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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Case No. 11-CV-00520-PAB-BNB

30(b)(6) DEPOSITION OF HEALTH GRADES, INC.,

Representative John Neal

and

DEPOSITION OF JOHN NEAL

June 13, 2012

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

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Job No. NJ399592

EXHIBIT B

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Pursuant to Notice and the Federal Rules of Civil Procedure, the 30(b)(6) Deposition of Health Grades, Inc. and Deposition of John Neal, called by Defendant, was taken on Wednesday, June 13, 2012, commencing at 8:22 a.m., at 1200 Seventeenth Street, Suite 3000, Denver, Colorado, before Kelly A. Mackereth, Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter and Notary Public within Colorado.

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PRODUCTION REQUEST(S):

None.

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PROCEEDINGS

JOHN NEAL,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STIMPSON:

(Exhibits 44 and 45 marked.)

Q Good morning, Mr. Neal.

A Good morning.

Q I'm Scott Stimpson. I'll be taking your deposition today. Have you ever had your deposition taken before?

A No.

Q Well, I'll be asking you questions, and you'll be expected to answer completely and truthfully. Okay?

A Um-hum, yes.

Q And from time to time your lawyer may object, but you'll still be expected to answer the question. All right? So if you can please pay attention to the question even if there's some colloquy between counsel. Okay?

A Yes.

Q If there's anything about my questions you don't understand, please just let me know, okay? I want to make sure they're clear for you. Okay?

A I will.

Q Can you tell me about your education after high school, please.

A I attended the University -- well, Belmont University for one year in Nashville, Tennessee.

Q Okay.

A And then attended the University of Tennessee in Knoxville for three years. That's where I received my undergraduate degree in finance.

And then two years later I went back to school, and I received my MBA at the University of Tennessee, as well.

Q Knoxville?

A Yes.

Q Okay. And what years was that? When did you go to Belmont?

A So Belmont would have been in '87. And then three years later, '90, and then add two. I started in '92 with my graduate studies and finished in 94, I guess.

Q Okay. What did you do after -- what did you do in that two years between finance degree and going for your MBA?

A I worked at a company called Service Merchandise. I was a cash management/financial analyzer.

Q Okay. And after you graduated in 1994, what did you do then?

A After I graduated from graduate school I went to work at Morgan Keegan as an investment banker in Memphis, Tennessee.

Q I'm sorry, what was the name of the company?

A Morgan Keegan.

Q Morgan Keegan?

A Um-hum. It's now part of Raymond James Financial.

Q Okay. How long were you there?

A I was there for about two years.

Q And what did you do there?

A I was an investment banking associate.

Q Okay. What did you do after you left Morgan Keegan?

A I was the junior co-founder of the predecessor to Health Grades, a company called

Specialty Care Network.

Q And that was in 1996?

A We actually funded the company initially in 1995. But, yeah, approximately 1996 we started operations.

Q And who founded it with you?

A It was Kerry Hicks, Pat Jaeckle, Peter Fatianow and myself, and there were a couple of others that I don't think participated in the initial founders roundup. So they were subsequent to that.

Q Okay. Did you contribute capital contribution to this?

A I did.

Q Do you own part of Health Grades today?

A I do.

Q Okay. And how much do you own?

A It's -- it's in the form of stock options, mostly. I do have a direct investment in the restricted shares of the company.

Q Okay.

A I can't tell you exactly. You would have to check with Veststar, and they could tell you what the value of those holdings are worth today.

Q Can you give me a ballpark?

A I know what I have invested in the company directly.
Q How much have you invested directly?
A 200,000 directly.
Q And when you say directly, did you invest some indirectly?
A Well, the other holdings are related to my equity participation via stock options, as well as restricted share matches. So there's a vesting associated with that restricted share investment as well.
Q And when do those vest?
A They -- there's a portion that vests, based on time, over a five-year period. And then there's -- that's 25 percent.
And then there's another 75 percent at vest based on certain thresholds being hit from a performance and liquidity standpoint.
Q Okay. And so when does the first part vest? You said it's over a five-year period?
A It invests radically over a five-year period.
Q Okay. Starting when?
A It's already begun.

Q Okay.
A So the history is that Health Grades was taken private by Veststar Capital Partners. And in taking the company private, they assumed primary ownership interest.
And essentially what they worked out is Veststar owns a substantial majority of the shares, and then the remainder is in the hands of management, which is made up of these restricted holdings, as well as these equity incentive grants.
Q So your total ownership interest in Health Grades, is it fair to say it's hundreds of thousands of dollars right now?
MR. VAZQUEZ: Object to form.
A You would have to check with the investors.
Q (BY MR. STIMPSON) So you don't have any idea right now how much that --
A I hope it's worth a lot. I hope it's worth a lot.
Q I understand.
A I mean, I don't know. There are companies that perform valuations, and they could do the analysis.

Q I understand, but I mean, since I can't get that right now I'm just asking you for your best understanding.
Is it less than $100,000?
A I don't think the investment has declined in value.
Q Okay. So it's somewhere between 100 and 300,000; is that fair?
A I invested 200,000. I don't think it's declined.
Q Okay. So it could be more than 300,000 now?
A Could be.
Q So then back to my question, is it fair to say that you own hundreds of thousands of dollars in ownership of Health Grades?
A I can't make that determination.
Q But you think it is, right?
A I hope so.
Q I've marked a couple of deposition notices. The first one, 44, is just your Notice of Deposition for your personal deposition. And then 45 is what is called a 30(b)(6) notice, and we'll get to that in a few minutes.

I've also shown you what we've marked as Exhibit 3.
Do you recognize that as a patent-in-suit?
A I do.
Q You're a named inventor on that?
A I am.
Q When was the last time you read it?
A It's been a long time. I don't know exactly.
Q When was the last time you read parts of it?
A I didn't review the application in preparation for this deposition. So it's been -- it's probably been years since I've looked at it and read through it in detail.
Q When was the last time you looked at the patent claims?
A The claims I've looked at in just the past couple of days.
Q Okay. All right. So we'll get to that a little bit later today.
Do you have any responsibilities with regard to this litigation?
A It depends on how you --

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MR. VAZQUEZ: Object to form.

A -- because I need to define responsibilities.

Q (BY MR. STIMPSON) How do you define responsibilities?

A Well, I'm here today providing a deposition, so I would say that I do --

Q Okay.

A -- in that form.

Q Were you involved in the decision to bring suit against MDx?

A That was a decision that was made by counsel.

Q Right. But who at Health Grades gave the green light for it?

A I was a party to those conversations. I didn't make the determination, and I don't know exactly who did.

Q Okay. Who else was involved in those determinations?

A It would have been -- it would have been myself, David Hicks. Kerry Hicks would have been a part of that conversation. And I don't recall who else may have been involved.

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Q Why did Health Grades sue MDx?

A We've had concerns about Vitals copying the content in execution of our website for some time. And the patent was an effort to protect the display form of content as it was presented on the website.

And it was obvious to us that Vitals was directly infringing on the patent as granted by the Patent Office.

Q Any other reasons?

A Not that I'm aware of.

Q In your involvement in the decision to bring suit against MDx, did you personally look at the MDx website?

A I did.

Q When did you do that?

A I continuously looked at other websites, particularly in the healthcare vertical. Those provided provider information online.

So it was just part of an ongoing analysis in making sure that I'm aware of what is available in the marketplace.

Q Did you personally look at the MDx website and compare it to the claims in your patent?

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A No, that was an analysis done by the attorneys.

Q Okay. When was the last time you looked at the MDx Vitals website prior to bringing suit?

A Prior to bringing the suit?

Q Right.

MR. VAZQUEZ: Form.

A I don't recall.

Q (BY MR. STIMPSON) Are you aware of changes that -- changes to the Vitals website that were done in approximately January 2011?

A I am aware that certain changes have been made, but in reviewing the most recent version of the website, I still see elements, at least based on a layman's perspective, that are in violation of the claims.

MR. STIMPSON: Move to strike the second part of that.

Q (BY MR. STIMPSON) Mr. Neal, what changes are you aware of that Vitals made to its website in January of 2011?

A I'm not sure of the specific changes, but the form of the presentation was altered.

Q Okay. Can you give me more specifics?

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A No.

Q Were you aware in March of 2011 -- well, let me back up a little bit and ask you a different question.

Were you aware that at one point Vitals had comparison ratings of healthcare providers in reports on its healthcare providers?

MR. VAZQUEZ: Object to form.

A I was and they still do.

Q (BY MR. STIMPSON) Are you aware that Vitals made changes to that?

A I was told that certain changes had been made that were specific to some of the claims made in the patent, but there are still comparison ratings on the website.

MR. STIMPSON: Move to strike the last part of that.

Q (BY MR. STIMPSON) Who told you about these changes?

A Well, conversations internally and also with counsel.

Q What I'm trying to get at, Mr. Neal, is did you know, prior to bringing suit against Vitals and MDx, that MDx -- that this change had already

been made?
MR. VAZQUEZ: Form.
A It wasn't -- you know, regardless of what changes were made, there's still violations of the claims made in the patent. So that was a concern and the reason for the suit, as I understand it.
MR. STIMPSON: Move to strike as nonresponsive.
Please read the question back to the witness.
(Record read as requested.)
A I was unaware that changes were made. Those changes that were made were specific to addressing the claims made in the patent.
MR. STIMPSON: Can I please have that back?
(Record read as requested.)
MR. STIMPSON: I move to strike everything starting from "those changes that were made" as nonresponsive.
Q (BY MR. STIMPSON) So, Mr. Neal, do you know if anyone at Health Grades knew at the time this litigation was brought that Vitals had made these changes to their website?

MR. VAZQUEZ: Just one second, Mr. Neal. Just caution you to not divulge any of our communications regarding bringing the lawsuit or any communications we've had as those are protected as attorney-client privilege.
Other than that, you can answer the question.
A I'm unaware.
Q (BY MR. STIMPSON) Do you remember the first time that you looked -- that you became aware of these changes to the Vitals website?
A No.
Q Did you discuss these changes for the MDx -- to the MDx website with anyone other than counsel?
MR. VAZQUEZ: Object to form.
A Not that I recall.
Q (BY MR. STIMPSON) So even after the litigation began, you never talked with Kerry Hicks about the changes to the Vitals website?
MR. VAZQUEZ: Same objection.
A There was no communication that it's not protected.
Q (BY MR. STIMPSON) How about with

Mr. Hicks, David Hicks?
MR. VAZQUEZ: Objection.
A The same.
Q (BY MR. STIMPSON) Can you tell me whether those conversations occurred, just -- without giving me the substance of them -- just a yes or no whether they occurred?
MR. VAZQUEZ: Form.
A They involved counsel.
Q (BY MR. STIMPSON) So they did exist. I'm not asking for the substance. Since they involved counsel I don't want you to disclose that, but I just want a yes or no as to whether those conversations occurred?
MR. VAZQUEZ: Form.
A Yeah, there was conversation.
Q (BY MR. STIMPSON) What did you do to -- oh, I'm sorry, I need to back up because I didn't quite finish your background.
You said you were with Morgan Keegan until '96, and then cofounded this Specialty Care Network in about '95, '96; is that right?
A Um-hum.
Q What was Specialty Care Network?

A It was a physician practice management company that purchased and managed orthopedic physician practices and related services.
Q Okay. Was there anything web based about that?
A No.
Q What was your position at that company?
A I was Specialty Care's cofounder and vice president of business development.
Q Did you hold that same title the whole time you were with Specialty Care?
A No, I didn't. There was progression. I started out as manager of -- I don't recall exactly, finance and business development, I think, and it evolved to vice president of business development.
Q And how long did Specialty Care Network -- is that still in existence today?
A That company is now Health Grades, CPM Health Grades.
Q Okay. And when did -- what did you say, CPM?
A CPM Health Grades is the name of our corporate entity today.
Q Oh. Is that a recent change, CPM?

A It is.
Q What does CPM stand for?
A I can't recall exactly.
Q Do you know when the change was made?
A Yeah, we merged with that company in October of last year.
Q Okay. So was there a change in management at that time?
A No.
Q What is CPM, even if you don't remember what CPM stands for?
A It is -- it's a customer relationship management company.
Q Okay. And so is Veststar still a majority holder of CPM Health Grades?
A Yes.
Q Were there any changes with regard to Health Grades website after this merger?
A There have been changes in Health Grades website since we launched the website in 2002. So it's unrelated to anything that occurred related to the merger.
Q Okay. So there have been changes but just nothing as a result of the merger?

A No.
Q Okay. So when did Specialty Care Network become Health Grades?
A That was -- I don't know the exact dates, but it was 1999, 2000, the name was changed from Specialty Care to Health Grades.
Q Why -- oh, so it was just a name change?
A It was, um-hum.
Q And was there a change in the business that the company did as of that time?
A There was.
Q And how was it -- what was that change?
A I actually left Specialty Care. I participated in the recapitalization of what became Health Grades. We sold all the assets that we had acquired as part of our physician practice acquisition. That's the process that took place in 1999 and into early 2000.
And then corresponding with that recapitalization and the sale of assets, Health Grades, Incorporated was created. And the focus of that entity was to provide information to consumers to allow them to differentiate providers. And initially the focus was on hospitals.

Q Okay. And at some point the focus expanded to physicians and other healthcare providers?
A It did.
Q Okay.
A Um-hum.
Q All right. And when did Veststar come in as a major stockholder?
A That would have been -- it's been a year and a half ago. So it was October of 2010, if my math is right.
Q Okay. Have you been involved with any other companies besides -- since the 1995, '96 timeframe besides the Specialty Care Network and Health Grades?
A I have.
Q And what companies are those?
A I was on the senior management team of a company called Service Magic.
Q Service Management?
A Service Magic.
Q Okay.
A ServiceMagic.com, which is now part of InterActiveCorp.

Q Okay. And when were you with Service Magic?
A That would have been 2001 through maybe late 2000 -- you know, I have to check the dates because I actually was -- I separated from Specialty Care and explored doing some other things, even getting back into investment banking. So somewhere in the 2000 to early 2003 timeframe was my employment with Service Magic. I don't know exact dates.
Q Okay. What did Service Magic do?
A It is a consumer-facing website that helps consumers find home service professionals and, at that point in time, real estate agents.
Q Home service professionals like carpenters and electricians, that sort of thing?
A Yes.
Q And real estate agents?
A Um-hum, yes.
Q So for Service Magic, a consumer would get on the website of Service Magic, type in a search for carpenters in Denver, and up would come information on carpenters in Denver; that sort of thing?
A Yeah, exactly. A directory type solution.
Q Okay. Did you have any -- what

information did you have at Service Magic on these professionals and real estate agents?

A It wasn't -- that service wasn't about information. It was basic information about providers. It was about certifying professionals to ensure that they had appropriately -- appropriate licensing to perform whatever services within that industry.

Q And who provided the certification?

A Service Magic. Service Magic certified them.

Q Okay. And from what information did you determine to make the certification?

A I don't recall exactly what those were. I wasn't involved with that. I was responsible for business development acquisitions.

Q Okay. So did you have information on there like education and schools?

A No.

Q No?

A No. If you think about home service professionals, they're typically -- they don't have --

Q Right.

A So it's not --

Q Real estate agents often do that, right?

A Yeah, that was about -- it was about promotion. So we would build a network. It was a marketing website, so there's a directory.

Q Okay.

A But our network was supported by those who joined it, and that's what that model was.

Q Did Service Magic ever collect any information on quality of the professionals or real estate agents?

A There's no means in that industry. They may have done things since I left. Again, that was only through very early -- late 2002 or early 2003.

Q Okay.

A They may have found the means to differentiate based on quality, but it didn't -- it simply didn't exist when I was there.

Q Was there any way for consumers to rate their service providers?

A You know, I don't think that we did provide ratings. I don't recall having provided ratings at that point in time.

Q At some point in time they did?

A They provide a form of survey that's from consumers now. I wouldn't qualify it necessarily as a rating.

Q And you said they do that now. Do you know when they started that?

A I do not.

Q Was it before 2006?

A I don't know.

Q How would I find out that information?

A I don't know.

Q Do you have any information on Service Magic that you keep personally?

A No.

Q Is Service Magic still in existence?

A It is, um-hum.

Q And if I was to contact -- who would I contact over there to ask them about who -- do you know anybody -- let me ask an intelligible question.

Do you know anybody who is there now who would know when these surveys were first available on Service Magic?

A No.

Q Do you know anyone there now at all?

A I do know a couple of people.

Q People who were still there when you were there?

A There's at least one person that's still there.

Q Who is that?

A Andy Zurcher.

Q Can you spell the last name, please?

A Z-U-R-C-H-E-R.

Q Where does Andy Zurcher live?

A Denver. It's a Denver-based company.

Q And what is his position?

A I'm not sure of his current position.

Q At the time that you filed your application on the '060 patent, Exhibit 3, did you know of other entities that provided ratings to consumers over the web?

MR. VAZQUEZ: Object to form.

A I can't recall.

Q (BY MR. STIMPSON) Did you know at some point during the prosecution of this patent about other companies who provided ratings to consumers over the web?

MR. VAZQUEZ: Same objection.

A I can't recall dates when other companies

may have offered ratings over the web.
Q (BY MR. STIMPSON) Did Service Magic provide ratings on professionals prior to Health Grades providing ratings on professionals?
MR. VAZQUEZ: Form.
A I never said they provided ratings.
Q (BY MR. STIMPSON) Okay. Surveys?
A They captured surveys.
Q Okay.
A And there's a distinction, an important distinction, between capturing a survey and providing a rating.
Q Okay. What was the survey that Service Magic did?
A I don't recall the content of the survey.
Q Did Service Magic provide these surveys prior to Health Grades providing patient ratings?
A I don't recall.
MR. VAZQUEZ: Form.
Q (BY MR. STIMPSON) Pardon me?
A I don't recall.
Q When you filed the application that became the '060 patent, did you do anything to check on when they did that?

MR. VAZQUEZ: Same.
A No, because this was completely unrelated to what we were filing the patent for.
MR. STIMPSON: Move to strike everything after "no." Nonresponsive.
Q (BY MR. STIMPSON) Do you -- at the time you filed the application for the '060 patent, did you know of any entities that provided ratings to consumers over the web for any type of professionals?
A It would be speculation on my part to guess the dates of who may have been providing what at what times.
Q Okay. Well, do the best you can, please.
A I can't recall.
Q You don't remember any companies -- let's just take the 2000 time period before 2007. Do you recall any companies that were providing ratings to consumers over the web?
A It would be speculation for me to guess the dates. I just don't recall the dates.
Q Do you know any companies that were doing it about that time?
MR. VAZQUEZ: Form.
A I'm aware of sites that have done it. I

just can't recall the dates.
Q (BY MR. STIMPSON) What are those sites?
A They're the restaurant websites, for example.
Q What specific sites?
A I don't recall the exact sites.
Q Is it fair to say, Mr. Neal, that the idea of providing ratings to consumers over the web, as of early 2006, late 2005, that was well known?
MR. VAZQUEZ: Object to form.
A No, that's the reason we filed the patent.
Q (BY MR. STIMPSON) Because you provided ratings over the web?
MR. VAZQUEZ: Form.
A No. No because -- no.
Q (BY MR. STIMPSON) What is the reason you filed the patent then?
A We created a very unique platform to assist consumers in educating themselves on providers, specifically physician providers, but secondarily hospital providers.
So the names by which we presented that content, form of content, and the means by which we combine that content, and then created a score by

which they could differentiate, was unique. There was no one else that was doing that.
Q Okay. As of early 2006, Mr. Neal, it was known that ratings could be provided to consumers for various professionals over the web, right?
MR. VAZQUEZ: Form.
A If that's your analysis. I said I couldn't recall the dates.
Q Okay. What did you do to prepare for the deposition?
A I've met with counsel twice over the last two days, so Monday and Tuesday. Monday for --
MR. VAZQUEZ: I'm sorry to interrupt. You can answer the question, but don't disclose any of our communications.
THE DEPONENT: Okay.
A -- for about an hour and a half Monday and for about 30 minutes, at the most, yesterday.
Q (BY MR. STIMPSON) So a total of two hours meeting with your counsel?
A We also had a video conference last week for no more than two hours.
Q Okay. Anything else you did to prepare?
A No.