

APPENDIX F

AGREEMENT TO CLOSE LAW PRACTICE IN THE FUTURE

This Agreement is entered into this ___ day of _____, 200__, by and between _____ (“Planning Attorney”), an individual admitted and licensed to practice as an attorney in the Courts of the State of New York and whose office for the practice of law is located at _____, and _____ (“Closing Attorney”), an individual admitted and licensed to practice as an attorney in the Courts of the State of New York and whose office for the practice of law is located at _____.

RECITALS

WHEREAS, Planning Attorney is a sole practitioner engaged in the practice of law; and

WHEREAS, Planning Attorney recognizes the importance of protecting the interests of his clients in the event that he is unable to practice law by reason of his death, disability, incapacity or other inability to act; and

WHEREAS, Planning Attorney wishes to plan for the orderly closing of his law practice if he is unable to practice law for the above stated reasons; and

WHEREAS, Planning Attorney has requested Closing Attorney to act as his agent to take all necessary actions to close Planning Attorney’s practice and Closing Attorney has consented to this appointment; and

WHEREAS, Planning Attorney and Closing Attorney are entering into this Agreement to define their rights and obligations in connection with the closing of Planning Attorney’s practice.

1. **Effective Date.** This Agreement shall become effective only upon Planning Attorney’s death, disability, incapacity or other inability to act, as established by paragraph 2. The appointment and authority of Closing Attorney shall remain in full force and effect as long as it is necessary or convenient to carry out the terms of this Agreement, or unless sooner terminated under paragraphs 8 or 9.
2. **Determination of Death, Disability, Incapacity.** Closing Attorney shall make the determination that Planning Attorney is dead, disabled, incapacitated or otherwise unable to practice law, and if disabled or incapacitated, that such disability or incapacity is permanent in nature or likely to continue indefinitely. Closing Attorney shall base his determination on reliable evidence such as communications with the members of Planning Attorney’s family and written opinions of licensed physicians and other medical professionals who diagnosed or treated Planning Attorney. As part of the process of determining whether the Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law, all individually identifiable health information and medical records may be released to Closing Attorney, even though the authority of the Closing Attorney has not yet become effective. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) 42 U.S.C. 1320d and 45 C.F.R. 160-164.¹ Closing Attorney may also

1. To assure compliance with HIPAA, the Planning Attorney, upon execution of the Agreement To Close Law Practice, should sign two written authorizations, one to his or her health care provider, and one leaving the provider line blank, giving the identity of the Closing Attorney and authorizing the disclosure of information relating to the Planning Attorney’s capacity to practice law upon request by the Closing Attorney. A sample authorization is attached to the end of this document.

consider the opinions of colleagues, employees, friends or other individuals with whom Planning Attorney maintained a continuous and close relationship. Closing Attorney shall sign an affidavit stating the facts upon which his determination is based, and such affidavit shall, for the purposes of this agreement, be conclusive proof that the Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law.

[or consider having the family or physicians determine incapacity, and including a measurable standard such as a determination by two physicians that Planning Attorney is incapable of conducting law practice by reason of incapacity]

3. **General Power and Appointment of Closing Attorney as Attorney-In-Fact.** Upon the determination that Planning Attorney is unable to continue the practice of law by reason of death, disability, incapacity or other inability to act as provided herein, and is unable to close his own practice, Planning Attorney consents to and authorizes the losing Attorney to take all necessary actions to close Planning Attorney's law practice. Planning Attorney appoints Closing Attorney as his attorney-in-fact with full power to do and accomplish all of the actions expressed and implied by this Agreement as fully and completely as Planning Attorney would do personally but for his inability.
4. **Specific Powers.** Planning Attorney consents to and authorizes the following actions by Closing Attorney in addition to any other actions Closing Attorney in his sole discretion deems necessary to carry out the terms of this Agreement.
 - a. **Access to Planning Attorney's Office.** To enter Planning Attorney's office and use his equipment and supplies as needed to close Planning Attorney's practice.
 - b. **Designation as Signatory on Financial Accounts.** To replace Planning Attorney as signatory on all of Planning Attorney's law office accounts with any bank or financial institution, including without limitation, attorney trust, escrow or special accounts, checking accounts, and savings accounts. Planning Attorney's bank or financial institution may rely on this authorization unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.
 - c. **Opening of Mail.** To receive, sign for and open Planning Attorney's law practice mail and deliveries by courier and to process and respond to them, as necessary.
 - d. **Possession of Property.** To take possession, custody and control over all of Planning Attorney's property relating to his law practice, real and personal, including client files and records.
 - e. **Access to and Inventory/Examination of Files.** To enter any storage location where Planning Attorney maintained his files and to inventory and examine all client case files, including client wills, property and other records of Planning Attorney. If Closing Attorney identifies a conflict of interest with a specific file or client, he shall assign the file to the Successor Closing Attorney in accordance with paragraph 8(b).
 - f. **Notification to Clients.** To notify clients, potential clients and those who appear to be clients, of Planning Attorney's death, disability, incapacity or other inability to act, and to take whatever action Closing Attorney deems appropriate to protect the interests of the clients, including advising the clients to obtain substitute counsel.

- g. **Transfer of Files.** To safeguard files and arrange for their return to clients; to obtain consent from clients to transfer files to new attorneys, to transfer files and property to clients or their new attorneys; to obtain receipts therefor.
- h. **Storage of Files and Attorney's Records.** To arrange for storage of closed files, unclaimed files, and records that must be preserved for seven years under Disciplinary Rule 9-102 (d) of the Code of Professional Responsibility.
- i. **Transfer of Original Documents.** To arrange for and transfer to clients all original documents, including wills, trusts and deeds.
- j. **Extensions of Time.** To obtain client's consent for extensions of time, to contact opposing counsel and courts/administrative agencies to obtain extensions of time, and to apply for extensions of time if necessary pending employment of new counsel by clients.
- k. **Litigation.** To file motions, pleadings, appear before court, and take any other necessary steps where the clients' interests must be immediately protected pending retention of other counsel.
- l. **Notification to Court and Others.** To contact all appropriate agencies, courts, adversaries and other attorneys, professional membership organizations such as the New York State Bar Association or local bar associations, the Office of Court Administration, and any other individual or organization that may be affected and advise them of Planning Attorney's death or other inability to act and that Planning Attorney has given this authorization to Closing Attorney.
- m. **Collection of Fees and Return of Client Funds.** To send out invoices for unbilled work by Planning Attorney and outstanding invoices; to prepare an accounting for clients on retainer, including return of client funds; to collect fees and accounts receivables on behalf of Planning Attorney or Planning Attorney's estate; to prepare an accounting of each client's escrow fund and arrange for transfer of escrow funds, including obtaining consent from client to transfer escrow funds and acknowledgment of receipt of escrow funds by new counsel or client.
- n. **Payment of Business Expenses and Creditors.** To pay business expenses such as office rent, rent for any leased equipment, library expenses, salaries to employees or other personnel, to determine the nature and amount of all claims of creditors, including clients, of Planning Attorney and to pay or settle same.
- o. **Personnel.** To continue the employment of Planning Attorney's employees and other personnel to the extent necessary to assist the Closing Attorney in the performance of his duties, to compensate and to terminate such employees or other personnel; to employ or dismiss agents, accountants, attorneys or others and to compensate them.
- p. **Termination of Obligations.** To terminate or cancel business obligations of Planning Attorney, including office lease; lease of equipment such as copier, computer, furniture; library, magazine or newspaper subscriptions.
- q. **Insurance.** To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability, or other office insurance of

Planning Attorney; to notify any professional liability insurance carriers of Planning Attorney's death, disability, incapacity or other inability to act; to cooperate with such insurance carriers regarding matters related to Planning Attorney's coverage, including addition of Closing Attorney as an insured under said policy.

- r. **Taxes.** To prepare, execute or file income, information or other tax returns or forms and to act on behalf of Planning Attorney's law practice in dealing with the Internal Revenue Service, any division of the New York State Department of Taxation and Finance, or any office of any other tax department or agency.
 - s. **Settlement of Claims.** To settle or compromise, or submit to arbitration or mediation, all debts, taxes, accounts, claims, or disputes between Planning Attorney's law practice and any other person or entity; to commence or defend all actions affecting Planning Attorney's law practice.
 - t. **Execution of Instruments.** To execute, as Planning Attorney's attorney-in-fact, any deed, contract, affidavit or other instrument on behalf of Planning Attorney.
 - u. **Attorney as Fiduciary.** To resign any position which Planning Attorney holds as a fiduciary, such as executor or trustee, and to notify other named fiduciary, if any, and beneficiaries of the estate or trust; if the trust or will does not name a successor fiduciary, to apply to the court for appointment of a successor fiduciary; to confer with the personal representative of the Planning Attorney's estate with respect to the obligation of such personal representative to account for the assets of the estate or trust that Planning Attorney was administering.
 - v. **Power of Sale and Disposition.** To sell or otherwise arrange for disposition of Planning Attorney's furniture, books, or other personal property located in Planning Attorney's law office.
 - w. **Representation of Planning Attorney's Clients.** To provide legal services to Planning Attorney's clients, provided that Closing Attorney has no conflict of interest, obtains the consent of Planning Attorney's clients, and does not engage in conduct that violates Disciplinary Rule 2-103 of the Code of Professional Responsibility. If Planning Attorney's clients engage Closing Attorney to perform legal services, Closing Attorney shall have the right to payment for such services from such clients.
 - x. **Access to Safe Deposit Box.** To open Planning Attorney's safe deposit box used for law practice, to inventory same, and to arrange for return of property to clients.
- 5. Preservation of Attorney-Client Privilege and Confidences and Secrets of Client.** Closing Attorney shall maintain the confidences and secrets of a client and protect the attorney-client privilege as if the Closing Attorney represented the clients of Planning Attorney.
- 6. Sale of Planning Attorney's Practice.** In the event of Planning Attorney's death, disability, incapacity, or other inability to act, Closing Attorney shall have the power to sell Planning Attorney's law practice in accordance with Disciplinary Rule 2-111 of the Code of Professional Responsibility. In the case of the death of the Planning Attorney, the sale shall be approved by the personal representative of the deceased Planning

Attorney. Such power shall include, without limitation, the authority to sell all assets of the Planning Attorney's practice such as good will, client files and fixed assets such as furniture and books; to advertise Planning Attorney's law practice; to arrange for appraisals; and to retain professionals such as lawyers and accountants to assist Closing Attorney in the sale of the practice. Upon the sale of the practice, Closing Attorney will pay Planning Attorney or Planning Attorney's estate all net proceeds of sale.

[note: in case of death, Planning Attorney should provide in Will that sale of practice is to be handled by Closing Attorney; alternative would be to specifically authorize Executor to sell the practice in which case this power to Closing Attorney should be deleted from above provision in the event of sale by reason of death.]

Closing Attorney shall have the right to purchase, in whole or in part, Planning Attorney's practice, provided that the purchase price is the fair market value as determined by an appraiser and that the terms of the sale are approved by the Executor or Administrator of Planning Attorney's estate or an independent third party (But note potential issues—see DR 5-101 and 5-104).

[note: consider giving Closing Attorney first option to purchase. Also, terms and conditions of sale to Closing Attorney may be described in this Agreement or by separate agreement]

7. **Compensation.** Closing Attorney shall be paid reasonable compensation for the services performed in closing the law practice of Planning Attorney. Such compensation shall be based on time and Closing Attorney agrees to maintain accurate and complete time records for the purposes of determining his compensation. Closing Attorney's compensation shall be paid from Planning Attorney's law practice *(or from the estate of the deceased Planning Attorney, in which case provision should be made in Planning Attorney's Will for such payment)*.
8. **Resignation of Closing Attorney and Appointment of Successor Closing Attorney.**
 - a. Prior to the effective date of this Agreement, Closing Attorney may resign at any time by giving written notice to Planning Attorney. After the effective date of this Agreement, Closing Attorney may resign by giving written notice to Planning Attorney, or if Planning Attorney is deceased, to Planning Attorney's Executor or Administrator, subject to any ethical or professional obligation to continue or complete any matter undertaken by Closing Attorney.
 - b. If Closing Attorney resigns or otherwise is unable to serve, Planning Attorney appoints _____ as Successor Closing Attorney, and Successor Closing Attorney consents to this appointment as evidenced by his signature to this Agreement. Successor Closing Attorney shall have all the rights and powers, and be subject to all the duties and obligations of Closing Attorney. During the tenure of Closing Attorney, Successor Closing Attorney shall review and take any necessary action with respect to those client files of Planning Attorney in which Closing Attorney identifies a conflict of interest.
 - c. Closing Attorney or Assisting Attorney shall not be required to post any bond or other security to act in their capacity.

9. **Liability and Indemnification of Closing Attorney.** Closing Attorney shall not be liable to Planning Attorney or Planning Attorney's estate for any act or failure to act in the performance of his duties hereunder, except for willful misconduct or gross negligence. Planning Attorney agrees to indemnify and hold harmless Closing Party from any claims, loss or damage arising out of any act or omission by Closing Attorney under this Agreement, except for liability or expense arising from Closing Attorney's willful misconduct or gross negligence. This indemnification does not extend to any acts, errors or omissions of Closing Attorney while rendering or failing to render professional services as attorney for former clients of Planning Attorney.

10. **Revocation, Amendment and Termination.**

- a. Prior to the effective date of this Agreement, Planning Attorney may at any time remove the Closing Attorney, or revoke, amend or alter this Agreement by written instrument delivered to Closing Attorney and Successor Closing Attorney, provided that any amendment or modification to Closing Attorney's obligations hereunder and to his rate of compensation shall require Closing Attorney's written consent.
- b. This Agreement shall terminate upon (i) prior to the effective date of this Agreement, delivery of written notice of termination by Planning Attorney to Closing Attorney and Successor Closing Attorney; and (ii) after the effective date of this Agreement, delivery of a written notice of termination to Closing Attorney by the Executor or Administrator of Planning Attorney's estate upon a showing of good cause, or by a Guardian of the property of Planning Attorney appointed under Article 81 of the Mental Hygiene Law pursuant to court order.

11. **Miscellaneous.**

- a. This Agreement shall be governed and interpreted in all respects by the laws of the State of New York.
- b. Whenever necessary or appropriate for the interpretation of his Agreement, the gender herein shall be deemed to include the other gender and the use of either the singular or the plural shall be deemed to include the other.
- c. The paragraph headings are for convenience only and are not to be relied upon for interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Planning Attorney

Closing Attorney

Successor Closing Attorney

ACKNOWLEDGMENTS

**GENERAL MEDICAL RECORDS RELEASE AND AUTHORIZATION
FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION**

Patient Name: _____

Address: _____

**Social Security
Number:** _____

I authorize the custodian of the records _____ to disclose/release the following information _____ [all medical records, including mental health, substance abuse and HIV/AIDS records] or [a subset of records]. These records are for services rendered [in the last two years] or: _____.

Please send the records listed above to [Agent]

Name: _____

Address: _____

Phone number: _____

The information may be used/disclosed to assist in the determination of my mental or physical capacity to practice law.

The Authorization expires one (1) year from the date it is presented to the custodian of records.

I understand that after the custodian of records discloses my health information, it may no longer be protected by Federal privacy laws. By signing below I represent and warrant that I have authority to sign this document and authorize the use or disclosure of protected health information and that there are no claims or orders pending or in effect that would prohibit, limit or otherwise restrict my ability to authorize the use or disclosure of this protected health information.

Signature of Patient

Date