AFFIDAVIT

STATE OF MICHIGAN)
:
COUNTY OF WASHTENAW)

FRED MORADY, M.D., being first duly sworn, deposes and says, under penalty of perjury as follows:

1. I am a physician licensed to practice medicine in the State of California (1976) and the State of Michigan (1984). Since August, 1987, I have been a Professor of Internal Medicine, Department of Internal Medicine, Division of Cardiology, University of Michigan. Since April, 2003, I have been the McKay Professor of Cardiovascular Disease, Department of Internal Medicine, Division of Cardiology, University of Michigan. From July, 1984 to July, 2004, I was Director of the Electrophysiology Laboratory at the University of Michigan. From August 2004 to December 2006, I was the Director, Clinical Electrophysiology Service, Department of Internal Medicine, Division of Cardiology, University of Michigan. My curriculum vitae is attached to this Affidavit.

2. I am familiar with the standard of care for clinical cardiac electrophysiologists. I have experience, training, and familiarity with the techniques of atrial fibrillation ablation. I am also familiar with the legal concepts of ordinary care and negligence.

3. I have been asked to address in this Affidavit issues relating to the medical care provided by David Smith, M.D. to patient Neil DeChambeau. Following a review of medical records, I have determined that Neil DeChambeau was under the care of Reno Heart Physicians since on or about December 28, 2005 and David Smith, M.D., since on or about May 15, 2006. The standard of care upon which I rely in support of this Affidavit would apply with equal force to Dr. Smith's practice as to my own.

4. On May 15, 2006 Neil DeChambeau had an electrophysiology consultation with David Smith, M.D., who determined that Neil DeChambeau exhibited recurrent paroxysmal atrial fibrillation. Neil DeChambeau was again diagnosed with paroxysmal atrial fibrillation by David Smith, M.D., on July 12, 2006, and a catheter ablation procedure was discussed with him. On September 7, 2006, Neil DeChambeau was a 57 year old male in good physical health who underwent an atrial fibrillation ablation procedure to address a previously diagnosed paroxysmal atrial fibrillation. Radiofrequency energy delivery in the left atrium commenced at or about 10:19 a.m. on September 7, 2006.

5. At or about 12:22 p.m. Neil DeChambeau experienced ventricular tachycardia. Neil DeChambeau underwent transthoracic cardioversion to terminate the ventricular tachycardia. No cause of the ventricular tachycardia arrhythmia was ever determined, and yet the atrial fibrillation ablation procedure continued after the ventricular tachycardia was corrected.

6. At or about 12:35 p.m. on September 7, 2006, Neil DeChambeau's blood pressure became unmeasurable. Despite the absence of a pulse, a surgeon was not immediately summoned. A surgeon was not present in the electrophysiology lab until approximately 1:16 p.m.

7. A transthoracic echocardiogram was not ordered until 12:44 p.m. on September 7, 2006. The transthoracic echocardiogram machine did not arrive until at or about 12:49 p.m. on September 7, 2006.

8. Although Neil DeChambeau was provided cardio-pulmonary resuscitation (CPR) from 12:39 p.m. until approximately 12:50 p.m., CPR was of no medical benefit to him because he was experiencing cardiac tamponade.

9. The anesthesia record indicates that the cardiac tamponade

experienced by Neil DeChambeau was not diagnosed until approximately 1:00 p.m. on September 7, 2006. This same record indicates that a pericardiocentesis procedure used to address the cardiac tamponade event did not occur until after 1:00 p.m.

10. I believe to a reasonable degree of probability that the care provided by David Smith, M.D. was negligent and breached the standard of care owed to Neil DeChambeau in the following particulars:

a) David Smith, M.D., failed to timely diagnosis that Neil DeChambeau was experiencing cardiac tamponade.

b) David Smith, M.D., failed to timely perform a pericardiocentesis procedure on Neil DeChambeau.

c) After Neil Dechambeau experienced ventricular tachycardia on September 7, 2006 at approximately 12:22 p.m., the cause of ventricular tachycardia should have been determined before any additional radiofrequency ablation was performed.

d) At the time David Smith, M.D., observed Neil DeChambeau to exhibit no pulse, he should have immediately requested a surgeon to review the condition of Neil DeChambeau but failed to do so.

e) A transthoracic echocardiogram was not ordered until approximately 12:44 p.m. on September 7, 2006 and did not arrive until approximately 12:49 p.m. The transthoracic echocardiogram was performed too late to benefit Neil DeChambeau.

All of the aforementioned conduct of David Smith, M.D. caused Neil DeChambeau to suffer irreversible brain damage and death.

11. I reserve the right to amend and supplement my opinions in the future as additional information is provided.

HISTORY AND PHYSICAL ROOM:

Electronically signed by:
DAVID E SMITH, M.D. 09/12/2006 08:42
DAVID E SMITH, M.D.

TR: mdq
DD: 09/06/2006 5:13 P
DT: 09/06/2006 6:15 P
D#: 2970006 Job #:000028506

cc: DAVID E SMITH, M.D.

12. All of the opinions expressed in this Affidavit are my opinions to a reasonable degree of medical probability.

Fred Morady
FRED MORADY, M.D.

SUBSCRIBED and SWORN to before me this 29th day of August, 2007.

SUSAN STOKES
Notary Public, State of Michigan
County of Washtenaw
My Commission Expires 08-20-[illegible]
Acting in the county of Washtenaw

NOTARY PUBLIC

EXHIBIT "2"

EXHIBIT "2"

$1425
Stephen C. Balkenbush, Esq.
Nevada Bar No. 1814
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Attorney for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU, individually, JEAN-PAUL DECHAMBEAU and ANGELA DECHAMBEAU as Special Administrator of the Estate of Neil DeChambeau,

Plaintiffs,

v.

DAVID SMITH, M.D., BERNDT, CHANEY-ROBERTS, DAVEE, GANCHAN, ICHINO, JUNEAU, NOBLE, SEHER, SMITH, SWACKHAMER, THOMPSON, WILLIAMSON, and ZEBRACK, LTD., a Nevada professional corporation, DAVID KANG, M.D., RINEHART, LTD., a Nevada professional corporation, and DOES 1-10,

Defendants.
_____/

Case No. CV07 02028

Dept. No. 4

SB00280

COMPLAINT

COMES NOW, PLAINTIFFS ANGELA DECHAMBEAU, JEAN-PAUL DECHAMBEAU, AND THE ESTATE OF NEIL DECHAMBEAU by and through their Attorneys THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER and for their Complaint hereby allege as follows:

1. At all relevant times, Angela DeChambeau and Jean-Paul DeChambeau were adult, competent residents of Reno, Nevada at the time of the incident set forth in this Complaint.

2. At all relevant times, Angela DeChambeau was the wife of Neil DeChambeau.

3. At all relevant times, Jean-Paul DeChambeau was the son of Neil DeChambeau.

4. On September 8, 2006, Neil DeChambeau died.

5. On December 26, 2006, Angela DeChambeau was appointed special administrator of the Estate of Neil DeChambeau.

6. On information and belief, Defendant David Smith, M.D. was at all times relevant hereto a physician licensed in the State of Nevada and practicing in the area of cardiology.

7. On information and belief, at all relevant times herein Defendant Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd., was a Nevada professional corporation organized and existing under the laws of the State of Nevada and operating in Reno, Nevada as an office for heart care. Upon information and belief, Defendant David Smith was an employee of Defendant Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. at all relevant times herein.

8. On information and belief, David Kang, M.D. was at all times relevant hereto a physician licensed in the State of Nevada and practicing in the area of anesthesia.

9. On information and belief, at all relevant times herein, Rinehart, Ltd., a Nevada professional corporation located in Reno, Nevada was corporation organized and existing under the law of the State of Nevada and operating in Reno, Nevada as an office providing anesthesia care. Upon information and belief, Defendant David Kang, M.D. was an employee of Rinehart, Ltd., at all relevant times herein.

10. Plaintiffs do not know the true names or capacities of those other Defendants named herein as DOES 1-10 and therefore, Plaintiffs sue said Defendants by said fictitious names. Plaintiffs are informed and believe and thereon allege that each of said Defendants are legally responsible under the claims for relief plead herein for the events and happenings herein referred to and proximately caused damages to Plaintiffs as alleged herein. Plaintiffs pray that when the true names of said Defendants are ascertained, Plaintiffs may insert the names herein with the appropriate allegations.

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11. That at all times mentioned, Defendants were the agents, servants and/or employees of the other Defendants and were acting with permission and consent within the course and scope of their agency and employment; that all such Defendants were responsible in some manner for the events and happenings referred to herein and proximately caused damages to Plaintiffs as alleged herein.

12. At all relevant times herein, Defendant Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. in connection with its activities, employed or otherwise retained or procured the services of technicians and other professional employees, including but not limited to Defendant David Smith, M.D. and held them out and warranted them to the public as competent, careful, and experienced in the care and treatment of patients such as Neil DeChambeau.

13. At all relevant times herein, Defendant David Smith, M.D. individually and as an agent, servant and/or employee of Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. held himself out to Plaintiffs in particular and the public in general as being an able and skilled physician in the area of cardiology possessing the same or higher level of skill and training as other members in his profession and that he was able to render proper and adequate care and treatment to Neil DeChambeau.

14. At all relevant times herein, Defendant Rinehart, Ltd. in connection with its activities, employed or otherwise retained or procured the services of technicians and other professional employees including but not limited to Defendant David Kang, M.D., and held them out and warranted them to the public as competent, careful, and experienced in the care and treatment of patients such as Neil DeChambeau.

15. At all relevant times herein, Defendant David Kang, M.D. individually and as an agent, servant and/or employee of his medical entity and/or Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. held himself out to Plaintiffs in particular and the public in general as being an able and skilled physician in the area of anesthesia possessing the same or higher level of skill and

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training as other members in his profession that he was able to render proper and adequate care and treatment to Neil DeChambeau.

16. All incidents and actions complained of herein occurred in Reno, Washoe County, Nevada.

17. The requisites of NRS 41A.100 are fully and timely complied with by the attachment herein of the Affidavit of Fred Morady, M.D. attached hereto as Exhibit "A" and the Affidavit of William J. Mazzei, M.D. attached hereto as Exhibit "B."

18. This action is governed by the provisions of NRS 41A and is thus exempt from any court annexed arbitration program.

FIRST CLAIM FOR RELIEF

(Negligence)

19. Plaintiffs incorporate herein by reference as if fully set forth herein at length the allegations contained in paragraphs 1-18 of Plaintiffs' Complaint.

20. On September 7, 2006, Neil DeChambeau was 57 year old male in good physical health who was admitted to Washoe Medical Center to undergo an atrial fibrillation ablation procedure to address a previously diagnosed paroxysmal atrial fibrillation.

21. On the morning of September 7, 2006, Neil DeChambeau was brought to the cath lab at Washoe Medical Center where David Kang, M.D. induced anesthesia. Neil DeChambeau was intubated and anesthesia was maintained throughout the atrial fibrillation ablation procedure.

22. At or about 12:39 p.m., Neil DeChambeau suddenly developed cardiac arrest. In response to the cardiac arrest advance cardio pulmonary resuscitation was instituted on Neil DeChambeau and multiple doses of vasoactive drugs were administered as chest compressions were performed.

23. At or about 1:00 p.m., an echo-cardiogram of the heart showed a cardiac tamponade.

24. At or about 1:00 p.m., a pericardiocentesis was performed and approximately 300 ccs of blood were removed from Neil DeChambeau's pericardial sac.

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25. David Smith, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.

26. David Smith, M.D. failed to timely perform a pericardiocentesis procedure on Neil DeChambeau.

27. David Kang, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.

28. David Kang, M.D. failed to timely recommend to David Smith, M.D. that he perform a pericardiocentisis on Neil DeChambeau.

29. David Kang, M.D. failed to timely perform a pericardiocentisis on Neil DeChambeau.

30. The conduct of David Smith, M.D. set forth in paragraphs 25 and 26 fell below the standard of care owed by David Smith, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.

31. The conduct of David Kang, M.D. set forth in paragraphs 27, 28, and 29 fell below the standard of care owed by David Kang, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.

32. As the direct and proximate result of the negligence of Defendants, Plaintiff Angela DeChambeau and Plaintiff Jean-Paul DeChambeau suffer and will continue to suffer grief, loss of probable support, companionship, society, comfort and consortium of Neil DeChambeau.

33. As a direct and proximate result of the negligence of Defendants, Plaintiff Estate of Neil DeChambeau has sustained special damages including medical expenses which Neil DeChambeau incurred or sustained prior to his death and funeral expenses.

34. As a direct and proximate result of the negligence of the Defendants, Plaintiff Angela DeChambeau and Plaintiff Jean-Paul DeChambeau sustained damages for pain, suffering or disfigurement of Neil DeChambeau.

35. Plaintiffs have been required to employ the services of legal counsel to prosecute action and to expend monies for the presentation of this claim in accordance with statutory requisites. Plaintiffs are entitled to attorney's fees and costs of suit including such costs and

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expenditures to employ medical experts for the presentation of this claim.

WHEREFORE, Plaintiffs Angela DeChambeau and Jean-Paul DeChambeau pray for relief against Defendants and each of them as follows:

1. For general damages including damages for pain, suffering and disfigurement of the decedent in an amount to be proven at trial.

2. For special damages, pecuniary damages for grief, loss of probable support, companionship, society, comfort and consortium in an amount to be proven at trial.

WHEREFORE, Plaintiff the Estate of Neil DeChambeau prays for relief against Defendants and each of them as follows:

1. For special damages including medical expenses which the decedent incurred or sustained before his death and funeral expenses.

WHEREFORE, all Plaintiffs pray for relief against Defendants and each of them as follows:

1. For attorneys fees and costs to be incurred in prosecuting this action and for such further relief as to this Court as appears just and equitable.

DATED this 4th day of September, 2007.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: _____
Stephen C. Balkenbush, Esq.
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SB00285

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that the preceding document filed in above-entitled court does not contain the social security number of any person.

DATED this 4th day of September, 2007.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: _____
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Attorneys for Plaintiffs

SB00286

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Q. And then it looks like from your notes that the patient had some problems coming out of the anesthesia, is that correct?
A. Correct.
Q. And can you explain what occurred?
A. When the anesthesia was reversed, we were not getting meaningful neurologic response from the patient, as per the anesthesiologist.
Q. And when would this occur? What I'm getting at, would this be at the end of the code, that you would bring him out of the anesthesia?
A. Correct.
Q. And you said that he "was not breathing over the vent." What do you mean by that?
A. If somebody has -- you know, a reasonable neurologic response off of anesthesia, you'd hope for them to breathe at a faster rate than what the ventilator is going at.
Q. And he was not?
A. Correct.
Q. Do you know who placed the long sheaths, et cetera? It says long sheaths were then placed in the femoral region, switched over to 8-French short sheaths. Do you know who did that?
A. That would be me.

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Q. And what was the reason for doing that?
A. The long sheaths go into the heart. So we wanted something shorter that wouldn't cause clots within the heart.
Q. And you indicated that there was a pericardiocentesis catheter sewn in place. Why was that done?
A. That's the tube that went into the pericardial space to drain the fluid. And that was left there, so that if he had recurrent bleeding that it would drain.
Q. Now I'm just curious what you mean at the bottom of this, "The total fluoroscopy time was 64 minutes." Is that when the radiation was going so you could see what was occurring?
A. That's X-ray time for the code and also the ablation procedure.
Q. So it's the X-ray time for the procedure, as well as the code?
A. Yes.
Q. And that's 64 minutes?
A. Yes.
Q. And then it says the total number of ablations was 157.
A. Yes.
Q. This was my naivety; I thought an ablation was

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like, you know, one kind of zap or whatever you want to call it. So how does an ablation actually work?
A. For atrial fibrillation there's multiple circuits causing the A-fib, so you have to do a lot of ablations to reduce the circuits that maintain the A-fib. That's why the procedure is much harder than an SVT ablation. That's why the quoted success is 50 to 60 percent, as opposed to 95 percent.
For SVT it's a single spot you're burning; for A-fib it's multiple spots that you're burning.
Q. So when you say the total number of ablations was 157 --
A. Each one is for about 20 or 30 seconds.
Q. And --
A. Then you move to the next spot.
Q. That's what I was going to get at. So you had to go along various little circuits in the heart to try to complete this procedure?
A. Yes.
Q. And then it says, "Total ablation time was 3199 seconds." I did not divide that out, but is each ablation then kind of counted on some kind of machine? How do you know that, I guess is what I'm asking?
A. It's counted on the Prucka machine.
Q. So it gives you the result at the end?

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A. Gives you the total number of ablations and the total time of ablations.
Q. And now once the code was called, I assume the ablations were all done?
A. We had just finished the right side of ablation. That was towards the end of the procedure. The left side of the ablations had been completed.
Q. Did you have any more to do, to your knowledge?
A. I wouldn't have done any more anyhow after the code, but there was probably not much else to do, from ablation standpoint.
Q. So it was almost completely done?
A. Yes.
Q. Once this lawsuit was filed naming you and Dr. Kang, I know that Mr. Balkenbush had the case reviewed by Dr. Morady. Had you ever heard of him before this case?
A. Yes.
Q. And how had you heard of Dr. Morady?
A. He's in charge of electrophysiology at the University of Michigan.
Q. And does he have a reputation as sort of known in that particular specialty?
A. He's a very well-known electrophysiologist.

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He does a lot of atrial fibrillation ablations.
Q. And when you read his affidavit indicating that there was a V-tach, is that what sent you to look at the tapes?
A. I was going to look at the tapes anyhow, but that certainly opened up my eyes. But I didn't know Dr. Kang had written down that there was a VT on his anesthesia note. So I went back and looked at that. I hadn't recalled there was VT during the case. If I had thought there was VT during the case, I would have put it in my dictation.
Q. And when you went back and looked at the -- was it the EKGs that you looked at?
A. EKG and the intracardiac electrocardiograms.
Q. There was no VT, is that correct?
A. Correct.
Q. I know that there was a very long time lapse and that Mr. Balkenbush as well as Mr. Lemons was trying to get this -- I'm going to call it the disk or the CD of the procedure from GE. Once that happened, did you ever actually review the data at the time?
A. I don't understand the question. I'm sorry.
Q. There's some kind of disk that GE printed off. And that took place sometime later in the case, because what I understand is Dr. Morady and Mr. Lemons were both

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trying to get that evidence. And it's my understanding that Renown somehow provided that disk.
A. Okay.
Q. Did you ever review that particular disk?
A. I don't know which one I reviewed. I reviewed a disk, which was the complete disk of the case. I don't know if --
Q. That's the one I'm talking about.
A. Yeah.
Q. What do we call the disk of the case? Just the disk, the CD?
A. I call it the Prucka disk. That's what I call it from a -- but, see if I asked somebody to get me the -- back then, I asked for the Prucka disk. I don't know what the formal name is.
Q. And when you reviewed that disk, you saw no VT, is that correct?
A. Correct.
Q. When you reviewed that disk, does that disk show you sort off the timing of the events? I mean does it show the pericardiocentesis?
A. It does not.
Q. Okay. What does it basically show then?
A. It shows the EKGs from beat to beat, it shows you the intracardiac recordings from the catheters beat

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to beat. The disk will also have some notations put in by whoever is working the system.
Q. Do you recall after this procedure having any conversations with Mrs. DeChambeau?
A. I do.
Q. And what do you recall about those conversations? Can you tell me the gist of what you recall? I mean I'm not asking word for word, just generally what occurred after this procedure.
A. I remember going out and talking to her and telling her that there was a complication; that he had a bleed around the heart, we drained it. Right now his blood pressure was fine, and we have to see how he does neurologically. We don't know yet. That's what I -- but I can't say for sure that's exactly what I said.
I had a conversation with her after the case, after the case and the complication, and I'm sure I had conversations with her up in the intensive care unit.
Q. And once the patient was stabilized after the cath procedure, I take it he was transferred to ICU?
A. Yes.
Q. And do you recall what type of specialist you called in to evaluate him?
A. A pulmonologist and a neurologist.
Q. And once the pulmonologist and the neurologist

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had done their evaluations, what was your understanding of Mr. DeChambeau's status?
A. The first evaluation, I think they didn't know exactly how he was going to do neurologically. That was the first. After somebody has a cardiac arrest, it takes 24 to 48 hours to determine how a patient will do.
Q. Before I go further along that line; during the procedure in the cath lab, did you have any criticisms of any of the Renown employees, I guess at that time they would have been Washoe Med employees, and the way they handled themselves?
A. I did not.
Q. Did you believe that there was any type of malpractice that should be asserted against Washoe Med, now known as Renown?
A. I'd never thought about it, but I don't believe so.
Q. And then you said once the patient was transferred, it takes 24 to 48 hours to see how well the patient is going to do. I take it --
A. I'm sorry. Go ahead.
Q. I take it that you're talking about the lack of oxygenation to the brain?
A. Neurologic, how a patient will respond after a code situation. That -- how they will do neurologically,

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it takes 24 to 48 hours to determine after an arrest whether they're going to get a meaningful recovery.

Q. Do you have any estimate of how long this arrest was?

A. I can only go back to the code note. I know the reps start at 12:39, and it says that a blood pressure was obtained by 12:54. I can't that say that 12:54 was the first time that the pulse was found, that's just what was documented. It doesn't have the timing of the pericardiocentesis on the code note.

Q. And when a person has had an arrest for approximately 10 to 15 minutes, what does the outcome generally mean?

A. It varies. I'm not a neurologist. I mean, it varies.

Q. And in Mr. DeChambeau's case what was his status after 24 to 48 hours?

A. As per the neurologist, they didn't think he would make meaningful recovery. At least that's what I read. I wasn't part of those meetings.

Q. Now, I know that you talked with Mrs. DeChambeau to let her know about the complications and what had occurred. Do you recall any other conversations with her?

A. I recall the conversation after the -- in the

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cath lab waiting room, and I recall maybe a conversation that evening, but I don't remember the content of it.

Q. Did you ever say anything to her like he's lost oxygen to the brain or he may not -- you know, he may not make it or anything like that?

A. I don't know.

Q. Just don't recall the specifics?

A. I don't remember.

Q. Did you ever talk with their son, by any chance?

A. I don't know. I do believe he came by once in the coronary care unit, but I don't remember whether I had talked to him.

Q. Doctor, I'm going to represent to you that I received a letter from Mr. Kozak indicating that he retained a Dr. Mark Seifert, the director of electrophysiology at John C. Lincoln Hospital in Phoenix. Do you know him?

A. I don't.

Q. I can represent to you that when these opinions were given, the doctor had not yet reviewed the Prucka disk, so it was based on the records. It says that Mr. -- Mr. Kozak is representing to me what Dr. Seifert is saying. So I don't know the accuracy of these statements, I'm just going to read them to you.

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It said that "Dr. Smith violated the standard of care by failing to restore Neil DeChambeau's pulse within an almost four to five minutes of the time he underwent a cardiac arrest at 12:39 p.m. on September 7, 2006."

Do you know anything about this timing of four to five minutes and if this is close to what occurred?

A. I have no idea about that. And a lot of it depends on if the patient is getting CPR at the time also.

Q. Said, "Dr. Smith should have assumed the worst (cardiac tamponade) and responded to the emergency by immediately inserting a needle and drain the pericardial sac surrounding the heart through one of several approaches, followed by a pericardiocentesis, removal of the accumulated blood in the sac immediately upon onset of cardiac arrest and loss of blood pressure."

I'm going to kind of break this down. Did you assume the worst, cardiac tamponade?

A. I did.

Q. And how did you respond to this?

A. I did a pericardiocentesis.

Q. And once you assumed it, how long does it take to do a pericardiocentesis?

A. It varies. I mean some are difficult and some

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aren't difficult.

Q. Do you recall in this case --

A. I don't remember it being difficult. But to get all the fluid out, you have to drain it. So it depends -- to complete the procedure, it depends on how much blood is in the sac. If you only had 30 or 40 CCs it would be quicker than if you had 300 CCs.

Q. So you have to take out the 300 CCs to complete the pericardiocentesis?

A. Correct.

Q. So you inserted the needle and drained the pericardial sac, is that correct?

A. Yes.

Q. And then it was followed by a pericardiocentesis, is that correct?

A. That's all a part of the same thing.

Q. Oh, it's the same?

A. Um-hum.

Q. Okay. And it says, "Confirmation of cardiac tamponade using transthoracic echo prior to the pericardiocentesis resulted in an unnecessary harmful delay in treatment."

First of all, did you use the echo prior to doing the pericardiocentesis?

A. No.

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Q. In your opinion was there any unnecessary delay?
A. No.
Q. And it said, "He not only ordered an echocardiogram, but commenced CPR. CPR was ineffective because of compression of the heart by the accumulated pericardial blood preventing it from pumping." Do you agree with that statement?
A. I mean you have to get rid of the pericardial fluid, but it's standard therapy to do CPR while you're doing a pericardiocentesis.
I don't know if that's 100 percent accurate.
Q. And you would do CPR --
A. Of course you would do CPR at the same time.
Q. And it says, "Waiting for the echo machine to arrive and getting it hooked up wasted time needed to perform the procedures." Did that occur?
A. Did not.
Q. And he says, "By the time Dr. Smith got around to doing what was demanded by the prevailing standard of care, 15 minutes had elapsed without oxygen to Neil's brain." Did you stand around for 15 minutes?
A. Absolutely not. It's a code situation.
Q. And to your knowledge, was there any delay of 15 minutes?

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A. No.
Q. Sounds like to me he believes that you waited for a technician and a transthoracic echo machine before you did the procedure. Did that occur?
A. No.
Q. Go through my little outline here, and I think we're pretty close to being done, Doctor.
MS. PISCEVICH: I don't think I have any other questions. Thank you, Doctor.
EXAMINATION
BY MR. KOZAK:
Q. Dr. Smith, I'm Chuck Kozak and I'm representing the DeChambeau family. I just have a few questions.
First of all, around the time that you were doing this procedure on Neil DeChambeau, how many of these procedures were you doing a year?
A. I don't know.
Q. Have any idea?
A. I don't have an exact number.
Q. Could you give us an approximate number?
A. I'm not sure it will be accurate.
Q. Okay. Now doing the procedure on the left ventricle is a little bit more complicated and tricky than doing it on the right ventricle, isn't that true?

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A. I wasn't doing anything on the left ventricle.
Q. You weren't involved in the left ventricle at all in the ablation procedure?
A. No. I was involved in the left atrium.
Q. Okay. Is that a little more complicated when you're dealing with the left atrium as well as the right?
A. It's a higher-risk procedure.
Q. Did you explain that to Mr. DeChambeau?
A. Yes.
Q. And how many of those procedures do you do that involve the left atrium at that time per year?
A. I don't know the exact numbers.
Q. Do you know an approximate number?
A. I don't. It would be just speculation.
Q. Prior to this procedure on Neil DeChambeau, had you ever had a cardiac arrest occur during the performance of your ablation procedure?
A. An A-fib ablation, no.
Q. So this is the first time this has happened to you?
A. An A-fib ablation with cardiac arrest, yes.
Q. And what was your understanding of the standard of care when that happens; what's the first thing you should do?
A. I don't understand. What are you asking?

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Q. When you have a cardiac arrest and you're doing an ablation procedure, is there a standard of care in your profession as to what you need to do as the physician in charge, the first thing you need to do?
MR. LEMONS: Objection, incomplete hypothetical.
THE WITNESS: I don't know -- I don't know how to answer that question. I'm sorry.
BY MR. KOZAK:
Q. Well, what is the first thing you did when the patient went into cardiac arrest at 12:39?
A. I did CPR and presumed it was pericardial fluid and did a pericardiocentesis.
Q. What came first, the CPR or the pericardiocentesis?
A. I don't know. Usually it's both simultaneous.
Q. And who did the CPR?
A. The techs, the nurse; not me.
Q. You don't disagree, do you, with the records which show that the pulse stopped at 12:39 and that it started again at 12:54?
A. I don't disagree with the pulse stopping at 12:39. In regards to 12:54, I don't know whether that's completely accurate, because I'm in the middle of doing the pericardiocentesis. Somebody has to be checking the

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pulse constantly. So I don't know whether it started back at 52, 49 or 48.

Q. Well, do you have any reason to disagree with the record that said it started at 12:54?

A. I don't really understand. I don't know. I mean, it certainly could have started back at 12:54. I think the code started at 12:39.

MR. KOZAK: Could we have this marked next in order.

(Exhibit 5 was marked for identification.)

BY MR. KOZAK:

Q. I'm going to show you Dr. Morady's affidavit. I think you've seen this before. Referring you to paragraph ten. I think it's on page three. Dr. Morady states, "I believe to a reasonable degree of probability that the care provided by David Smith, M.D., was negligent and breached the standard of care owed to Neil DeChambeau in the following particulars: a) David Smith, M.D., failed to timely diagnose that Neil DeChambeau was experiencing cardiac tamponade." And, "b) David Smith, M.D., failed to timely perform a pericardiocentesis procedure on Neil DeChambeau." Do you see that?

A. I do see that.

Q. Okay. Do you disagree with Dr. Morady's

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statement there in his affidavit?

MS. PISCEVICH: Just before you answer, I'm going to insert an objection, because he's relying on paragraph nine of the anesthesia record, which I just wanted to point that out.

So feel free to answer the question, Doctor. It's an incomplete hypothetical.

THE WITNESS: When Dr. Morady reviewed the records, he looked at anesthesia record, he didn't see the code note. The code note stated that the code started at 12:39 and blood pressure pulse was back by 12:54. He was looking at the anesthesia record, from what I hear.

MS. PISCEVICH: Well it states it in paragraph nine, Doctor.

THE WITNESS: Does it?

MS. PISCEVICH: Yes. If you look at the preceding paragraph.

THE WITNESS: Anesthesia record. That's not the formal record. The formal record is the code note.

BY MR. KOZAK:

Q. So it's your contention then, that if the pulse was not restored until 12:54, that was within the standard of care, as far as restoring a pulse to a patient who has undergone a cardiac arrest?

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A. I don't know if there's a standard of care. When you're in the middle of a code situation, you're doing everything you can to restore the patient's blood pressure, pulse. I don't think you're going to find something that's going to be written or published that has to be done within 15 minutes or 10 minutes or 5 minutes or 2 minutes. You just do your best, which is -- in the code situation.

Q. And under these circumstances; Mr. DeChambeau's brain was actually deprived of oxygen for long enough to basically lead to his demise, isn't that true?

MR. LEMONS: He can answer that, except to the extent that you're asking for the expert opinion of a neurologist or a neurosurgeon, which, as he said earlier, he's not.

THE WITNESS: I'm not a neurologist. He did pass away.

BY MR. KOZAK:

Q. So as you sit here today, you do not know how long Neil DeChambeau's brain was deprived of oxygen, is that correct?

A. I don't know the exact time.

Q. Were the materials in the operating room available to you to do the pericardiocentesis --

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A. Yes.

Q. -- as soon as he went into cardiac arrest?

A. Yes.

Q. Were there cameras placed in the atrium at the time of the cardiac arrest?

A. There's no camera in the atrium.

Q. So there was no way you could visualize what was going on?

A. No.

Q. When Mr. DeChambeau was brought out of the operating room, was he on a gurney and brought out in front of Mrs. DeChambeau?

A. I don't know. He would have been brought out on a gurney; I don't know if he was brought out in front of Mrs. DeChambeau.

Q. Do you know if he was hooked up to any tubes or anything when he came out of the operating room to go up to ICU?

A. I'm assuming he was still on the ventilator, so he definitely was hooked up to the ventilator.

Q. Anything else?

A. He had a tube in the pericardial space to prevent recollection of the blood and he had some IV catheters. There could have been something else. He might have had a catheter in the bladder, too.

Q. Was there an investigation done of this particular procedure by the hospital or by any entity that you know of?
A. I don't know.
Q. You're not aware of any?
A. From the hospital, no.
Q. Or any entity. Not only the hospital, but anybody was doing an investigation of what happened in the operating room?
MR. LEMONS: Well, we had a lawsuit. And to the extent that we examined what occurred, that would all be privileged.
BY MR. KOZAK:
Q. I'm not talking about the lawsuit. I'm talking about the hospital or somebody doing an independent investigation, apart from your discovery or investigation.
A. I don't know.
Q. Have you ever had a fatality prior to this procedure in 2006 as a result of one of your cardiac ablation procedures?
MR. LEMONS: I'm just going to object. That's vague. I don't understand what you're --
THE WITNESS: You mean by a fatality, somebody died two weeks later or three weeks later?

BY MR. KOZAK:
Q. No. Before.
A. On the table?
Q. Yes. Like Neil DeChambeau.
MS. PISCEVICH: I'm going to object. He didn't die on the table.
BY MR. KOZAK:
Q. Well, that he suffered substantial injury on the table?
A. I don't know. I can't recall.
Q. You can't recall?
A. I can't recall that ever happening, except --
Q. Prior to Mr. DeChambeau's demise?
A. Correct, but I've been practicing for 20 years.
MR. KOZAK: Okay. I think that's all the questions I have.
THE WITNESS: Thank you.
MS. PISCEVICH: With respect to the original, why don't you go ahead and send it to me and send a copy to Mr. Lemons with the original correction page and signature page. And I will do my normal order with the exhibits.
MR. KOZAK: Just regular copy is fine.
(Whereupon the deposition concluded at 6:15 p.m.)
--oOo--

--o0o--

CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury, that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

DATED: At _____, _____.
(City) (State)

This ____ day of _____, 2013.

_____
DAVID E. SMITH, M.D.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, EVELYN J. STUBBS, a Certified Court Reporter in and for the County of Washoe, State of Nevada, do hereby certify:
That on Tuesday, the 7th day of May, 2013, at the hour of 2:04 p.m. of said day, at the offices of Lemons, Grundy and Eisenberg, Attorneys at Law, 6005 Plumas Street, Third Floor, Reno, Nevada, personally appeared DAVID E. SMITH, M.D., who was duly sworn by me, and thereupon was deposed in the matter entitled herein;
That said deposition was taken in stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;
That the foregoing transcript, consisting of pages 1 through 54, is a full, true and correct transcript of my stenotype notes of said deposition to the best of my knowledge, skill and ability.
DATED: At Reno, Nevada, this 20th day of May, 2013.

_____
EVELYN J. STUBBS, CCR#356

CHANGES/CORRECTIONS/NOTES

Page	Line	

EXHIBIT "2"

EXHIBIT "2"

$1425
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2007 SEP -5 PM 1:45
AMY A. ... JR.
BY D. Jaramillo

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU, individually, JEAN-PAUL DECHAMBEAU and ANGELA DECHAMBEAU as Special Administrator of the Estate of Neil DeChambeau,

Plaintiffs,

v.

DAVID SMITH, M.D., BERNDT, CHANEY-ROBERTS, DAVEE, GANCHAN, ICHINO, JUNEAU, NOBLE, SEHER, SMITH, SWACKHAMER, THOMPSON, WILLIAMSON, and ZEBRACK, LTD., a Nevada professional corporation, DAVID KANG, M.D., RINEHART, LTD., a Nevada professional corporation, and DOES 1-10,

Defendants.

Case No. CV07 02028

Dept. No. 4

SB00280

COMPLAINT

COMES NOW, PLAINTIFFS ANGELA DECHAMBEAU, JEAN-PAUL DECHAMBEAU, AND THE ESTATE OF NEIL DECHAMBEAU by and through their Attorneys THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER and for their Complaint hereby allege as follows:

1. At all relevant times, Angela DeChambeau and Jean-Paul DeChambeau were adult, competent residents of Reno, Nevada at the time of the incident set forth in this Complaint.

2. At all relevant times, Angela DeChambeau was the wife of Neil DeChambeau.

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3. At all relevant times, Jean-Paul DeChambeau was the son of Neil DeChambeau.

4. On September 8, 2006, Neil DeChambeau died.

5. On December 26, 2006, Angela DeChambeau was appointed special administrator of the Estate of Neil DeChambeau.

6. On information and belief, Defendant David Smith, M.D. was at all times relevant hereto a physician licensed in the State of Nevada and practicing in the area of cardiology.

7. On information and belief, at all relevant times herein Defendant Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd., was a Nevada professional corporation organized and existing under the laws of the State of Nevada and operating in Reno, Nevada as an office for heart care. Upon information and belief, Defendant David Smith was an employee of Defendant Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. at all relevant times herein.

8. On information and belief, David Kang, M.D. was at all times relevant hereto a physician licensed in the State of Nevada and practicing in the area of anesthesia.

9. On information and belief, at all relevant times herein, Rinehart, Ltd., a Nevada professional corporation located in Reno, Nevada was corporation organized and existing under the law of the State of Nevada and operating in Reno, Nevada as an office providing anesthesia care. Upon information and belief, Defendant David Kang, M.D. was an employee of Rinehart, Ltd., at all relevant times herein.

10. Plaintiffs do not know the true names or capacities of those other Defendants named herein as DOES 1-10 and therefore, Plaintiffs sue said Defendants by said fictitious names. Plaintiffs are informed and believe and thereon allege that each of said Defendants are legally responsible under the claims for relief plead herein for the events and happenings herein referred to and proximately caused damages to Plaintiffs as alleged herein. Plaintiffs pray that when the true names of said Defendants are ascertained, Plaintiffs may insert the names herein with the appropriate allegations.

11. That at all times mentioned, Defendants were the agents, servants and/or employees of the other Defendants and were acting with permission and consent within the course and scope of their agency and employment; that all such Defendants were responsible in some manner for the events and happenings referred to herein and proximately caused damages to Plaintiffs as alleged herein.

12. At all relevant times herein, Defendant Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. in connection with its activities, employed or otherwise retained or procured the services of technicians and other professional employees, including but not limited to Defendant David Smith, M.D. and held them out and warranted them to the public as competent, careful, and experienced in the care and treatment of patients such as Neil DeChambeau.

13. At all relevant times herein, Defendant David Smith, M.D. individually and as an agent, servant and/or employee of Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. held himself out to Plaintiffs in particular and the public in general as being an able and skilled physician in the area of cardiology possessing the same or higher level of skill and training as other members in his profession and that he was able to render proper and adequate care and treatment to Neil DeChambeau.

14. At all relevant times herein, Defendant Rinehart, Ltd. in connection with its activities, employed or otherwise retained or procured the services of technicians and other professional employees including but not limited to Defendant David Kang, M.D., and held them out and warranted them to the public as competent, careful, and experienced in the care and treatment of patients such as Neil DeChambeau.

15. At all relevant times herein, Defendant David Kang, M.D. individually and as an agent, servant and/or employee of his medical entity and/or Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson, and Zebrack, Ltd. held himself out to Plaintiffs in particular and the public in general as being an able and skilled physician in the area of anesthesia possessing the same or higher level of skill and

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training as other members in his profession that he was able to render proper and adequate care and treatment to Neil DeChambeau.

16. All incidents and actions complained of herein occurred in Reno, Washoe County, Nevada.

17. The requisites of NRS 41A.100 are fully and timely complied with by the attachment herein of the Affidavit of Fred Morady, M.D. attached hereto as Exhibit "A" and the Affidavit of William J. Mazzei, M.D. attached hereto as Exhibit "B."

18. This action is governed by the provisions of NRS 41A and is thus exempt from any court annexed arbitration program.

FIRST CLAIM FOR RELIEF

(Negligence)

19. Plaintiffs incorporate herein by reference as if fully set forth herein at length the allegations contained in paragraphs 1-18 of Plaintiffs' Complaint.

20. On September 7, 2006, Neil DeChambeau was 57 year old male in good physical health who was admitted to Washoe Medical Center to undergo an atrial fibrillation ablation procedure to address a previously diagnosed paroxysmal atrial fibrillation.

21. On the morning of September 7, 2006, Neil DeChambeau was brought to the cath lab at Washoe Medical Center where David Kang, M.D. induced anesthesia. Neil DeChambeau was intubated and anesthesia was maintained throughout the atrial fibrillation ablation procedure.

22. At or about 12:39 p.m., Neil DeChambeau suddenly developed cardiac arrest. In response to the cardiac arrest advance cardio pulmonary resuscitation was instituted on Neil DeChambeau and multiple doses of vasoactive drugs were administered as chest compressions were performed.

23. At or about 1:00 p.m., an echo-cardiogram of the heart showed a cardiac tamponade.

24. At or about 1:00 p.m., a pericardiocentesis was performed and approximately 300 ccs of blood were removed from Neil DeChambeau's pericardial sac.

SB00283

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25. David Smith, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.

26. David Smith, M.D. failed to timely perform a pericardiocentesis procedure on Neil DeChambeau.

27. David Kang, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.

28. David Kang, M.D. failed to timely recommend to David Smith, M.D. that he perform a pericardiocentisis on Neil DeChambeau.

29. David Kang, M.D. failed to timely perform a pericardiocentisis on Neil DeChambeau.

30. The conduct of David Smith, M.D. set forth in paragraphs 25 and 26 fell below the standard of care owed by David Smith, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.

31. The conduct of David Kang, M.D. set forth in paragraphs 27, 28, and 29 fell below the standard of care owed by David Kang, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.

32. As the direct and proximate result of the negligence of Defendants, Plaintiff Angela DeChambeau and Plaintiff Jean-Paul DeChambeau suffer and will continue to suffer grief, loss of probable support, companionship, society, comfort and consortium of Neil DeChambeau.

33. As a direct and proximate result of the negligence of Defendants, Plaintiff Estate of Neil DeChambeau has sustained special damages including medical expenses which Neil DeChambeau incurred or sustained prior to his death and funeral expenses.

34. As a direct and proximate result of the negligence of the Defendants, Plaintiff Angela DeChambeau and Plaintiff Jean-Paul DeChambeau sustained damages for pain, suffering or disfigurement of Neil DeChambeau.

35. Plaintiffs have been required to employ the services of legal counsel to prosecute action and to expend monies for the presentation of this claim in accordance with statutory requisites. Plaintiffs are entitled to attorney's fees and costs of suit including such costs and

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expenditures to employ medical experts for the presentation of this claim.

WHEREFORE, Plaintiffs Angela DeChambeau and Jean-Paul DeChambeau pray for relief against Defendants and each of them as follows:

1. For general damages including damages for pain, suffering and disfigurement of the decedent in an amount to be proven at trial.

2. For special damages, pecuniary damages for grief, loss of probable support, companionship, society, comfort and consortium in an amount to be proven at trial.

WHEREFORE, Plaintiff the Estate of Neil DeChambeau prays for relief against Defendants and each of them as follows:

1. For special damages including medical expenses which the decedent incurred or sustained before his death and funeral expenses.

WHEREFORE, all Plaintiffs pray for relief against Defendants and each of them as follows:

1. For attorneys fees and costs to be incurred in prosecuting this action and for such further relief as to this Court as appears just and equitable.

DATED this 4th day of September, 2007.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: _____
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SB00285

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that the preceding document filed in above-entitled court does not contain the social security number of any person.

DATED this 4th day of September, 2007.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: _____
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SB00286

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EXHIBIT "1"

EXHIBIT "1"

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
--oOo--

ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, both Individually and as SPECIAL ADMINISTRATORS of the ESTATE OF NEIL DECHAMBEAU,
Plaintiffs,
vs.

STEPHEN C. BALKENBUSH, ESQ., THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, a Nevada Professional Corporation; and DOES I through X, inclusive,

Defendants.

Case No. CV12-00571
Dept. No. 7

DEPOSITION OF DAVID E. SMITH, M.D.
Tuesday, May 7, 2013
Reno, Nevada

Reported by: EVELYN J. STUBBS, CCR #356
MOLEZZO REPORTERS
(775) 322-3334

APPEARANCES OF COUNSEL:

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For David E. Smith, M.D.:

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Attorneys at Law
By: Edward J. Lemons, Esq.
6005 Plumas Street
Third Floor
Reno, Nevada 89519
775.786.6868
ejl@lge.net

Also Present:
Angela DeChambeau
Jean-Paul DeChambeau

INDEX

THE WITNESS: DAVID E. SMITH, M.D.

* * *

INDEX OF EXHIBITS

PURSUANT TO NOTICE, and on Tuesday, the 7th day of May, 2013, at the hour of 2:04 p.m. of said day, at the offices of Lemons, Grundy and Eisenberg, Attorneys at Law, 6005 Plumas Street, Third Floor, Reno, Nevada, before me, Evelyn J. Stubbs, personally appeared DAVID E. SMITH, M.D.

DAVID E. SMITH, M.D.,
called as a witness by the defendants herein,
being first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MS. PISCEVICH:

Q. Dr. Smith, I think we've met before, but my name is Margo Piscevich, and I represent Steven Balkenbush in an action that has been brought against him for legal malpractice by Mrs. DeChambeau and her son. This arises out of a practice lawsuit that Mr. Balkenbush filed on their behalf against you and Dr. Kang.

The first question is, obviously, would you please state your full name for the record.

A. I'm David Smith.

Q. And what is your profession or occupation?

A. I'm a cardiologist.

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Q. And, Dr. Smith, where is your office currently located?
A. 343 Elm Street, Reno, Nevada.
Q. And would you briefly go through your educational background, starting with medical school. And I'd like the institution and the year.
A. I graduated from NYU Medical School in 1988, U.C. San Diego for medicine in 1991, Harbor-UCLA, for cardiology in 2005, Stanford for electrophysiology in -- I got that wrong. Sorry. So let me write it down.
Q. I could have brought you an exhibit from Mr. Lemon's office. I mean from his deposition that I think I had your CV on it.
A. So '88 to '91 for U.C.S.D.; '92 to '95, Harbor-UCLA; and '96, Stanford for electrophysiology. Sorry.
Q. So is the Stanford electrophysiology a fellowship?
A. It is.
Q. And for the record, what is a fellowship?
A. It's a specialty in arrhythmia medicine.
Q. And then once you obtained your fellowship, then what did you do?
A. I went into practice here.
Q. In Reno?

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A. Um-hum.
Q. Is that a "yes"?
A. Yes.
Q. And --
A. Sorry.
Q. It's all right. I may remind you.
And was that with Reno Heart Physicians?
A. Correct.
Q. And so you would have started in approximately 1996, 1997 to date?
A. Correct. Correct.
Q. And in layman's terms, what is your specialty?
A. I deal with heart rhythm problems, pacemakers, defibrillators, arrhythmias.
Q. Do you have any independent recollection of the patient Mr. DeChambeau?
A. I remember certainly a lot about the case.
Q. I'm going to ask you a couple of questions with respect to the underlying malpractice case where you were named as a party. Did you ever consent to settlement?
A. No.
Q. And why not?
A. I didn't think I did anything wrong.
Q. What do you recall specifically about the case

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that's not in the records, because we will be going over the records?
A. Excuse me. I don't understand the question.
Q. Do you recall anything about the underlying case that is not contained in the records? I mean something separate, like maybe you had talks during or after this event or something like that.
A. Not really.
Q. Okay. From a review of the records, then, do you have a recollection of the case?
A. I do.
Q. And did you bring those records with you today?
A. I did.
Q. And I brought a copy too, so I don't intend to attach them to this deposition.
A. Okay.
Q. You indicated that you didn't believe that you did anything wrong. Can you just say in general terms why you believe that the underlying case was one that was defensible on your behalf.
A. Well, we did an atrial fibrillation ablation. There was a complication, which involved pericardial tamponade, which I diagnosed, treated; outcome was not good, but it was done in a rapid manner, just kind of to

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what would be standard care of a complication that's known with this procedure.
Q. Are you familiar with Dr. Kang?
A. I am.
Q. And how do you know Dr. Kang?
A. Colleague, does anesthesia for some of my cases.
Q. And I take it you had hadn't worked with him before this event occurred in --
A. I believe so.
Q. Okay. And was there ever a VT in this case?
A. There was not.
Q. Okay. And I'm talking about a ventricular tachycardia when I use VT.
A. Right.
Q. For the record, what is that?
A. It's a life-threatening arrhythmia that comes from the bottom chamber from the ventricle of the heart.
Q. Are you familiar with his anesthesia record? And I do have a copy of it here we can mark as a separate exhibit. And start as Exhibit No. 1.
(Exhibit 1 was marked for identification.)
BY MS. PISCEVICH:
Q. Take a minute, and I'm sure you've seen this before.

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A. I have.
Q. You'll note on the second page at 1222, I think this says, "Defibrillate with 120 joules for v-tach"?
A. Correct.
Q. And you indicated that the patient never had v a-tach, is that correct?
A. Correct.
Q. What occurred during this approximate time of 1222?
A. Following ablation on the left side, we attempt to reinduce atrial fibrillation, which I did reinduce atrial fibrillation. Atrial fibrillation had a rapid tach. It was rapid. Patient was -- atrial fibrillation also had both aberrancy and nonaberrancy.
Aberrancy is when the QRS gets a little bit wide and it can kind of look like VT, but isn't VT. But the printout that I looked at at the time of the cardioversion was narrow. So it was definitely A-fib with rapid ventricular response. And he had had aberrancy before when he went fast in A-fib, where he had this thing that was called a left bundle branch block or something that could be confused with VT. But he did not have VT.
Q. And could you tell that on which test that you

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looked at?
A. On the Prucka disk, when you print out the EKGs, all those things are kind of saved on that stuff. I went back and looked at it again and it was definitely A-fib with a narrow complex, not VT.
Q. There was some information in the file that Dr. Kang had a different timing for the pericardiocentesis. Is that a correct statement that he was wrong on that as well?
A. He's definitely wrong, because the code had already finished by then. And the accurate records for the code note are the code note. The anesthesiologist is there helping with the code, he's not there as a scribe. The person that's supposed to be the describe is the person doing the code note. So the code had already stopped by 12:54. He said the echo came at 1:00 or something. I'd a have to look at exhibit.
MS. PISCEVICH: Would you please mark Exhibit No. 2.
(Exhibit 2 was marked for identification.)
BY MS. PISCEVICH:
Q. Is Exhibit 2 a copy of the code note?
A. Correct.
Q. Is what you're referring to is what on this exhibit?

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A. The beginning of the code was at 1239, which is on the top of the code note on 9-7 of 2006. And patient pulse detected by 1254.
Q. I believe Dr. Kang in his notes indicated 1:00 o'clock or something to that effect?
A. Correct.
Q. Other than the notation that there was a VT when there wasn't and the timing of the pericardiocentesis, do you recall any other notations by Dr. Kang that you thought might be inaccurate?
A. I have to look at the -- oh, you mean on his anesthesia record?
Q. Yes.
A. Well, the timing of the cardiac arrest on the charts says 1250. So that's not accurate. It says the transthoracic echo was at 1300. That's not accurate. Maybe it was accurate to his phone or whatever he was using, but it wasn't accurate -- the code note is accurate. That's what the scribe does. All they do during the code is write down accurate information.
Q. When the code happens and somebody comes in to do this, do they actually yell out, you know, what happened at this time or something to that effect, so everybody in the room is sort of aware of what's going on?

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A. A lot of times when you push drugs, you say, "Epinephrine is pushed." Then the person that is writing down the code stuff will document that and then basically put the time down.
Q. Were you ever critical of the conduct of Dr. Kang in the underlying case?
A. No.
Q. Were you ever during this procedure?
A. No.
Q. Do you know if Dr. Kang had privileges that allowed him to do a pericardiocentesis?
A. He should not have privileges for that. I don't know for sure, but that would not be a standard privilege for an anesthesiologist.
Q. I want to backtrack now to Mr. DeChambeau and talk to you a little bit about the records at Reno Heart. If I'm correct, he first came in in December 2005. Is that correct?
A. He saw my partner at first, I think Dr. Berndt. I don't know the exact dates.
Q. I have different page numbers, but I show the first consultation on December 28, 2005, with Dr. Berndt.
A. 12-28-2005, correct.
Q. And just in layman's terms, why did he come in to see Dr. Berndt?

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A. Recurrent palpitations, unknown etiology. Had been going on for some time. At least that's what he documented.

Q. And it looks like the next visit was January 18th of 2006, and he was seen by Dr. Grinsell. Is that another partner in the group?

A. Correct.

Q. And what did Dr. Grinsell note?

A. I think he was scheduled for a stress echo that day. And he was noted to be in atrial fibrillation with rapid ventricular response. And I think the stress echo might have been cancelled because of that.

Q. And in layman's terms, what is atrial fibrillation?

A. It's an irregular heart rhythm, which starts in the upper chamber of the heart, increases the risk of stroke. A lot of patients feel poorly with it.

Q. And then it looks like that stress echo was done on approximately March 20th of 2006, is that correct?

A. I don't know the exact date. There is a record of it in here somewhere. It's not in here -- not in exact location, but he did have a stress echo, I know that.

Q. Do you recall, without looking at that actual

Page 14

document, what the echocardiogram revealed?

A. Without looking at it?

Q. I mean, if you recall. If you can find it --

A. It's right here. Left ventricular hypertrophy, normal LV function, enlargement of both atria, some valve leakage. It was negative for myocardial ischemia. So it was not suggestive of coronary artery disease.

Q. And are those findings good findings or bad findings?

A. It's a good finding that he didn't have myocardial ischemia, it's a good finding that his heart function was normal, less good finding that his atrium are enlarged when it comes from atrial fibrillation.

Q. It's something to watch?

A. Exactly.

Q. And after the stress echocardiogram was done, did he continue to come back and treat with Reno Heart Physicians?

A. I believe so.

Q. And if I understand correctly, it was Dr. Berndt that thought he may need a possible ablation, is that correct?

A. Correct.

Q. And then he was referred to you?

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A. Correct.

Q. When is the first date that you actually saw Mr. DeChambeau?

A. 5-15-2006.

Q. And what did your evaluation reveal?

A. There was a question of whether he had supraventricular tachycardia, which is another arrhythmia that goes along with A-fib and sometimes leads to A-fib. And he had documented atrial fibrillation also. So that was symptomatic and pretty well documented on his previous medical records.

Q. I realize you may not know this word for word, but when you have these types of findings, do you sit down with the patient and explain what occurred?

A. I try to. You know, I can't swear to what I did in 2006, but, of course, I try to make it understandable to the patient and the patient's family.

Q. And in layman's terms what would your custom and practice be about telling a patient what these findings, what they mean?

A. I'd say, "The standard treatment would be -- that by having atrial fibrillation, you're at higher risk of stroke, and therefore, that's why the anticoagulation is prescribed for you."

In regards to treatment, we generally try

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antiarrhythmic medications first. If the antiarrhythmic medications fail or patients get too many side effects with antiarrhythmic medications, then we consider more invasive options.

Q. And if somebody has the same kind of findings as Mr. DeChambeau did in May of '06 and do not treat it, then it can result in a stroke?

A. Correct.

Q. How did Mr. DeChambeau progress?

A. We started him with medications, with Tambocor, which we started him at 100 milligrams twice a day. And we also I think gave him an event recorder to try to record whether he was having recurrent arrhythmias. I don't recall whether that occurred on the first visit or the next.

5-31, I gave him the event recorder.

Q. And the event recorder tries to monitor the heart?

A. Right. If patients have recurrent atrial arrhythmias, it's something to record what's going on.

Q. And after he received the recorder and the medications, how did he progress?

A. He had some improvement with the medications, but not complete control. He had significant fatigue with the medications. We tried lowering the dose to

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50 milligrams twice a day, but he continued to have arrhythmias at that point on the medications.
Q. And then I know that he returns on July 12, 2006, is that correct?
A. Correct.
Q. And at this point what was his status?
A. He was still having recurrent atrial arrhythmias. And we discussed medicines and we also discussed catheter ablation. And then he was asked to follow up with me in six weeks.
Q. Now when you say that you did discuss the supraventricular tachycardia ablations, what did you tell him about that process?
A. For A-fib ablation or SVT ablation?
Q. I thought your note said SVT ablations, but I could be wrong.
A. It says both.
Q. Okay.
A. I had a question whether the patient had SVT, which also can be treated with ablation with a 90 to 95 percent success rate. I also discussed A-fib ablation, which has a 60 percent success rate, but has more risks than the SVT ablation. So I talked about both of those.
Q. For lay people, what's the difference between

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those two ablation procedures?
A. SVT ablation is a single circuit, either on the left side or the right side. It's easier to ablate with a higher success rate. That's why I'm quoting a 90 to 95 percent rate with that type of ablation, because you're burning out one circuit, as opposed to A-fib, which is multiple circuits, and therefore, much more difficult as a procedure and a longer procedure.
Q. And at this time you were fairly sure he had the A-fib?
A. I knew he had A-fib. There was a question from history whether he had SVT. Some people have SVT and A-fib. So if we were going to go in for an A-fib ablation, we would also look for SVT, which would be standard.
Q. And I take it after you discussed this matter with him in July of 2006, eventually he agreed to do this, is that correct?
A. I think he called or a family member called and scheduled after.
Q. According to one of the notes in your records it says that his wife called and indicated the patient decided to go through with the procedure.
A. That might be it.
Q. Up to this point, had you ever spoken to

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anybody other than Mr. DeChambeau?
A. I believe his wife came to the visits, but I can't say with certainty to all visits.
Q. If I understand correctly then, a decision had been made to go forward. And I take it this is a scheduled procedure, is that correct?
A. Correct.
Q. When was this procedure to take place?
A. Exact date, I don't -- I think it was September 6th, if I remember correctly.
Q. I know that your history and --
A. September 6th or 7th. It was the 7th.
MS. PISCEVICH: May I have this marked as exhibit next in order.
(Exhibit 3 was marked for identification.)
BY MS. PISCEVICH:
Q. Doctor, is this the History and Physical that you dictated for this procedure?
A. Correct.
Q. And it's fairly self-explanatory. In the first part you give the reasons for what you're doing, is that correct?
A. Correct.
Q. And you indicate that he's had a 25-year history of arrhythmias and two types. One being rapid

Page 20

and irregular, and another one being rapid and regular. What are you basically trying to say there?
A. I'm trying to say that he definitely has atrial fibrillation, but there's a possibility that he has SVT also, because that would give you the regular one.
Q. And then if I understand, you go through the history of the diagnosis studies that he underwent and then you do an assessment and plan. And what was your assessment and plan with respect to this patient?
A. A recurrent atrial fibrillation with possible PSVT and wished to go ahead with possible -- we should go ahead with catheter ablation for possible cure.
Q. Now you indicate in here that the risks and benefits of the procedure were explained. And I mean, I can read what you've written here. And are these basically what you would have told Mr. DeChambeau?
A. Correct.
Q. Do you know if his wife was present when you went over the risks and the benefits?
A. I don't.
Q. And for the record, what are the risks of this procedure?
A. Bleeding, stroke, heart attack, death, punctured lung, blood in the thorax, atrial esophogeal

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fistula, pulmonary vein stenosis. There's some other risks also that are not listed there, but those are the main ones. Clot formation.

Q. And what are the chances of a complication occurring?

A. One to three percent.

Q. So it's a low risk, but known complications?

A. Correct.

Q. And you indicate in here, you put in the success rate for the supraventricular tachycardia 90 to 98 and for the fibrillation is approximately 60, is that correct?

A. Correct.

Q. And then you said that he will get a transesophageal echocardiogram and an intracardiac echocardiogram catheter. What were the reasons for this?

A. Transesophageal echocardiogram is to make sure there's no clots in the left side that could break off during the procedure. So you're ruling out any left atrial clot. The intracardiac echo is for the transseptal catheterization, which is the puncturing of the --

THE REPORTER: I'm sorry.

THE WITNESS: The intracardiac echo goes directly up the vein. And it's used for the imaging to

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allow the safe puncture of the septum between the right atrium and the left atrium.

(Exhibit 4 was marked for identification.)

BY MS. PISCEVICH:

Q. Dr. Smith, I've handed you your dictation, which I understand would be done after the procedure, is that correct?

A. Correct.

Q. Do you have any recollection of this procedure separate and apart from your dictation?

What I'm getting at is do you recall the timing of the events and what happened, because it's not exactly set forth?

A. I don't know how to answer that. I mean, I remember some stuff, but this is from 2006. So exact timing, I'd have some difficulty with.

Q. With this particular procedure, where is it done?

A. It's done in the cardiac catheterization lab. This was at Washoe, and now it's Renown.

Q. And besides yourself and an anesthesiologist, who else would be present?

A. There's cardiovascular techs, nurses, I think Dr. Kolli might have been there for a brief period of time for the transesophageal echo.

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Usually in the room there's going to be myself, a nurse, a tech, maybe a scrub. So there's probably three to four other people in the room.

Q. With respect to this particular procedure, I know in your chart there is about a 28-page printout from the cath lab, if I'm not mistaken, that looks like this?

A. Looks like a log, yes.

Q. How does this come about, the log, if you know?

A. It's inputted by the person on the machine, the Prucka. It could be a nurse, but often it's a CV tech.

Q. And you called it a Prucka?

A. Well, that was the recording system we had back then. It's called Prucka, P-R-U-C-K-A. It's owned by GE.

Q. And does the Prucka machine record everything that you do in actual time? I mean, you can pull it off of the machine?

A. Correct.

Q. And this is an actual --

A. Not everything will get recorded. I mean, not every second. So you can turn it on and turn it off for recording electrocardiograms, but it is based on a clock, that's correct. But if you're going to put in

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information, if somebody is going to put information as to when a medication is given, it doesn't do it automatically based on the medication. Somebody has to input in that.

Q. That's what I'm getting at. But in terms of the actual rhythm of the heart, et cetera, that's just an ongoing recording?

A. That's correct.

Q. But if somebody is going to say medication A was given at this time, somebody has to actually type that in?

A. Correct.

Q. In layman's terms -- I understand that this procedure was complicated by the pericardial tamponade. But what occurred, just is in layman's terms, before there was a hemodynamic instability?

A. From the beginning?

Q. Yes, just generally what you had done. I mean, I don't need you to read it, but just kind of an overview.

A. So the patient comes into the lab, receives general anesthesia from the anesthesiologist, then gets prepped and draped, and then we put in venous sheaths. One went into the neck and three down -- at least three down in the groin. Following that we put catheters into

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the heart and do testing of the heart to see if the patient has evidence of PSVT. That's a supraventricular tachycardia, which he did not have. Then following that we knew that he had clinical atrial fibrillation, we went through the standard procedure for an A-fib ablation, which involves isolation of the pulmonary veins. This occurred after the double transseptal catheterization and the mapping.

The mapping is done with a mapping system. And called ESI at that time.

So basically the standard procedure and setting of doing the study first, then the catheter ablation for the A-fib with a mapping system.

Q. Okay. And it says in the middle of the long paragraph that at the end of the ablation, the patient had evidence of some hemodynamic compromise. Was this the very end of the procedure?

A. It was towards the end of the procedure.

He had had ablation on the left side of the heart. And then he had inducible atrial flutter from the right side of the heart. And I believe the hemodynamic compromise occurred after the ablation on the right side of the heart.

Q. And did you recognize this hemodynamic compromise?

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A. I did.

Q. And how did it manifest itself?

A. Minimal blood pressure. Couldn't test a response unless he was under general anesthesia, but his blood pressure went quite low.

Q. And what does that tell you as a cardiologist?

A. When we do ablations on the right side/left side of the heart, the first thing we think about is a bleed. Told me that he probably had a pericardial effusion.

Q. So once you considered a bleed, what did you do?

A. Started CPR, ACLS, called for a stat echo -- I don't know if this is all in sequence -- got a pericardiocentesis tray and went into the pericardiocentesis. Also in that period of time we call the CT surgeons. I don't know when in the process. There's a lot of things going on at once.

Q. There's been some indication that you should have done a pericardiocentesis; just immediately stuck the needle into the heart. Is that common?

A. To do it that way?

Q. Yes.

A. Yes.

Q. Do you know if you did that?

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A. Yes.

Q. Did you have any undue delay in doing it?

A. I don't believe so.

Q. I've never obviously seen the -- is it called a Prucka tape?

A. Right.

Q. Did you ever review that tape?

A. The Prucka tape is the tape of the intracardiac EGMs. It has nothing to do with the pericardial effusion. It won't show you anything when it comes to that.

Q. There's been a lot of controversy in this case about -- I'm going to call it a CD or a disk of the procedure. What am I referencing when I talk about that?

A. Those are the beat-to-beat analyses of the patient's EKG and intracardiac electrocardiograms, which is the recording from inside of the heart, the electrical recordings that were ablated.

Q. If do we refer to this as a CD or a disk or a P --

A. It is a CD of some sort. It's an older system. It can only be read under an older system. So you couldn't pop it into a CD.

Q. Did you review all of these particular tests, including the CD or the disk?

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A. Recently, the CD, or back?

Q. Back then?

A. I did.

Q. And have you reviewed it recently?

A. I haven't, not the CD.

Q. Not the CD?

A. No. Be hard to read it. I don't even think we could read it at this point, it's such old technology. You could probably get somebody to do it, but we don't have the capability to do that.

Q. When you reviewed it at the time of this litigation, do you recall what it revealed?

A. Well, I reviewed it for a couple reasons. I reviewed to see whether the patient actually had VT to be shocked. And I reviewed that and confirmed that it wasn't VT, it was atrial fibrillation.

And I reviewed the patient's intracardiac EGMs, which is the recording inside of the heart, and the EKGs right prior to the code. That's what I reviewed.

Q. And what did they reveal, the intracardiac EKG and EMG?

A. Sinus rhythm, and then some bradycardia rhythm where it slowed down, and then the code. That's what really happened right before he arrested.

Q. Now you indicated that you requested several

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things be done. Do you have any idea of how long it took to go through the various steps of CPR, ACLS, stat echo, et cetera?

A. I don't. I mean in the midst of a code you're doing everything as fast as you can and as best as you can. And it's kind of a team process. All I know is that we're working as fast as we can to try to revive the patient. And I really am dependent on the person who is writing down as to the time frame, because it can feel like an hour, even though it could be five minutes.

Q. I understand that. It says in your note that about 300 milliliters of blood was removed from the pericardial space. Do you know if CPR was ongoing and you were also doing the pericardiocentesis basically together? How is this working?

A. Yes. I'm doing the pericardiocentesis and one of the nurses or one of the techs is doing the CPR.

Q. So the CPR is at the same time?

A. Simultaneous.

Q. Okay. My question is, I guess, why did you order a stat echocardiogram?

A. Stat echo is to -- once you get the tube in during the pericardiocentesis, you can determine whether it's in the right place. Also as you drain the blood, you can see that it's diminishing and that it's not

Page 30

reaccumulating.

Q. So the stat echo would have been taken after --

A. No question about it.

Q. -- you inserted the needle?

A. Right. I mean, you could do a pericardiocentesis with an echo there at the time, but that's not what you wait for, you just do the pericardiocentesis.

Q. So you did not wait for the echo before you did --

A. No.

Q. -- the pericardiocentesis?

A. I'm sorry. I did not.

Q. I need a clear question. When did you insert the needle in relationship to the echocardiogram?

A. Before.

Q. And then I take it once you inserted the needle, you found blood in the pericardium?

A. Right.

Q. And --

A. You don't know how much blood you have at the time you do the needle, because you bring the echo there to see how much is left, how much you have to drain off, all the rest, whether it reaccumulates.

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So the echo is helpful in the setting that as you're getting the blood out, do you have something that's 100 CCs or do you have something that's 50 CCs; how much do you have to take off.

Q. And in this case where you said you had 300 milliliters, would that basically equal 300 CCs?

A. Correct.

Q. And what did that tell you?

A. That the patient had a fairly large bleed into the pericardial space.

Q. Then it indicates in your dictation that, "We continued to echo-monitor the patient and showed evidence of improved LV function and minimal pericardial fluid." And you go on and talk about it. And then it says, it developed -- "It showed blood pressures greater than 100." What does that mean? What were you doing at the last part of your first large paragraph?

A. The echo monitor is to make sure it wasn't reaccumulating, that we took care of the problem in which the patient had bled, so the patient had come back hemodynamically and had a blood pressure. The echo again is there to make sure that there's not a recurrence of pericardial fluid.

Q. And you indicate there was approximately five to ten minutes of CPR, is that correct?

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A. Correct.

Q. And that would be started at the very beginning, when his blood pressure dropped?

A. Correct.

Q. And that would be done by a tech or a nurse?

A. Correct.

Q. And at the same time you were doing the pericardiocentesis?

A. Correct.

Q. Putting the needle in, is that correct?

A. Correct.

Q. And then it says you received pressors from the anesthesiologist, including epinephrine, atropine and bicarbonate three ampules. What was the anesthesiologist doing at this time?

A. During the code?

Q. During what you dictated here.

A. He was giving medications during the code, which included epinephrine to raise the blood pressure, atropine to raise the heart rate, and bicarbonate to prevent acidosis, which all three would be standard medications during a code situation.

Then we also gave protamine to reverse the heparin that we gave during the procedure. That's to prevent further bleeding.

Code: 2200
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGLEA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, both Individually and as SPECIAL ADMINISTRATORS of the ESTATE Of NEIL DECHAMBEAU,

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ., THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, A Nevada Professional Corporation, And DOES I through X, inclusive,

Defendants.
_____/

Case No. CV12-00571

Dept. No. 7

Motion for Summary Judgment

Piscevich & Fenner
499 West Plumb Lane, Suite 201

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Motion for Summary Judgment

Defendants move the Court pursuant to NRCP 56 for an Order granting summary judgment in Defendants' favor on the ground Plaintiffs cannot meet the required elements for a claim of legal malpractice or a claim for punitive damages. Discovery is completed and Plaintiffs have failed to proffer or obtain any evidence of causation, or to prove the underlying case.

This Motion is made and based on the Memorandum of Points and Authorities in Support, and on all the records papers and pleadings on file in this action.

Dated this 14th day of August, 2013.

PISCEVICH & FENNER

By: _____
Mark J. Lenz
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Memorandum of Points and Authorities

I. Nature of the Case

This is a legal malpractice action in which the underlying case was a medical malpractice action. Plaintiffs allege that Defendant Stephen Balkenbush mishandled their medical malpractice case. Plaintiffs are obligated to prove, by medical expert testimony, the standard of care, breach, and causation in the underlying case. Separately, and distinctly disconnected from the medical malpractice elements, in the legal malpractice action, Plaintiffs are required to prove an attorney-client relationship, duty and breach, and that "but for" the attorney's breach of duty, Plaintiffs would have prevailed in the underlying case. Because Plaintiffs cannot prove the underlying medical malpractice case, they cannot establish any breach of duty or proximate cause, both necessary elements, and their claim fails as a matter of law.

Discovery is now complete. Plaintiffs' have no evidence or testimony that had Mr. Balkenbush done something different, Plaintiffs would have achieved a better outcome. All of their legal theories are negated, often by testimony of their own experts. Summary judgment is warranted.

II. Statement of Undisputed Facts

The following facts are either undisputed or conclusively established:

1. In this legal malpractice action, Plaintiffs allege that Mr. Balkenbush failed to exercise the legal skills necessary to their purported medical malpractice claim against Dr. David Smith and others. [Complaint, ¶ 24].

2. Plaintiffs' claim for medical malpractice against Dr. Smith arose out of a heart procedure known as cardiac ablation. During the procedure, (an atrial fibrillation ablation), there was a complication involving a pericardial tamponade. [**Exhibit "1,"** (Deposition of Dr. Smith), p. 7, lns. 22-25; p. 8, lns. 1-2].

3. During Dr. Smith's efforts to deal with the complication, Plaintiffs' decedent "coded," i.e. went into cardiac arrest, likely from a pericardial effusion. [Exh. "1," p. 26, lns.6-10]. Plaintiffs' decedent suffered an anoxic brain injury and died.

4. On September 5, 2007, Plaintiffs' then-counsel, Mr. Balkenbush filed a medical malpractice lawsuit against Dr. Smith and others. [**Exhibit "2"** (underlying Complaint – CV07-02028)].

5. Attached to the underlying Complaint was the Affidavit of Dr. Fred Morady dated August 29, 2007. [**Exhibit "3"**].

6. Mr. Balkenbush considered Dr. Morady to be "one of the preeminent electrophysiologists" in the country. [**Exhibit "4,"** (Deposition of Stephen Balkenbush) p. 32, lns. 24, 25; p. 33, lns. 1-2)].

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7. Dr. Morady initially opined that, based on his review of the medical records provided to him, Dr. Smith's conduct fell below the standard of care, as follows:

> 10. I believe to a reasonable degree of probability that the care provided by David Smith, M.D. was negligent and breached the standard of care owed to Neil DeChambeau in the following particulars:
> a) David Smith, M.D., failed to timely diagnosis that Neil DeChambeau was experiencing cardiac tamponade.
> b) David Smith, M.D., failed to timely perform a pericardiocentesis procedure on Neil DeChambeau.
> c) After Neil Dechambeau experienced ventricular tachycardia on September 7, 2006 at approximately 12:22 p.m., the cause of ventricular tachycardia should have been determined before any additional radiofrequency ablation was performed.
> d) At the time David Smith, M.D., observed Neil DeChambeau to exhibit no pulse, he should have immediately requested a surgeon to review the condition ofNeil DeChambeau but failed to do so.
> e) A transthoracic echocardiogram was not ordered until approximately 12:44 p.m. on September 7, 2006 and did not arrive until approximately 12:49 p.m. The transthoracic echocardiogram was performed too late to benefit Neil DeChambeau.
> All ofthe aforementioned conduct of David Smith, M.D. caused Neil DeChambeau to suffer irreversible brain damage and death.

[Exh. "3," p. 2, ¶10].

Dr. Morady had not, at that time, been provided with the "Prucka" recording, also called the "EPS" data, which provides a record of the procedure in actual time. [Exh. "1," p. 23, lns. 10-25].

8. Dr. Morady advised Mr. Balkenbush that he needed to review the EPS tape – "there [had] to be one." [Exh."4," p. 24, lns. 3-19].

9. Despite efforts to do so, Mr. Balkenbush was unable to obtain the EPS tape until March, 2010. [Exh. "4," p. 25, lns. 11-12].

10. Upon receipt of the EPS tape, Mr. Balkenbush provided it to Dr. Morady for review; and after Dr. Morady reviewed it, he told Mr. Balkenbush that he had "changed his opinion." [Exh. "4," p. 30, lns. 1-3].

11. Specifically, Dr. Morady told Mr. Balkenbush he "didn't believe that there was any malpractice in the action by Dr. Smith." [Exh. "4," p. 30, lns. 6-9].

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12. Dr. Morady also advised Mr. Balkenbush that "he would not have done anything differently [from Dr. Smith regarding the pericardiocentesis procedure]...." [Exh. "4," p. 30, lns. 21-24].

13. Mr. Balkenbush did not consider obtaining another expert opinion from a different electrophysiologist about whether Dr. Smith had committed malpractice because he believed Dr. Morady to be the preeminent electrophysiologist in the country, the time for designating experts had expired, and because when he discussed the case with his clients at its inception, they agreed that the case would "rise or fall based upon that expert's opinion." [Exh. "4," p. 33, lns. 16-21].

14. Dr. Morady testified that after reviewing the EPS data, he no longer stood by his earlier opinions that Dr. Smith failed to diagnose cardiac tamponade or perform a pericardiocentesis procedure. [**Exhibit "5,"** (Deposition of Dr. Morady upon Written Questions), p. 3, lns. 2-17].

15. Plaintiffs allege that Mr. Balkenbush's legal malpractice occurred when he allegedly dismissed the case "without consulting with Plaintiffs," on the ground that Plaintiffs' own expert had reversed his medical opinion upon being shown the "EPS" data. Dr. Morady advised Mr. Balkenbush that there was, in fact, no malpractice involved in the treatment of Plaintiffs' decedent.

16. Specifically, Plaintiffs have alleged:

> 14. BALKENBUSH'S stated reason for dismissing Plaintiffs' case was that as a result of a review of an EPS tape recorded during the operation, DR. MORADY, one of Plaintiffs' experts, had reversed his opinion as to the negligence of DR. DAVID SMITH. BALKENBUSH never provided Plaintiffs with any written communication from DR. MORADY to him in which DR. MORADY explained his alleged reversal of his original opinion of DR. SMITH'S malpractice. In fact no such opinion exists in any written form. ,,,

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> 24. The Defendants breached their duty to the Plaintiffs and failed to perform legal services that met the acceptable standard of practice for attorneys handling medical malpractice cases in the following respects:
> A. Defendants failed to keep the Plaintiffs informed of the status of their case.
> B. Defendants dismissed Plaintiffs case without consulting with Plaintiffs and obtaining their consent before entering into an agreement with opposing counsel and dismissing Plaintiffs case with prejudice.
> C. Defendants failed to provide legal services reasonably required to investigate the merits of Plaintiffs' case. In a wrongful death case involving medical malpractice, failure to take depositions of the treating physicians and other physicians who were present in the operating room where the fatal injury occurred violates the acceptable legal standard of care for attorneys handling such cases. Furthermore, Defendants were negligent in not asking Interrogatories, failing to make any Requests for Admissions or using any or the normal discovery tools expected of litigation attorneys handling a medical malpractice case.

[Complaint ¶¶ 14, 24]

17. Plaintiffs' expert Gerald Gillock, Esq., identified "five or six areas" pertaining to which he believed Mr. Balkenbush "violated the standard of care," including:

a. Lack of diligence;

b. Failure to do formal written discovery;

c. Failure to take depositions of defendants in first three years;

d. Failure to take formal measures to obtain EPS tape;

e. Failure to take percipient witness depositions; and

f. Failure to investigate the Code.

[**Exhibit "6,"** (Gillock Deposition, p. 70, lns. 19-25; p. 71, lns. 1-3)].

18. Mr. Gillock testified at deposition as follows, with respect to the alleged bases for their malpractice claims:

a. *[Defendants failed to keep the Plaintiffs informed of the status of their case.*

> Q Are you contending that there was a violation of the standard of care with respect to the communication with the clients?
> A No.

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[Exh."6" (Gillock Depo, p. 48, lns. 14-17)].

b. *Defendants dismissed Plaintiffs case without consulting with Plaintiffs and obtaining their consent before entering into an agreement with opposing counsel and dismissing Plaintiffs case with prejudice...*

Q I guess I need to ask this a different way. Are you going to be giving some kind of an opinion that it was below standard of care because Mr. Balkenbush did not obtain his client's permission to dismiss this case?
A No.
Q So that's not an issue in this case?
A Right.

[Exh. "6" (Gillock Depo, p. 68, lns. 16-22].

c. *[Defendants failed to provide legal services reasonably required to investigate the merits of Plaintiffs' case. In a wrongful death case involving medical malpractice, failure to take depositions of the treating physicians and other physicians who were present in the operating room where the fatal injury occurred violates the acceptable legal standard of care for attorneys handling such cases.]*

Q And what was your understanding toward the end of the case what the parties were going to do, the attorneys? What what was the discovery plan?
A The discovery plan, if there was a plan, as evidenced by some correspondence and e-mails, was going to be that they were going to exchange expert witness reports, and -- under the expert disclosures, which they did in March of 2010. And I'm not sure. It's not real clear where they were going from there.

So, it looked like they were going to set depositions after they exchanged expert reports, even though they were looking at a July trial date.

Q Well, I have done that. But, you get plenty of time to do the depositions. I'm not worried about that.
But, is it your understanding they were going to set the depos after the exchange of the report and the review of the EPS tape or the Pruka disk, whatever it's called?
A They were going to do some depositions of the experts afterwards.
Q And the parties?

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A Well, I'm not sure where you're getting that information. But, Mr. Lemons said yes, of the parties. But, I don't think Mr. Balkenbush did. I'd have to look and see.

[Exh. "6," Gillock Depo, pp. 35-37]

d. [... not investigating the Code.]

A So why wasn't this reviewed by a nursing person or someone who knows about Code sheets to see whether or not the hospital, if they put in accurate numbers on the Code sheet, shouldn't have been named as a defendant in the case?
Q Well, how would that have changed the outcome if the code sheet is incorrect?
A You mean how would it have changed the death?
Q Yeah. How would it have changed the outcome of the case if the Code sheet is incorrect?
A It wouldn't have.

[Exh. "6," p. 57, lns. 4-13].

19. Mr. Gillock did not testify about causation.

20. Plaintiffs' expert Dr. Siefert testified that, at the time of his deposition in this case, he had not reviewed the EPS data because he did not believe it was "worth [his] time" to do so. [**Exhibit "7,"** (Dr. Siefert deposition) p. 16, lns. 8-22; p. 17, lns. 6-15].

21. Dr. Siefert did not testify that any conduct by Dr. Smith caused anything. He contended only "that Dr. Smith did the timing of the procedure incorrectly." [Exh. "7," p. 74, lns. 6-9].

22. Dr. Siefert testified that if the sequence or order of events were as described by Dr. Smith in his deposition, then there was no breach of the standard of care. He does not believe that Dr. Smith's testimony is corroborated by the medical record; but agrees that he himself was not present. [Exh. "7," p. 29, lns. 2-6; p. 24, lns. 13-16; p. 74, lns. 17-21].

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23. Dr. Seifert did not "find anything inappropriately done by any of the technicians or nurses in the catheter lab," nor "any inappropriate care on the floor." [Exh. "7," p. 54, lns. 15-21].

III. Argument

A. Standard of Review

Summary judgment may be granted where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. NRCP 56. Relying upon the Supreme Court's decisions in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), the applicable standard of review and burdens of proof for summary judgment motions are as follows:

> The moving party is entitled to summary judgment as a matter of law where, viewing the evidence and the inferences arising therefrom in favor of the nonmovant, there are no genuine issues of material fact in dispute. ...
>
> The moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. ... Once the moving party has met its burden, the party opposing the motion may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing that there is a genuine issue for trial. ...
>
> Summary judgment is not a disfavored procedural shortcut, but an integral part of the [] rules as a whole. ...

Alam v. Reno Hilton Corporation, 819 F. Supp. 905, 909 (D. Nev. 1993) (citations omitted).

In *Wood v. Safeway, Inc.,* 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court made it clear that the "'slightest doubt' standard ... is an incorrect statement of the law and should no longer be used when analyzing motions for summary judgment." *Id.* The nonmoving party must "'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." *Id.* at p. 4.

In the present case, Plaintiffs cannot prove the underlying case. Their claim for legal malpractice fails as a matter of law.

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B. Plaintiffs must prove the underlying medical malpractice claim.

In order to prevail in a legal malpractice action, Plaintiffs must allege and prove:

1. an attorney-client relationship;

2. duty to use the skill, prudence and diligence ordinary lawyers possess in exercising and performing similar tasks;

3. breach of that duty;

4. proximate cause; and

5. damages.

Mainor v. Nault, 120 Nev. 750, 101 P.3d 308 (2004).

A legal malpractice claim in the context of litigation does not accrue "until the underlying legal action has been resolved." *Moon v. McDonald Carano & Wilson, LLP*, 129 Nev.Adv.Op. No. 56, __ P.3d __ (August 1, 2013). A "legal malpractice action does not accrue until the plaintiff's damages are certain and not contingent upon the outcome of an appeal. *Amfac Distribution Corp. v. Miller*, 673 P.2d 795, 796 (Ariz.App. 1983). Specifically, "[w]here there has been no final adjudication of the client's case in which the malpractice allegedly occurred, the element of injury or damage remains speculative and remote, thereby making premature the cause of action for professional negligence." *Id. A fortiori*, in a legal malpractice action predicated on the client's underlying medical malpractice case, proof of the underlying case is necessary to remove it from the realm of "speculative and remote." *See also, e.g., Schultheis v. Franke*, 658 N.E.2d 932, 939 (Ind.App. 1995) ("In order to prevail on his legal malpractice claim, Franke had the burden of establishing the elements of the underlying medical malpractice claim.").

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1. Plaintiffs cannot establish the elements of the underlying medical malpractice claim.

The elements necessary to a claim of medical malpractice are:

1. failure of a hospital or physician to use the reasonable care, skill or knowledge ordinarily used in similar circumstances;

2. proximate cause; and

3. damages.

Prabhu v. Levine, 112 Nev. 1538, 930 P.2d 103 (1996).

Breach of the standard of care and causation must ordinarily be established by expert testimony, to a reasonable degree of medical probability. *Morsicato v. Sav-on Drug Stores, Inc.*, 121 Nev. 153, 111 P.3d 1112 (2005).

As noted above, Plaintiffs' principal theory in the underlying case was that Dr. Smith's conduct fell below the standard of care for his failure to diagnose cardiac tamponade, perform a pericardiocentesis procedure, determine the cause of ventricular tachycardia, request a consult, and order a transthoracic echocardiogram in time. However, after Dr. Morady reviewed the EPS data and advised Plaintiffs' counsel that he had changed his opinion, and there was no malpractice, Mr. Balkenbush was left with but one honorable choice – consult with his clients and dismiss the case.

Plaintiffs urge the Court that Mr. Balkenbush should have sought another expert opinion, one that would counter that of Dr. Morady. Such a meretricious approach is probably common, but any lawyer with a modicum of integrity would avoid it. From a practical standpoint, it would not have revived this case. Defense counsel would merely call Dr. Morady as a witness, establish that he was hired by Plaintiffs for his world-class preeminence as an electrophysiologist, have him testify that he changed his opinion based on data he requested in 2007 but did not receive until 2010, and that he would have done the same as Dr. Smith.

Plaintiffs would then be hard pressed to convince the jury that their new expert, Dr.Siefert, knew better than Dr. Morady, without even reviewing the EPS data, whereupon defense counsel[1] would politely reduce the new expert to a nullity. Mr. Balkenbush acted appropriately by hiring the best expert he could find, and relying on his opinions, and then dismissing the case without exposing his clients to an award of fees and costs.

Plaintiffs assert one additional theory, not framed in their pleadings, however, which is that Mr. Balkenbush should have "investigated the code," so as to possibly have sued Washoe Medical Center (nka "Renown Regional Medical Center). [*See,* Exh. "4," p. 48, lns. 20-25; p. 49, ln. 1]. However, Mr. Gillock also testified that even if hospital staff had done something different it would not have changed the outcome. Moreover, Plaintiffs' current medical expert, Dr. Siefert, has opined on that issue and stated he found nothing objectionable either in the conduct of the anesthesiologist, or in the conduct of any Washoe staff. [Exh. "7," p. 54, lns. 9-21].

Accordingly, Plaintiffs could not have established the necessary elements of their medical malpractice claim. They had no expert who would testify that Dr. Smith's conduct fell below the standard of care; and their current expert, Dr.Siefert, offers only that he does not believe Dr. Smith's testimony, and does not need to review the EPS data on which Dr. Morady relied. He nowhere mentions causation, admits that if Dr. Smith did as he testified, there was no malpractice, and agrees that no hospital staff conduct fell below the standard of care. Thus, Plaintiffs had, and have, no medical malpractice claim.

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[1] In this case, Edward Lemons, whose ability to disassemble opposing experts is well-known.

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C. Plaintiffs' purported legal malpractice claim is untenable.

In addition to their failure to prove the underlying case, Plaintiffs cannot support their legal malpractice claim on the chimerical evidence they propose. First, as noted above, they have had to abandon virtually all of their initial theories. For example, there is no evidence that Mr. Balkenbush failed to keep Plaintiffs informed, or that he dismissed the case without consulting with his clients.

As to the alleged failure to do "formal written discovery," Plaintiffs' expert, Mr. Gillock opines that an NRCP 16.1 Request for Documents is essentially worthless as a discovery device. [Exh. "6," p. 33, lns. 23-25]. Mr. Gillock should perhaps review the most recent Nevada Supreme Court rulings on enforcement of NRCP 16.1, including *Moon v. McDonald,* 126 Nev.Adv.Op. No. 47, 245 P.3d 1138 (2010) (affirming dismissal for failure timely to file report pursuant to NRCP 16.1(e)(2)). The Court may and should be reluctant to countenance Plaintiffs' argument that document requests pursuant to Rule 16.1 do not constitute "formal written discovery."

Mr. Gillock opines that propounding interrogatories in a medical malpractice case is "absolutely" a standard of care issue. [Exh. "6," p. 37, lns. 11-13]. His opinion is contrary to law. The Court may note that NRCP 26 teaches that discovery is entirely permissive rather than mandatory. ("... any party who has complied with Rule 16.1(a)(1) ***may*** obtain discovery by one or more of the following ***additional*** methods ..."). (Emphasis added). It also establishes that Rule 16.1 is, in fact, a discovery rule, to which other methods are "additional."

Plaintiffs' argument appears to be that if Mr. Balkenbush had propounded formal interrogatories or requests for production, he might have obtained the EPS data sooner than he did. Clearly, this argument is mere speculation, but it is also fraught with false logic. The EPS

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data compelled Dr. Morady to change his opinion regarding Dr. Smith's conduct – how would having the same data a month, or a year, earlier make any difference? It would have allowed Mr. Balkenbush to seek out an "expert of the night?" Once again, we can be thankful that at least some attorneys do not succumb to subtle but meretricious folly.

With respect to the alleged failure to take depositions, Mr. Gillock's opinion is merely one of timing – he objects to not having the depositions of the hospital personnel involved in the "code," or of the experts within the first three years of filing. [Exh. "6," p. 33, lns. 10-22]. Mr.Gillock, however, admits that all the medical records were obtained, [Exh. "6," p. 34, lns. 6-25; p. 35,lns. 1-3], that Ms. Dechambeau's deposition was in fact taken, and that the parties agreed to complete the remaining depositions in the last two-and-a-half months before trial. [Exh. "6," p. 36, lns. 16-25; p. 37,lns. 1-8].

Most importantly, Mr. Gillock nowhere asserts that the alleged failure to engage in formal written discovery ***caused*** anything. The word "cause" does not appear in Mr. Gillock's deposition; and the term "causation" appears once, in a general question. [Exh. "6," p. 47, ln. 6]. Logically, even if Mr. Balkenbush had buried defendants with written discovery and obtained the EPS data sooner, it would not have made a particle of difference to Dr. Morady's opinion. The alleged failure to propound interrogatories did not, and could not have, caused anything.

Finally, with respect to Plaintiffs' theory that Mr. Balkenbush failed to "investigate" the "code," the theory is untenable as noted above. Mr. Gillock's testimony is directed only at a possible claim against the hospital staff, a claim which, in the opinion of Dr.Siefert, has no basis in the record.

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D. Plaintiffs may not maintain a claim for punitive damages.

Plaintiffs have included in their Complaint a bare claim for punitive damages, averring, without reference to any factual basis, that Defendants' actions and omissions were so egregious, wanton, willful, reckless and in such complete disregard of Plaintiffs' rights that they are thereby liable for punitive or exemplary damages." [Exh. "1," p.9, lns. 3-6]. NRS 42.005 provides:

> 1. Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant. Except as otherwise provided in this section or by specific statute, an award of exemplary or punitive damages made pursuant to this section may not exceed:
>
> (a) Three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is $100,000 or more; or
>
> (b) Three hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than $100,000.

NRS 42.001 provides:

> As used in this chapter, unless the context otherwise requires and except as otherwise provided in subsection 5 of NRS 42.005:
>
> 1. "Conscious disregard" means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.
>
> 2. "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his or her rights or property or to otherwise injure another person.
>
> 3. "Malice, express or implied" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.
>
> 4. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.

Plaintiffs' bare citation to the language of NRS 42.005 is insufficient as a matter of law – some evidence is required. Plaintiffs do not refer to any evidence to support that Mr. Balkenbush acted with malice, defined as "conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the

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rights or safety of others." *Delaware v. Rowatt*, 126 Nev.Adv.Op. No. 44, 244 P.3d 765 (2010).

> A defendant has a "[c]onscious disregard" of a person's rights and safety when he or she knows of "the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1). In other words, under NRS 42.001(1), to justify punitive damages, the defendant's conduct must have exceeded "mere recklessness or gross negligence."

Id. (citations omitted).

The Complaint in this case is simply devoid of any factual allegations that would support a claim for punitive damages. Plaintiffs' experts nowhere refer to any conduct by Mr. Balkenbush that they describe as malicious, wanton, or oppressive; nor do they suggest that he acted with a conscious disregard of Plaintiffs' rights. Accordingly, the Court should dismiss Plaintiffs' unsupported claim for punitive damages.

IV. Conclusion

Plaintiffs cannot establish the elements of the underlying medical malpractice claim. Their inability to do so renders their legal malpractice claim a nullity. At the end of discovery, Plaintiffs have no viable theory of liability left. They have no cognizable evidence of causation, and no expert testimony or other evidence establishing causation. Finally, they have no evidence or argument to support a claim for punitive damages.

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WHEREFORE, Defendants request relief as follows:

1. For an Order granting Defendants' Motion for Summary Judgment;

2. For costs of suit and a reasonable attorney's fee; and

3. Such other and further relief as the Court deems appropriate in the circumstances.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document **DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.**

Dated this 14th day of August, 2013.

PISCEVICH & FENNER

By: _____
Mark J. Lenz
Attorneys for Defendants

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: Motion for Summary Judgment

Person(s) Served:

Charles R. Kozak
1225 Tarleton Way
Reno, NV 89523

_____	Hand Deliver
___X___	U.S. Mail
_____	Overnight Mail
_____	Facsimile (775)
___X___	Electronic Filing

DATED this 14th day of August, 2013.

Beverly Chambers

Beverly Chambers

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Exhibit List

Exhibit "1"	-	Deposition Transcript, David Smith M.D.
Exhibit "2"	-	Complaint in Case No: CV07-02028
Exhibit "3"	-	Affidavit of Fred Morady, M.D.
Exhibit "4"	-	Deposition of Stephen Balkenbush
Exhibit "5"	-	Deposition on Written Questions of Dr. Fred Morady
Exhibit "6"	-	Deposition of Gerald Gillock
Exhibit "7"	-	Deposition of Mark Siefert, M.D.

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Attorney for the Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, both Individually and as SPECIAL ADMINISTRATORS of the ESTATE of NEIL DECHAMBEAU,

Plaintiff,

Vs.

STEPHEN C. BALKENBUSH, ESQ., THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, A Nevada Professional Corporation, & DOES I through X, inclusive,

Defendants.
_____/

Case No.

Dept. No.

COMPLAINT

COME NOW Plaintiffs, ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU both individually and as SPECIAL ADMINISTRATORS of the ESTATE of NEIL DECHAMBEAU, by and through their attorney, CHARLES R. KOZAK, ESQ., and for their COMPLAINT against the Defendants, STEPHEN C. BALKENBUSH, ESQ., THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, a Nevada Professional

Corporation, and DOES I – X, hereby allege as follows:

PARTIES

1. Plaintiff, ANGELA DECHAMBEAU, at all material times hereto was a competent, adult resident of Reno, Nevada including at the time of the incidents set forth in this Complaint. At all material times hereto, said Plaintiff was the wife and/or widow of NEIL DeCHAMBEAU.

2. Plaintiff, JEAN-PAUL DECHAMBEAU, at all material times hereto was a competent, adult resident of Reno, Nevada including at the time of the incidents set forth in this Complaint. At all material times hereto, said Plaintiff was the son and/or survivor of NEIL DeCHAMBEAU.

3. On September 8, 2006, NEIL DeCHAMBEAU, the husband of Plaintiff, ANGELA DECHAMBEAU and the father of Plaintiff, JEAN-PAUL DECHAMBEAU, died while undergoing a procedure on his heart at Washoe Medical Center in Reno, Nevada.

4. On or about December 26, 2006 Plaintiffs, ANGELA DECHAMBLEAU and JEAN-PAUL DECHAMBEAU, were appointed Special Administrators of the Estate of NEIL DeCHAMBEAU

5. Defendant, STEPHEN C. BALKENBUSH, ESQ. (hereinafter "BALKENBUSH"), at all material times hereto was a competent, adult resident of Reno, Nevada, licensed to practice law in the State of Nevada.

6. Defendant, THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER (hereinafter "THORNDAL LAW FIRM" or "TADBE"), at all material times hereto was and is a Reno, Nevada law firm and resident with offices located at 6590 South McCarran Blvd., Suite B, Reno, Nevada 89509. THORNDAL LAW FIRM members and employees at all material times hereto were and continue to be engaged in the practice of law in Reno, Washoe County, Nevada.

7. Defendants, JOHN DOES I – X, are individuals who reside in Nevada and who may have

aided and abetted other defendants in the actions which form the basis for the Plaintiffs' various complaints as set forth herein below and thereby may be liable to Plaintiffs as discovery may reveal. Upon their true identities becoming known by Plaintiffs, Plaintiffs' counsel will move the Court to have them added as Named Defendants.

FIRST CAUSE OF ACTION
(Legal Malpractice)

8. On or about September 5, 2007, Defendants filed a medical malpractice lawsuit on behalf of the Plaintiffs, alleging that DAVID SMITH, M.D., BERNDT, CHANEY-ROBERTS, DAVEE, GANCHAN, ICHINO, JUNEAU, NOBLE, SEHER, SWACKHAMER, THOMPSON, WILLIAMSON and ZEBRACK, LTD., a Nevada Professional Corporation, DAVID KANG, M.D., RINEHART, LTD., a Nevada Professional Corporation and DOES 1 – 10 caused the wrongful death of NEIL DeCHAMBEAU on September 8, 2006 through medical professional negligence.

9. Defendant, BALKENBUSH was the lead attorney among the Defendants named herein. As such he retained two medical experts, Cardiologist FRED MORADY, M.D. and Anesthesiologist WILLIAM MEZZEI, M.D. Both of these experts provided sworn expert witness reports in which they stated that Cardiologist, DAVID SMITH, M.D. and Anesthesiologist DAVID KANG, M.D. had failed to meet the standard of care in treating NEIL DeCHAMBEAU and thereby cased the death of NEIL DeCHAMBEAU in the operating room on September 7, 2006.

10. As set forth in paragraphs 20 through 31 of Defendants' medical malpractice lawsuit filed on behalf of Plaintiffs, the defendants hereto alleged the following facts, with their signature to said lawsuit verifying the truth thereof:

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20. On September 7, 2006, Neil DeChambeau was [sic] 57 year old male in good physical health who was admitted to Washoe Medical Center to undergo an atrial fibrillation ablation procedure to address a previously diagnosed paroxysmal atrial fibrillation.

21. On the morning of September 7, 2006, Neil DeChambeau was brought to the cath lab at Washoe Medical Center where David Kang, M.D. Induced anesthesia. Neil DeChambeau was intubated and anesthesia was maintained throughout the atrial fibrillation ablation procedure.

22. At or about 12:39 p.m., Neil DeChambeau suddenly developed cardiac arrest. In response to the cardiac arrest cardio pulmonary resuscitation was instituted on Neil DeChambeau and multiple doses of vasoactive drugs were administered as chest compressions were performed.

23. At or about 1:00 p.m., an echo-cardiogram of the heart showed a cardiac tamponade.

24. At or about 1:00 p.m., a pericardiocentesis was performed and approximately 300 ccs of blood were removed from Neil DeChambeau's pericardial sac.

25. David Smith, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.

26. David Smith, M.D. failed to timely perform a pericardiocentesis procedure on Neil DeChambeau.

27. David Kang, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.

28. David Kang, M.D. failed to timely recommend to David Smith, M.D. that he perform a pericardiocentisis [sic] on Neil DeChambeau.

29. David Kang, M.D. failed to timely perform a pericardiocentisis [sic] on Neil DeChambeau.

30. The conduct of David Smith, M.D. set forth in paragraphs 25 and 26 fell below the standard of care owed by David Smith, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.

31. The conduct of David Kang, M.D. set forth in paragraphs 27, 28, and 29 fell below the standard of care owed by David Kang, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.

11. Trial of the above described medical malpractice suit was eventually set for July 12,

2010.

12. In June 2010, Plaintiffs were informed by BALKENBUSH that their case had been dismissed against all of the Defendants.

13. In actuality, BALKENBUSH had stipulated to a dismissal with prejudice of their Complaint on May 5, 2010 **without ever informing Plaintiffs he was doing this and without ever obtaining their permission or authority to do so before he did.**

14. BALKENBUSH'S stated reason for dismissing Plaintiffs' case was that as a result of a review of an EPS tape recorded during the operation, DR. MORADY, one of Plaintiffs' experts, had reversed his opinion as to the negligence of DR. DAVID SMITH. BALKENBUSH never provided Plaintiffs with any written communication from DR. MORADY to him in which DR. MORADY explained his alleged reversal of his original opinion of DR. SMITH'S malpractice. In fact no such opinion exists in any written form.

15. No reason was given to Plaintiffs by BALKENBUSH for the dismissal of the case against DR, KANG. They were simply told that the case against DR. KANG had been dismissed with prejudice as well a month or so after BALKENBUSH had done so without Plaintiffs' knowledge or permission.

16. At no time did BALKENBUSH conduct any written discovery of any Defendants in the case, other than to request production of the medical records of the various Defendants.

17. The critical issue in the medical malpractice case was the timing of DR. SMITH'S reaction to NEIL DeCHAMBEAU going into cardiac arrest during the scheduled six (6) hour cardiac ablation procedure. Instead, the procedure lasted over nine (9) hours.

18. At no time during the pendency of the medical malpractice case from its filing date of September 5, 2007 until BALKENBUSH dismissed it on May 5, 2010 without Plaintiffs'

knowledge or permission, did BALKENBUSH take the depositions of DR. SMITH, DR. KANG, DR. KROLLI (a resident physician who was present with DR. SMITH and DR. KANG during the procedures performed on NEIL DeCHAMBEAU on September 7, 2010), or the thoracic surgeon who was called in to consult after the patient had suffered cardiac arrest due to a hole being punched in the decedent's heart during the ablation procedure. These physicians were all present in the operating room and witnessed each other's actions, omissions and malfeasance which caused the premature death of NEIL DeCHAMBEAU.

19. In order to meet the acceptable standard of care for physicians, DR. SMITH and/or DR. KANG should have immediately performed the procedure known as "periocardiocentesis" immediately after becoming aware that the patient had gone into cardiac arrest. Instead, both DR. SMITH and DR. KANG violated the standard of care by waiting until an echocardiogram could be ordered and performed, after a useless ten (10) minutes of CPR were administered. By the time the futile CPR measures had been performed (they did absolutely no good as the CPR only acted to push the blood out of the heart through the tamponade) and then the echocardiogram ordered and performed, the patient's brain had been deprived of oxygen for at least ten (10) minutes, resulting in irreversible brain damage.

20. The Defendants provided an EPS tape allegedly recorded during the operation to BALKENBUSH. Defendants claimed this tape contradicted the written medical records and proved that DR. SMITH had acted in accordance with the acceptable standards of practice when responding to the cardiac arrest of NEIL DeCHAMBEAU. Other that DR. SMITH'S Counsel's representations as to the authenticity of the EPS tape, BALKENBUSH made no attempt to verify its authenticity or even explore the spoliation of evidence issues attendant with the isolated appearance of the EPS tape long after the other medical records had been produced by the

Defendants. BALKENBUSH made no attempts through discovery to verify that the tape was authentic or was in fact made during NEIL DeCHAMBEAU'S operation. BALKENBUSH also failed to have the tape examined and tested by a properly credentialed expert to determine if the tape had been tampered with or altered in any way. BALKENBUSH failed to use any discovery tools whatsoever to determine whether the tape, if genuine, in any way exonerated DR. SMITH and DR. KANG from medical malpractice in the operating room.

21. DR. SMITH'S own records of the events leading up to and causing the premature death of NEIL DeCHAMBEAU, transcribed on September 8, 2006 specifically state:

> At the end of the ablation, the patient had evidence of homodynamic compromise with hypotension and some bradycardia. Stat echocardiogram was performed, which showed a fairly large pericardial effusion. CPR was also performed for approximately 10 minutes.

Later in DR. SMITH'S transcription he repeats:

> Please note that there was approximately 5 to 10 minutes of CPR.

22. A simple reading of the records in DR. SMITH'S own words immediately after the operation confirms the opinions of DR. MORADY and DR. MESSEI, Plaintiffs' experts, that DR. SMITH and DR. KANG, in delaying the periocardiocentesis until after futile CPR was performed and then the echocardiogram ordered and performed instead of immediately doing the periocardiocentesis, caused the needless death of NEIL DeCHAMBEAU on September 8, 2007.

23. This delay was medical malpractice and BALKENBUSH dismissed the case with no sworn evidence to the contrary, without taking any Depositions, asking any Interrogatories, making any Requests for Admissions and without giving Plaintiffs the chance to pursue their Causes of Action with other counsel competent to handle a medical malpractice case **as he, without their permission, dismissed their case with prejudice.**

24. The Defendants breached their duty to the Plaintiffs and failed to perform legal services that met the acceptable standard of practice for attorneys handling medical malpractice cases in the following respects:

A. Defendants failed to keep the Plaintiffs informed of the status of their case.

B. Defendants dismissed Plaintiffs case without consulting with Plaintiffs and obtaining their consent before entering into an agreement with opposing counsel and dismissing Plaintiffs case with prejudice.

C. Defendants failed to provide legal services reasonably required to investigate the merits of Plaintiffs' case. In a wrongful death case involving medical malpractice, failure to take depositions of the treating physicians and other physicians who were present in the operating room where the fatal injury occurred violates the acceptable legal standard of care for attorneys handling such cases. Furthermore, Defendants were negligent in not asking Interrogatories, failing to make any Requests for Admissions or using any or the normal discovery tools expected of litigation attorneys handling a medical malpractice case.

D. Defendants failed to provide Plaintiffs with the opportunity to obtain new counsel who could have substituted in on the case and verified the reasonableness of DR. MORADY'S claimed change of opinion approximately five (5) months prior to Trial or obtained another expert cardiologist.

E. Defendants failed to properly investigate the authenticity of the EPS tape and to allow the Plaintiffs to obtain a second opinion from qualified technical and/or medical experts as to the significance of the EPS tape to the ultimate issues in the case. Defendants also failed to investigate the spoliation of evidence issues attendant with a tape which had not been produced with the other medical records, including whether the tape was even from the

operation on NEIL DeCHAMBEAU on September 7, 2006 or whether the tape had been tampered with or altered in any manner.

F. Defendants' actions and omissions were so egregious, wanton, willful, reckless and in such complete disregard of Plaintiffs' rights that they are thereby liable for punitive or exemplary damages.

WHEREFORE, Plaintiffs, ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, pray for the following relief against the Defendants and each of them for:

1. General damages, including damages for pain and suffering and disfigurement of the decedent in an amount to be proven at trial.

2. Special damages, pecuniary damages for grief, loss of probable support, companionship, love and affection in an amount to be proven at trial.

3. Punitive or exemplary damages.

4. All costs and expenses of this action, prejudgment interest and attorneys fees.

5. Such other and further relief as the Court deems equitable in the premises.

WHEREFORE, the Special Administrators of the Estate of Neil DeChambeau, ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, pray for relief on behalf of said Estate against the Defendants and each of them for:

1. Special damages including medical expenses which the decedent incurred or sustained before his death and for his funeral expenses.

2. Punitive or exemplary damages.

3. All costs and expenses of this action, prejudgment interest and attorneys fees.

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4. Such other and further relief as the Court deems equitable in the premises.

Pursuant to NRS 239B.030 the undersigned certifies no Social Security numbers are contained in this document.

Dated this 5th day of March, 2012.

/s/ Charles R. Kozak
CHARLES R. KOZAK, ESQ.
Nevada State Bar No. 11179
1225 Tarleton Way
Reno, NV 89523
(775) 622-0711
Kozak131@charter.net
Attorney for the Plaintiff

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

ANGELA DeCHAMBEAU, under penalties of perjury being first duly sworn, deposes and says: That she is a Plaintiff in the above-entitled action, and has read the Complaint and Jury Demand, that the same is true of her own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters she believes it to be true.

Angela DeChambeau
ANGELA DeCHAMBEAU

SUBSCRIBED and SWORN to before me
this 2nd day of March, 2012.

Sandra R. DeSilva
NOTARY PUBLIC

SANDRA R. DESILVA
Notary Public State of Nevada
No. 99-7779-2
My Appt. Exp. August 29, 2015

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

On this 2nd day of March, 2012, personally appeared before me, ANGELA DeCHAMBEAU, proven to me to be the person whose name is subscribed to the above instrument, and who acknowledged to me that she executed the foregoing Complaint and Jury Demand.

Sandra R. DeSilva
NOTARY PUBLIC

SANDRA R. DESILVA
Notary Public State of Nevada
No. 99-7779-2
My Appt. Exp. August 29, 2015

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

JEAN-PAUL DeCHAMBEAU, under penalties of perjury being first duly sworn, deposes and says: That he is a Plaintiff in the above-entitled action, and has read the Complaint and Jury Demand, that the same is true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters he believes it to be true.

JEAN-PAUL DeCHAMBEAU

SUBSCRIBED and SWORN to before me this 2nd day of March, 2012.

SANDRA R. DESILVA
Notary Public State of Nevada
No. 99-7779-2
My Appt. Exp. August 29, 2015

NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

On this 2nd day of March, 2012, personally appeared before me, JEAN-PAUL DeCHAMBEAU, proven to me to be the person whose name is subscribed to the above instrument, and who acknowledged to me that he executed the foregoing Complaint and Jury Demand.

SANDRA R. DESILVA
Notary Public State of Nevada
No. 99-7779-2
My Appt. Exp. August 29, 2015

NOTARY PUBLIC

ORIGINAL

FILED

2012 MAR 28 PM 12: 38

JOEY HASTINGS

BY _____ DEPUTY

1130
MARGO PISCEVICH
Nevada State Bar No. 000917
MARK J. LENZ
Nevada State Bar No. 004672
PISCEVICH & FENNER
499 West Plumb Lane, Suite 201
Reno, Nevada 89509
775-329-0958
Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ANGLEA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, both Individually and as SPECIAL ADMINISTRATORS of the ESTATE Of NEIL DECHAMBEAU,

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ., THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, A Nevada Professional Corporation, And DOES I through X, inclusive,

Defendants.

_____/

Case No. CV12-00571

Dept. No. 7

DEFENDANTS' ANSWER TO COMPLAINT

Defendants STEPHEN C. BALKENBUSH and THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, a Nevada Professional Corporation, by and through their counsel, PISCEVICH & FENNER, and in answer to Plaintiffs' Complaint, admit, deny and allege as follows:

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PARTIES

1. Upon information and belief, Defendants admit the allegations contained in paragraph 1 of Plaintiffs' Complaint.

2. Upon information and belief, Defendants admit the allegations contained in paragraph 2 of Plaintiffs' Complaint.

3. Upon information and belief, Defendants admit the allegations contained in paragraph 3 of Plaintiffs' Complaint.

4. These answering Defendants are without information sufficient to form a belief form as to the allegations contained in paragraph 4 of Plaintiffs' Complaint and therefore deny the same.

5. Defendants admit that Stephen Balkenbush is a resident of Reno, Nevada, and licensed to practice law in the State of Nevada.

6. Defendants admit that Thorndal, Armstrong, Delk, Balkenbush and Eisinger is a law firm with offices located at 6590 S. McCarran Boulevard in Reno, Nevada.

7. It appears that no answer is required of these answering Defendants as to the allegations contained in paragraph 7; however, if it is determined that an answer is required, these answering Defendants hereby deny said allegations.

FIRST CAUSE OF ACTION

(Legal Malpractice)

8. Defendants admit a medical malpractice lawsuit was filed arising out of the alleged wrongful death of Neil DeChambeau; however, denies the remaining allegations of paragraph 8 of Plaintiffs' Complaint.

9. Defendants admit that medical experts were retained; however, denies the remaining allegations of paragraph 9 of Plaintiffs' Complaint.

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10. Defendants admit a medical malpractice was filed; however, the allegations could not be proven as set forth in paragraph 10 of Plaintiffs' Complaint.

11. These answering Defendants are without information sufficient to form a belief form as to the allegations contained in paragraph 11 of Plaintiffs' Complaint and therefore deny the same.

12. These answering Defendants deny the allegations contained in paragraph 12 of Plaintiffs' Complaint.

13. These answering Defendants deny the allegations contained in paragraph 13 of Plaintiffs' Complaint.

14. Defendants admit that Dr. Morady reversed his opinion; however, deny the remaining allegations contained in paragraph 14 of Plaintiffs' Complaint.

15. These answering Defendants deny the allegations contained in paragraph 15 of Plaintiffs' Complaint.

16. These answering Defendants deny the allegations contained in paragraph 16 of Plaintiffs' Complaint.

17. These answering Defendants deny the allegations contained in paragraph 17 of Plaintiffs' Complaint.

18. These answering Defendants deny the allegations contained in paragraph 18 of Plaintiffs' Complaint.

19. These answering Defendants are without information sufficient to form a belief form as to the allegations contained in paragraph 19 of Plaintiffs' Complaint and therefore deny the same.

20. These answering Defendant deny the allegations contained in paragraph 20 of Plaintiffs' Complaint.

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21. These answering Defendants are without information sufficient to form a belief form as to the allegations contained in paragraph 21 of Plaintiffs' Complaint and therefore deny the same.

22. These answering Defendants are without information sufficient to form a belief form as to the allegations contained in paragraph 22 of Plaintiffs' Complaint and therefore deny the same.

23. These answering Defendant deny the allegations contained in paragraph 23 of Plaintiffs' Complaint.

24. These answering Defendant deny the allegations contained in paragraph 24 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to Plaintiffs' Complaint and each cause of action, claim and allegation contained therein, these answering Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim against these answering Defendants.

SECOND AFFIRMATIVE DEFENSE

There is no causal relationship between the alleged malpractice as set forth in Complaint and the damages being claimed.

THIRD AFFIRMATIVE DEFENSE

Pursuant to Chapter 41A of Nevada Revised Statutes, Plaintiffs have failed to state a claim for exemplary or punitive damages.

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FOURTH AFFIRMATIVE DEFENSE

Punitive damages are unconstitutional in that they are in violation of the equal protection clause, due process clause and undue burden on interstate commerce in violation of contract clause and the Eighth Amendment prescription of excessive fines.

FIFTH AFFIRMATIVE DEFENSE

With respect to punitive damages, NRS 42.025 does not provide for adequate standards for the application for punitive damages, the statute is inherently vague, and said statute violates the rights and safeguards of the Eighth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of Nevada.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs were placed on notice of the problems in the underlying case, including that the Plaintiffs could not prevail on the malpractice claims, met with Defendants, and specifically agreed to dismiss the malpractice case.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' conduct constitutes a known waiver or abandonment of the underlying medical malpractice case and Plaintiffs consented to the dismissal of the underlying case.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of equitable estoppel.

NINTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred as they agreed to a compromise of the underlying case, consisting of a dismissal with each side to bear their own costs and fees.

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TENTH AFFIRMATIVE DEFENSE

The exercise of professional judgment used by Defendants was totally within the standards used by litigation attorneys and was not a breach of the duty arising from the attorney-client relationship.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot prevail in the underlying action and would not have succeeded in the underlying action.

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not be alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer. Defendants therefore reserve the right to amend this Answer to allege additional affirmative defenses.

AFFIRMATION

The undersigned does hereby affirm that the preceding document **DOES NOT** contain the Social Security number of any person.

DATED this 28th day of March, 2012.

PISCEVICH & FENNER

By: _____
MARGO PISCEVICH
Attorneys for Defendants

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775 329.0958

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: ANSWER TO COMPLAINT

Person(s) Served:

Charles R. Kozak
1225 Tarleton Way
Reno, NV 89523

_____	Hand Deliver
X	U.S. Mail
_____	Overnight Mail
_____	Facsimile (775)
_____	Electronic Filing

DATED this 28th day of March, 2012.

Beverly Chambers

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

Docket Number 64463

In the

SUPREME COURT

For the

STATE OF NEVADA

ANGELA DECHAMBEAU AND JEAN-PAUL DECHAMBEAU, BOTH INDIVIDUALLY AND AS SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL DECHAMBEAU

Appellants,

v.

STEPHEN C. BALKENBUSH, ESQ.; AND THORNDAHL ARMSTRONG DELK BALKENBUSH & EISINGER, A NEVADA PROFESSIONAL CORPORATION

Respondents

Appeal from a Decision of the Second Judicial District of the State of Nevada,
Washoe County, Court Case No. CV12-00571

APPELLANT'S JOINT INDEX OF EXHIBITS, Vol I

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Attorney for the Appellants

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