

# **EXHIBIT 4**

**TO THE DECLARATION OF BRIAN J. NISBET  
IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY ADJUDICATION**



**Consulting Agreement Memo**

**Date:** March 27, 2017  
**To:** Jason Hannon  
**CC:** File  
**RE:** SSAB Consulting Agreement for Dr. Jim Youssef/Durango Spine, LLLP

JL EthicalBIZ Exclusion  
JL CV & ANA Check

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Dr. Youssef (contracting as Durango Spine, LLLP) has submitted a new consulting agreement that covers his engagement on the Senior Surgeon Advisory Board.

**Services:** Senior Surgeon Advisory Board Member

**Hourly Compensation:** \$8,333.25 per quarter

**Milestones:**

- 2,380 shares of common stock upon the commercial launch of NuVasive's next generation XLIF implant system for Net Sales up to \$100,000,000
- 2,380 shares of common stock upon the commercial launch of NuVasive's next generation XLIF access system for Net Sales up to \$100,000,000
- 2,380 shares of common stock upon the completion of an updated and comprehensive peer to peer surgeon education strategy for NuVasive's XLIF procedure

**Term:** Three years; NuVasive has the right to renew the Agreement for additional on-year terms upon written notice

**Please return the signed agreement to Rebecca Jones.**

## SURGEON ADVISORY BOARD CONSULTING AGREEMENT

This SURGEON ADVISORY BOARD CONSULTING AGREEMENT (the "Agreement") is dated as of February 8, 2017 (the "Effective Date"), by and between NuVasive, Inc., a Delaware corporation ("NuVasive"), and Durango Spine, LLLP ("Consultant").

WHEREAS, NuVasive is a medical device company that develops, manufactures and supplies certain surgical products and procedurally-integrated solutions for the spine and, in connection therewith, consults with licensed medical professionals for assistance in a variety of areas in order to improve spine surgery and patient outcomes; and

WHEREAS, Consultant, through the personal services of Jim Youssef, M.D., a licensed physician and agent of Consultant ("HCP" and together with Consultant, jointly and severally, "Provider"), has the appropriate expertise and qualifications to consult with NuVasive regarding certain of its products and procedures.

NOW, THEREFORE, the parties hereby agree as follows:

### 1. SERVICES.

(a) NuVasive hereby engages Consultant, and Consultant accepts such engagement, to provide the services (the "Services") set forth on the Scope(s) of Work (each, an "SOW") entered into under this Agreement from time to time by the parties. Consultant agrees that all Services under this Agreement shall be performed exclusively by HCP unless otherwise agreed in writing by NuVasive. Consultant covenants, acknowledges and agrees that it shall be responsible for (i) HCP's compliance with the terms and conditions applicable to HCP and Provider hereunder and (ii) all acts and omissions of HCP hereunder. In addition, HCP covenants, acknowledges and agrees that HCP is personally responsible for complying with the terms and conditions applicable to HCP and Provider hereunder.

(b) The initial SOW is attached hereto as **EXHIBIT A**, and, as additional Services may be requested of Consultant by NuVasive, such additional Services will be documented by additional SOWs to be acknowledged by NuVasive, Consultant and HCP. Each SOW shall be deemed a part of this Agreement and subject to the same terms and conditions set forth herein. For purposes of clarity, any reference to "Agreement" herein shall be interpreted to include this Agreement and any applicable SOW. In addition to describing the Services of a respective engagement by NuVasive of Consultant, each SOW may also contain certain terms and conditions applicable with respect to each such engagement. When the engagement involves product development services, such additional terms and conditions will address, among other matters, ownership of certain inventions or discoveries.

(c) In performing the Services under this Agreement, Provider shall report and be responsible to the NuVasive employee designated in the applicable SOW and/or such other person(s) as may be subsequently designated by NuVasive (the "NuVasive Designee(s)").

(d) Provider shall provide all Services in a professional, skilled, and efficient manner, consistent with pertinent industry standards. Provider shall also use commercially reasonable efforts and such working time and energy as may be required for the satisfactory performance of the Services in accordance with NuVasive's requests and instructions.

### 2. COMPENSATION.

(a) NuVasive shall pay Consultant for Services actually requested by, and provided to, NuVasive at the rate(s) set forth in the applicable SOW. The parties acknowledge and agree that the compensation represents fair market value for the Services outlined. Further, nothing herein shall obligate Provider to purchase, utilize, recommend, or arrange for the use of any NuVasive products, and the compensation outlined herein does not in any way take into account the volume or value of any referrals or business otherwise generated between Provider and NuVasive. Consultant agrees to submit a quarterly work progress summary to NuVasive for all Services Provider provides in an applicable quarter. Such work progress summary shall include a detailed description of the

Services provided (e.g., preparation, research, speaking, meetings attended, travel, teleconference, etc.) and the approximate amount of time spent providing the Services. Within 60 days of completion of the Services or expiration or termination of this Agreement, Consultant shall submit a final work progress summary to NuVasive. No amount shall be owed by NuVasive at any point after a final invoice has been submitted and paid by NuVasive.

(b) No part of Consultant's fees will be subject to payroll tax withholding and payment by NuVasive including, but not limited to, federal income tax, state income tax, federal and state employment taxes, federal social security tax, and federal Medicare tax. Consultant agrees to complete and return to NuVasive a completed W-9 form and to report to the appropriate taxing authorities any and all compensation received from NuVasive hereunder and shall be solely responsible for the payment of any and all taxes respective thereto. NuVasive will report consulting fee payments as required by applicable federal, state or local tax law or regulations. Upon receipt by NuVasive of copies of receipts or other appropriate evidence of expenditures by Consultant, NuVasive shall reimburse Consultant for pre-approved, reasonable travel expenses incurred by Consultant at the request of NuVasive in the course of rendering Services hereunder in accordance with NuVasive's travel and expense policies.

(c) NuVasive shall report any compensation paid to Consultant hereunder as required by federal and state transparency laws, including, without limitation, the Federal Physician Payments Sunshine Act.

### **3. RELATIONSHIP OF PARTIES; COMPLIANT PROVISION OF SERVICES.**

(a) Provider's relationship with NuVasive will be that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. NuVasive will not be responsible for Provider's acts while performing the Services, whether on NuVasive's premises or elsewhere, and Provider will not have authority to speak for, represent, or obligate NuVasive in any way. Provider will not be entitled to any of the benefits that NuVasive may make available to its employees, including, but not limited to, group health, life insurance, profit-sharing or retirement benefits, paid vacation, holidays or sick leave. Provider will not be authorized to make any representation, contract or commitment on behalf of NuVasive unless specifically requested or authorized in writing to do so by an authorized officer or employee of NuVasive. Provider will be solely responsible for obtaining any business or similar licenses required by any federal, state or local authority. In addition, NuVasive shall not provide any insurance coverage of any kind for Provider.

(b) Provider represents and warrants that Provider has the requisite expertise, ability, and legal right to provide the Services and will perform the Services in an efficient manner and in accordance with the terms of this Agreement. Provider warrants that Provider will abide by all laws, rules, and regulations that apply to the performance of the Services and will comply with all of NuVasive's policies and procedures with respect to appropriate conduct, including, without limitation, federal and state anti-fraud and anti-kickback laws, the Federal Food, Drug, and Cosmetic Act, and any law, order, or regulatory provision related to the advertising and promotion of medical device products and NuVasive's policies and procedures relating to those laws, including, without limitation, NuVasive's policy against the improper promotion of products with off-label information and NuVasive's policy prohibiting offers or solicitation of kickbacks. In addition, Provider will be provided a copy of relevant NuVasive policies and Provider agrees to review such policies and undergo and certify to any compliance-related training required by NuVasive prior to performing the Services contemplated hereunder. During the pendency of this Agreement, Provider shall maintain the high standards of ethics and integrity by which NuVasive conducts business. Provider shall have the right to control the performance of the Services, as the result of the work is the primary factor bargained for in this consultancy, and not the manner, method or means by which the result is obtained.

(c) Provider agrees and acknowledges that any payments or other reimbursement made under this Agreement are made solely for services rendered to NuVasive, and that no payments or any other reimbursement provided by NuVasive to Provider are to be construed as compensation for activities that Provider performs in connection with membership in any professional society, including but not limited to, the North American Spine Society or the Society of Lateral Access Surgery ("Society(ies)"). With respect to proctoring or other activities Provider performs in connection with Society memberships, Provider acknowledges and agrees that such activities are not in any way at the request or for the benefit of NuVasive, and that Provider is not in any way acting as NuVasive's agent or representative in connection with such Society activities. Provider further acknowledges and

agrees that when conducting Society activities, Provider is in no way expected or obligated to discuss, mention, recommend or endorse NuVasive products, and Provider may freely and openly discuss any subject Provider deems relevant, including competitor products. Provider further understands that any statements or representations made by Provider in connection with Society activities are not in any way endorsed or authorized by NuVasive.

#### 4. CONFIDENTIALITY.

(a) During discussions leading up to this Agreement and during the course of providing the Services, it is anticipated that Provider will learn confidential and/or proprietary information of NuVasive. Provider will keep confidential and not use, except in connection with the performance of the Services hereunder, any and all information provided to Provider by NuVasive and/or developed by Provider while performing Services, including, without limitation, information concerning NuVasive's products, manufacturing processes, customers, product pricing, and technical know-how, unless and until NuVasive consents to disclosure in writing, or unless such information otherwise was previously known by Provider, as documented by Provider in writing, or becomes generally available to the public through no fault of Provider. Provider further represents that any and all information disclosed to NuVasive, or used for the benefit of NuVasive, by Provider does not and will not include any confidential, trade secret, or proprietary information of others. Except as required by Provider Disclosure Obligations (as defined below), Provider will not disclose to others, without NuVasive's written consent, any of the terms or conditions of this Agreement. The foregoing obligations of nonuse and confidentiality shall survive the expiration or termination of this Agreement. Upon termination of the Services set forth on an applicable SOW, Provider will return to NuVasive all copies of drawings, specifications, manuals, and other printed or reproduced material (including information stored on machine readable media) provided to Provider by NuVasive or developed by Provider during the performance of Services under this Agreement. In the event of a breach or threatened breach by Provider of any of the provisions hereof, Provider hereby consents and agrees that NuVasive shall be entitled to pre-judgment injunctive relief or similar equitable relief to restrain Provider from committing or continuing any such breach or threatened breach.

(b) Provider acknowledges that (i) any NuVasive information being furnished hereunder may contain material, non-public information regarding NuVasive or its business partners, and (ii) United States securities laws may prohibit any persons who have material, non-public information regarding NuVasive or its business partners from purchasing or selling securities of NuVasive in reliance upon such information, or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities of NuVasive or its business partners in reliance upon such information.

5. CONFLICTS OF INTEREST. Provider represents and warrants that it has no relationship with any third party, including a competitor of NuVasive, which would present a conflict of interest with the Services, or which would prevent Provider from carrying out the terms of this Agreement. Provider agrees to advise NuVasive in writing of any such relationships that arise during the term of this Agreement. Upon learning of the existence of any such relationship, NuVasive will have the option to terminate this Agreement and any Services set forth on an SOW without further liability except to pay for any Services actually rendered. Provider shall have no recourse against NuVasive for termination under this Section 5. In addition, in the event Provider's relationship with NuVasive hereunder creates a conflict of interest between Provider and a third party (whether as of the Effective Date or during the term of this Agreement), Provider acknowledges and agrees that it shall be Provider's obligation to inform any such third party of such conflict of interest to the extent disclosure is required.

#### 6. DISCLOSURES TO THIRD-PARTIES.

(a) Notwithstanding the confidentiality obligations contained in this Agreement, including but not limited to those set forth in Section 4, Provider may have obligations to disclose information regarding the existence of this Agreement and the terms hereof and/or any payment made hereunder ("Provider Disclosure Obligations") pursuant to (i) federal, state or local laws, rules or regulations, (ii) requirements of, or obligations to, hospitals, academic institutions, professional organizations, or other entities relating to conflicts of interests, or (iii) other obligations Provider has to disclose potential conflicts of interest created by Provider's relationship with NuVasive hereunder to third parties, including patients or employers. Provider acknowledges and agrees that Provider is solely responsible for identifying and complying with such Provider Disclosure Obligations.

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