

01-20-2004



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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Total Wound Treatment Center, Inc. 1.14.04
Individual(s) Association
General Partnership Limited Partnership
Corporation-State Delaware
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: AmSouth Bank
Internal
Address: AmSouth Center, 10th Floor
Street Address: 315 Deaderick Street
City: Nashville State: TN Zip: 37237
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Alabama
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

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OPR/FINANCE

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: December 31, 2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
Additional number(s) attached Yes No

B. Trademark Registration No.(s) 2, 222, 466

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Robert L. Brewer
Internal Address: AmSouth Center, Suite 2700
Street Address: 315 Deaderick Street
City: Nashville State: TN Zip: 37238

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41) \$40.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number: 502483-4995, 108000-355
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
Robert L. Brewer
Name of Person Signing Signature
January 12, 2004
Date

Total number of pages including cover sheet, attachments, and document: 17

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TRADEMARK
REEL: 002898 FRAME: 0491

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated the 31 day of December, 2003, is made and entered into by TOTALWOUND TREATMENT CENTER, INC., a Delaware corporation ("TWTC"), in favor of AMSOUTH BANK, an Alabama banking corporation (the "Lender").

RECITALS:

A. National Medical Solutions, Inc., a Texas corporation and the parent company of TWTC (the "Borrower"), and the Lender are parties to that certain Loan Agreement of even date herewith (as the same heretofore may have been or hereafter may be amended, restated, supplemented, extended, renewed, replaced or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Lender has agreed to make the Loans to the Borrower as more specifically described in the Loan Agreement.

B. Pursuant to the Security Agreement, TWTC has agreed to grant in favor of the Lender a valid perfected security interest in all of its right, title and interest in, to and under the Collateral, including the property listed on attached Schedule A, together with any renewals or extensions thereof, and all Proceeds thereof, to secure the payment of the Obligations.

C. TWTC owns the Trademarks listed on Schedule A attached hereto.

D. It is a condition precedent to the obligation of the Lender to make the Loans under the Loan Agreement that TWTC execute and deliver this Agreement to the Lender.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and to induce the Lender to make the Loans under the Loan Agreement, TWTC hereby makes the following representations and warranties to the Lender and hereby covenants and agrees with the Lender as follows:

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement, and the following terms shall have the following meanings:

(a) "Agreement" means this Agreement as amended, supplemented or otherwise modified from time to time.

(b) "Collateral" has the meaning assigned to it in Section 2 of this Agreement.

(c) "Obligations" means all of the Obligations of TWTC as described and defined in the Security Agreement, together with all advances made for taxes, levies,

insurance and preservation of the Collateral and all attorney's fees, court costs and expenses of whatever kind incident to the collection of any of said indebtedness or other obligations and the enforcement and protection of the security interest created hereby.

(d) "Proceeds" means "proceeds," as such term is defined in Section 9-102(a)(64) of the UCC and, to the extent not included in such definition, shall include, without limitation, (1) any and all proceeds of any insurance, indemnity, warranty, guaranty or letter of credit payable to TWTC, from time to time with respect to any of the Collateral, (2) all payments (in any form whatsoever) paid or payable to TWTC from time to time in connection with any taking of all or any part of the Collateral by any governmental authority or any Person acting under color of governmental authority), (3) all judgments in favor of TWTC in respect of the Collateral and (4) all other amounts from time to time paid or payable or received or receivable under or in connection with any of the Collateral.

(e) "Trademarks" means (1) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source of business identifiers used in any country in the world, whether registered or unregistered, and the goodwill associated therewith, now existing or hereafter acquired, and (2) all registrations, recordings and renewals thereof, and all applications in connection therewith, issued by or filed in a national, state or local governmental authority of any country, including, without limitation, all of the foregoing more particularly described or referred to in Schedule A hereto.

(f) "Trademark License" means any agreement, material to the businesses of TWTC, written or oral, providing for the grant by or to TWTC of any right to use any Trademark, including, without limitation, any thereof referred to in Schedule A hereto.

(g) "UCC" means the Uniform Commercial Code as from time to time in effect in the State of Tennessee.

2. Grant of Security Interest. As collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations, TWTC hereby assigns and grants to the Lender a security interest in all of TWTC's right, title and interest in and to the following property now owned or at any time hereafter acquired by TWTC or in which TWTC now have or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"):

- (a) all Trademarks;
- (b) all Trademark Licenses to the extent assignable; and
- (c) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing;

regardless of whether specifically included in Schedule A.

3. Representations and Warranties Concerning Trademarks. TWTC represents and warrants that Schedule A hereto includes all of TWTC's registered Trademarks and Trademark Licenses owned by TWTC in its own name or as to which TWTC has any colorable claim of ownership that are material to the businesses of TWTC as of the date hereof. To the best of TWTC's knowledge, each Trademark is valid, subsisting, unexpired, enforceable and has not been abandoned. Except as set forth in Schedule A, none of the Trademarks is the subject of any licensing or franchise agreement. All licenses of the Trademarks are in force and, to the best knowledge of TWTC, not in default. No holding, decision or judgment has been rendered by any governmental authority that would limit, cancel or question the validity of any material Trademark. No action or proceeding is pending (a) seeking to limit, cancel or question the validity of any Trademark or TWTC's ownership thereof or (b) that, if adversely determined, would reasonably be likely to have a material adverse effect on the value of any Trademark.

4. Covenants. TWTC covenants and agrees with the Lender that until the Obligations are fully paid and performed:

(a) Further Documentation. From time to time, upon the written request of the Lender, and at the sole expense of TWTC, TWTC will promptly and duly execute and deliver such further instruments and documents and take any other action reasonably requested by the Lender to insure the attachment, perfection and first priority of, and the ability of the Lender to enforce, the Lender's security interest in any and all of the Collateral, including (1) authorizing, executing (to the extent that TWTC's signature is required), delivering and filing financing statements and amendments relating thereto under the UCC, (2) complying with any provision of any statute, rule, regulation or treaty of any jurisdiction as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the Lender's security interest in such Collateral, (3) obtaining governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other person obligated on Collateral, and (4) taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction. TWTC hereby authorizes the Lender to file any such financing or continuation statement without the signature of TWTC to the extent permitted by applicable law.

(b) Limitation on Lien on Collateral. TWTC will not create, incur or permit to exist, will take all commercially reasonable actions to defend the Collateral against, and will take such other commercially reasonable action as is necessary to remove, any Lien on or claim to the Collateral, other than the Liens created hereby, and other than as permitted pursuant to the Loan Agreement, and will take all commercially reasonable actions to defend the right, title and interest of the Lender in and to any of the Collateral against the claims and demands of all persons whomsoever.

(c) Limitations on Dispositions of Collateral. TWTC will not sell, transfer or otherwise dispose of any of the Collateral, or attempt, offer or contract to do so except as permitted in the Loan Agreement.

(d) Notices. TWTC will advise the Lender promptly, in reasonable detail, at its address set forth in the Loan Agreement, (1) of any Lien (other than Liens created hereby or permitted under the Loan Agreement) on, or claim asserted against, any of the Collateral and (2) of the occurrence of any other event that could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder.

(e) Trademarks.

(1) TWTC (either itself or through licensees) will, except with respect to any Trademark that TWTC shall reasonably determine is of immaterial economic value to it or otherwise reasonably determines not to do so, (A) continue to use each Trademark on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (B) maintain as in the past the quality of products and services offered under such Trademark, (C) use reasonable efforts to employ such Trademark with the appropriate notice of registration, (D) not adopt or use any mark that is confusingly similar or a colorable imitation of such Trademark unless within thirty (30) days after such use or adoption, the Lender, for its benefit, shall obtain a perfected security interest in such mark pursuant to this Agreement, and (E) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated.

(2) TWTC will promptly notify the Lender if it knows, or has reason to know, that any application relating to any Trademark may become abandoned or dedicated, or of any adverse determination or material development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court or tribunal in any country) regarding TWTC's ownership of any Trademark or its right to register the same or to keep and maintain the same.

(3) Whenever TWTC, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Trademark with the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, TWTC shall report such filing to the Lender within five (5) business days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Lender, TWTC shall execute and deliver any and all reasonably necessary agreements, instruments, documents, and papers as the Lender may request to evidence the Lender's security interest in any newly filed Trademark and the goodwill and general intangibles of TWTC relating thereto or represented thereby, and each TWTC hereby constitutes the Lender its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power being coupled with an interest is irrevocable until the Obligations are paid in full.

(4) TWTC, except with respect to any Trademark TWTC shall reasonably determine is of immaterial economic value to it or it otherwise reasonably determines not to so do, will take all reasonable and necessary steps, including, without limitation, in any proceedings before any tribunal, office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of Trademarks, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability when appropriate.

(5) In the event TWTC knows or has reason to know that any Trademark included in the Collateral is infringed, misappropriated or diluted by a third party, TWTC shall promptly notify the Lender after it learns thereof and shall, unless TWTC shall reasonably determine that such Trademark is of immaterial economic value to TWTC, which determination TWTC shall promptly report to the Lender, promptly sue for infringement, misappropriation or dilution, or take such other actions as TWTC shall reasonably deem appropriate under the circumstances to protect such Trademark.

5. The Lender's Appointment as Attorney-in-Fact.

(a) Powers. TWTC hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of TWTC and in the name of TWTC or in its own name, from time to time after the occurrence, and during the continuation of, an Event of Default in the Lender's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement.

(b) Other Powers. TWTC also authorizes the Lender, at any time and from time to time, to execute, in connection with the sale provided for in Section 8 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(c) No Duty on the Part of the Lender. The powers conferred on the Lender hereunder are solely to protect the interests of the Lender in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its partners, officers, directors, employees or agents shall be responsible to TWTC for any act or failure to act hereunder, except for their own gross negligence or willful misconduct or failure to comply with mandatory provisions of applicable law.

6. Performance by the Lender of TWTC's Obligations. If TWTC fails to perform or comply with any of its agreements contained herein and the Lender, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of the Lender incurred in connection with such performance or compliance, together with interest thereon at the highest default rate provided in the Note, shall be payable by TWTC to the Lender on demand and shall constitute Obligations secured hereby.

7. Proceeds. It is agreed that if an Event of Default shall occur and be continuing (a) all Proceeds received by TWTC consisting of cash, checks and other cash equivalents shall be held by TWTC in trust for the Lender, segregated from other funds of TWTC, and shall, forthwith upon receipt by TWTC, be turned over to the Lender in the exact form received by TWTC (duly endorsed by TWTC to the Lender, if required), and (b) any and all such Proceeds received by the Lender (whether from TWTC or otherwise) shall promptly be applied by the Lender against, the Obligations (whether matured or unmatured), such application to be in such order as the Lender shall elect. Any balance of such Proceeds remaining after the Obligations shall have been paid in full shall be paid over to TWTC or to whomsoever may be lawfully entitled to receive the same.

8. Remedies.

(a) If an Event of Default shall occur and be continuing, the Lender, may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, the Lender without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon TWTC or any other person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or, contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any office of the Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or on future delivery without assumption of any credit risk. The Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in TWTC, which right or equity is hereby waived or released. TWTC further agrees, at the Lender's request, to assemble the Collateral and make it available to the Lender at places that the Lender shall reasonably select, whether at TWTC's premises or elsewhere. The Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Lender hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the

Lender may elect, and only after such application and after the payment by the Lender of any other amount required by any provision of law, including, without limitation, Section 9-608(a)(1) of the UCC, need the Lender account for the surplus, if any, to TWTC. To the extent permitted by applicable law, TWTC waives all claims, damages and demands it may acquire against the Lender arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition. TWTC shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Obligations and the fees and disbursements of any attorneys employed by the Lender to collect such deficiency.

(b) The Lender shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, TWTC hereby agrees that it will not invoke any law relating to the marshalling of collateral or any similar law that might cause delay in or impede the enforcement of the Lender's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, TWTC hereby irrevocably waives the benefits of all such laws.

9. Limitation on Duties Regarding Preservation of Collateral. The Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Lender would deal with similar property for its own account. Neither the Lender nor any of its partners, directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of TWTC or otherwise.

10. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

11. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Paragraph Headings. The paragraph headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

13. No Waiver; Cumulative Remedies. The Lender shall not by any act (except by a written instrument pursuant to Section 14 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Lender of any right or remedy hereunder on any occasion shall not be construed as a bar to any right or remedy that the Lender would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

14. Waivers and Amendments: Successors and Assigns. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by TWTC and the Lender, provided that any provision of this Agreement may be waived by the Lender in a written letter or agreement executed by the Lender or by telex or facsimile transmission from the Lender. This Agreement shall be binding upon the successors and assigns of TWTC and shall inure to the benefit of the Lender and its successors and assigns.

15. Notices. Any and all notices or other communications permitted or required to be made under this Agreement shall be given to TWTC and the Lender at the addresses and in the manner specified in the Loan Agreement.

16. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Tennessee applicable to contracts to be wholly performed in such State.

[Signature Page Follows]

IN WITNESS WHEREOF, TWTC and the Lender have caused this Agreement to be executed by their respective duly authorized officers or other duly authorized representatives as of the day and year first above written.

TWTC:

TOTALWOUND TREATMENT CENTER,
INC.

By: Kenton W. Rideout
Kenton W. Rideout, Vice President

LENDER:

AMSOUTH BANK

By: [Signature]
Title: AVP.

SCHEDULE A

<u>Trademark</u>	<u>Registration No.</u>	<u>Status</u>
TotalWound Treatment Center	2,222,466	Registered