble Co v Paragon Trade Brands, Inc*, 917 F Supp 305, 310 (D Del, 1995).]

While the present case is not a patent or trademark case, the same logic applies: one must be the real party in interest at the time the lawsuit is filed, and a retroactive, or *nunc pro tunc*, revocation may not be used to correct a factual problem that existed when the lawsuit was filed. While plaintiff and her medical providers were at liberty to mutually decide to revoke the assignments, the revocations were effective as of the date that the revocations were executed and could not essentially eliminate the fact that the assignments had occurred prior to plaintiff filing suit. And, the medical providers had no timely claims to return to plaintiff as of the date of the revocations because the revocations occurred more than a year after services were rendered. Thus, the mutual revocations did not reassign any timely claims to plaintiff.

Plaintiff further argues that mutual revocation of an agreement returns the parties to the status quo as it existed prior to the assignment. While this may be true in some cases, the same cannot be said when the revocation occurs after the time for performance matures or the rights of the parties become fixed. "An assignment may be revoked before the rights of the parties become fixed." 6A CJS, Assignments § 71. Thus, although the revocation may have some effect between plaintiff and the medical providers, as to defendant and the court, it cannot impact how plaintiff stood at the time the complaint was filed:

> As an assignee, appellant can stand in no better position than the assignor. And since the Fund was barred by the statute of limitations, so was appellant. Their attempt to make the assignment retroactive to the date the complaint was filed may have some meaning between them, but it is meaningless as to third parties. [*Stephens v Textron, Inc*, 127 Ariz 227, 230; 619 P2d 736 (1980) (citation omitted).]

Here, it is undisputed that at the time she filed the complaint, plaintiff had assigned her rights to recover the unpaid medical bills to her medical providers. Because the rights of plaintiff viz-a-viz defendant and the court had essentially become fixed under the assignment agreements, the

revocations could not impact plaintiff's status at the time the complaint was filed. Because plaintiff was not a real party in interest at the time she filed the lawsuit, the trial court erred in denying defendant's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Brock A. Swartzle

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