



# MUTUAL BINDING ARBITRATION AGREEMENT

**Patient's Name:** \_\_\_\_\_

This mutual binding agreement constitutes an integral part of a contract for medical services by and between Lane F. Smith, M.D., and \_\_\_\_\_.

This arbitration agreement shall apply to any legal claim or civil action in connection with any and all medical care or medical services rendered, whether inpatient or outpatient, against Dr. Lane F. Smith, The Plastic Surgery Institute of Las Vegas, Smith Plastic Surgery Inc., Smith Building Inc., and/or any entities related to Dr. Smith such as employees or contracted staff. All parties to this Contract, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.

## Article 1: Dispute resolution

By signing this agreement ("Agreement") we are agreeing to resolve any Claim for medical malpractice by the dispute resolution process described in this Agreement. Under this Agreement, you can pursue your Claim and seek damages, but you are waiving your right to have it decided by a judge or jury. It is understood that any dispute as to medical malpractice, that is, as to whether any medical services rendered under this contract will be determined by submission to arbitration as provided in Nevada and Federal Law, and not by lawsuit or resort to court process.

## Article 2: Definitions

- A. The term "we," "parties" or "us" means you (the patient) and the provider and/or any employees working under the direction of the provider.
- B. The term "Claim" means any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or improperly or negligently or incompetently rendered or performed.
- C. The term "Provider" means Dr. Lane Smith, Dr. Smith's clinic, Dr. Smith's corporations, Smith Building Inc., The Plastic Surgery Institute of Las Vegas and Dr. Smith's employees, partners, associated agents, successors and estates.
- D. The term "Patient" or "you" means:
  - (1) You and any person who makes a Claim for care given to you, such as your heirs, your spouse, children, parents, and legal representatives AND
  - (2) Your unborn child or newborn child for care provided during the 12 months immediately following the date you sign this agreement, or any person who makes a claim for care given to that unborn or newborn child.

## Article 3: Dispute Resolution Options

- A. **Methods Available for Dispute Resolution.** We agree to resolve any Claim by:
  - (1) working directly with each other to try and find a solution that resolves the Claim, OR
  - (2) using binding arbitration as described in this Agreement
- B. **Legal Counsel.** Each of us may choose to be represented by legal counsel during any stage of the dispute resolution process, but each of us will pay the fees and costs of our own attorney.

**C. Arbitration.** Final Resolution. If working with the provider does not resolve your Claim, we agree that your Claim will be resolved through binding arbitration will be final.

**Article 4: How to Arbitrate a Claim**

**A. Notice.** To make a Claim under this Agreement, a written notice must be sent to the provider by certified mail before the statute of limitations for malpractice claims according to Nevada law has expired. The written notice must describe the nature of the claim. In accordance with Nevada law, in order to begin a malpractice claim, an affidavit from a medical expert stating that malpractice has occurred must be obtained. Therefore, it is agreed that the notice to arbitrate a Claim must include a copy of the affidavit of the medical expert stating that malpractice has occurred. A notice sent without an affidavit of the medical expert witness will be deemed incomplete and not valid.

**B. Arbitrators.** Within 60 days of receiving by Notice the provider will contract you. If you and the Provider cannot reach an agreement by working together, we will start the process of choosing arbitrators. There will be three arbitrators unless we agree that a single arbitrator may resolve the claim.

(1) Appointed arbitrators. You will appoint an arbitrator of your choosing and all Providers will jointly appoint an arbitrator of their choosing.

(2) Jointly-Selected Arbitrator. You and the Provider(s) will then jointly appoint an arbitrator (the “Jointly Selected Arbitrator”). Since this is a question regarding medical malpractice, all parties agree that it is important that one of the arbitrators have a medical background in order to properly evaluate the claim. Therefore, it is agreed by all parties, that the Jointly Selected Arbitrator must be a medical doctor with a background in the medical field pertinent to the claim, in most cases, a plastic surgeon.

**C. Arbitration Expenses.** You will pay the fees and cost of the arbitrator you appoint and the Provider(s) will pay the fees and costs of the arbitrator the Provider(s) appoints. Each of us will also pay one-half the fees and expenses of the Jointly Selected Arbitrator and any other expenses of the arbitration panel.

**D. Final and Binding Decision.** A majority of the three arbitrators will make a final decision on the Claim. The decision shall be consistent with Nevada law and Federal Law.

**E. All Claims May be Joined.** Any person or entity that could be appropriately named in a court proceeding (“Joined Party”) is entitled to participate in this arbitration as long as that person or entity agrees to be bound by the arbitration decision (“Joinder”). Joinder may also include Claims against persons or entities that provided care prior to the signing date of the Agreement. A “Joined Party” does not participate in the selection of the arbitrators but is considered a “Provider” for all other purposes of this Agreement.

**Article 5: Liability and Damages May Be Arbitrated Separately.** At the request of the “Provider” the issues of liability and damages can be arbitrated separately. If the arbitration panel finds liability, the “Provider” may agree to either continue to arbitrate damages with the initial panel or may cause that a second panel be selected for considering damages.

**Article 6: Venue/Governing Law**

The arbitration hearings will be held in a place agreed to by the parties. If the parties cannot agree, the hearings will be held in Las Vegas, Nevada.

**Article 7: Term/ Rescission/ Termination**

**A. Term.** This agreement is binding on both of us for two years from the date you sign it unless you rescind it. If it is not rescinded, it will automatically renew every two years unless either party notifies the other in writing by certified or registered mail of a decision to terminate the automatic renewal.

**B. Rescission.** You may rescind the agreement within 5 days of signing it by sending written notice by registered or certified mail to the provider. The effective date of the rescission notice will be the date the rescission is postmarked. If not rescinded, this agreement will govern all medical services received by the Patient from the Provider after the date of signing, except in the case of a Joined Party that provided care prior to signing the agreement (see article 4 (E)).

**Article 8: Severability**

If any part of this Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and will not be affected by the invalidity of any other provision.

**Acknowledgement of Understanding**

I have received a written copy of this agreement. I have had the right to ask questions and have my questions answered. I understand any Claim or Malpractice action I might have must be resolved through the dispute resolution process in this Agreement instead of having them heard by a judge, jury or court trial. I understand the role of arbitrators and the manner in which they are selected. I understand the responsibility for arbitration related costs. I understand that this Agreement renews every two years unless cancelled before the renewal date. I understand I can rescind this Agreement within 5 days of signing it.

Provider: Lane F. Smith, M.D

\_\_\_\_\_  
(Signature of Dr. Smith or Authorized Agent)

\_\_\_\_\_  
(Printed Name of Patient)

\_\_\_\_\_  
(Signature of Patient or Patient’s Representative)

\_\_\_\_\_  
(Date)