BEFORE THE SUPREME COURT OF THE STATE OF NEVADA

ALI PIROOZI, M.D., Petitioner, v. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JAMES BIXLER, DISTRICT COURT JUDGE, Respondent(s), and TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST; MARTIN BLAHNIK, M.D., Real Party in Interest.	Supreme Court Case No.: EJDC Case No.: A-10-616728-C

RESPONDENT ALI PIROOZI, M.D.'S APPENDIX VOL 4

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@cdwnvlaw.com
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
E-mail: CRigler@cdwnvlaw.com
COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Respondents Ali Piroozi, M.D.

INDEX TO APPENDIX

VOLUME 1

DOCUMENT TITLE **EXHIBIT**

VOLUME 2

VOLUME 3

VOLUME 4

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 4th day of February 2014, and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **RESPONDENT ALI PIROOZI, M.D.'S APPENDIX**, postage prepaid and addressed to:

The Honorable Judge James Bixler
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Catherine Cortez Masto
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701
Counsel for Respondent

Attornevs for Real Parties in Interest

Robert McBride, Esq.
Marie Ellerton, Esq.
Mandelbaum, Ellerton & McBride
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Real Parties in Interest
Martin Blahnik, M.D.

/S/ Gemini Yii
An employee of Cotton, Driggs, Walch, Holley, Woloson & Thompson

OPP
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
kwebster@hpslaw.com
jwhitehead@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

Electronically Filed
12/09/2013 04:58:28 PM

CLERK OF THE COURT

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST, Plaintiffs, vs. SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, MARTIN BLAHNICK, M.D., ALI PIROOZI, M.D., RALPH CONTI, M.D. and FOOTHILL PEDIATRICS LLC, Defendants.	CASE NO. A616728 DEPT NO. XXIV

DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL

COMES NOW, Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (hereinafter "Sunrise Hospital"), by and through its attorneys, HALL PRANGLE & SCHOONVELD, LLC, and hereby opposes Plaintiffs' Motion in Limine No. 2: Exclude Dr. Conti's Settlement at Trial.

This Opposition is made and based upon the papers and pleadings on file herein, the points and authorities attached hereto and such argument of counsel which may be adduced at the time of hearing such Motion.

DATED this 9th day of December, 2013.

HALL PRANGLE & SCHOONVELD, LLC

By: _____

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

POINTS AND AUTHORITIES

I.

INTRODUCTION

This case arises from claims of medical malpractice against defendants alleged to have occurred at Sunrise Hospital. Plaintiffs settled and dismissed Defendant Dr. Conti. It is stipulated and agreed that Sunrise Hospital will not mention the settlement with Dr. Conti before the jury. However, Sunrise Hospital files this limited opposition as to Plaintiffs' arguments that (1) fault not be apportioned to Dr. Conti and (2) introduction of evidence as to Plaintiffs' damages.

. . .

. . .

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

II.

LEGAL ARGUMENT

A. Defendant Dr. Conti should be Included on the Jury Verdict Form Pursuant to NRS 41A.045.

Under NRS 41A.045(1), "each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant." This statute was "intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence." NRS 41A.045(2). Thus the remaining defendants in this action can only be found liable "for that portion of the judgment which represents the percentage of negligence attributable to [them]." *Id.* Accordingly, it makes no difference whether Dr. Conti is currently a party to this case or not. Defendants are not liable for any percentage of negligence that is attributable to Dr. Conti. Therefore, NRS 41A.045 abrogated joint liability in medical malpractice actions, leaving defendants liable to plaintiffs severally only, not jointly.

Moreover, California Courts also ruled that Defendants can point blame at a non-Defendant and that it is appropriate to add a non-Defendant to a verdict form so that the jury can apportion fault to the non-Defendant. *Wilson v. Ritto*, 105 Cal.App.4th 361, 129 Cal.Rptr.2d 336 (2003). In *Wilson*, the defendant physician sought to show that one of plaintiff's subsequent medical treaters was also responsible for plaintiff's injuries. *Id.* The defendant physician also sought to have the subsequent medical treater added to the jury verdict form as an additional tortfeasor to whom the jury could apportion a percentage of fault. *Id* at 340. The applicable California statutes provided for several liability of the defendant, similar to NRS 41A.045. *Id.* Using the fact that several liability applied to defendants in the case, the court ruled that court

could consider "other joint tortfeasors degree of fault" and that damages could be apportioned to a non-party tortfeasor.

Although not authoritative, District Courts in Nevada have agreed to permit a settled and dismissed co-defendant on the verdict form for the jury to allocate fault. In *Barton v. Lloyd, M.D., et al.*, Case Number CV08 02832, a co-defendant physician settled with plaintiffs prior to trial. The District Court permitted the settling defendant to be on the verdict form and for fault to be allocated to this defendant by the jury. *See* Verdict Form, attached hereto as Exhibit A.

As in *Wilson* and *Barton*, despite the fact that Dr. Conti settled and is no longer a party to this case, Defendants should be able to argue his degree of fault and to include him on the verdict form so that the jury can apportion his percentage of negligence in this action under NRS 41A.045.

B. Defendants should be Permitted to Cross Examine Plaintiffs and Plaintiffs' Experts as to the Actual Costs of Items Purchased with Dr. Conti's Settlement.

Plaintiffs agree that Defendants are entitled to an offset of the jury award for the settlement amount from Dr. Conti. However, Plaintiffs argue they should be entitled to present the full amount of damages to the jury and not be forced to reduce from this total the items and bills purchased and paid through Dr. Conti's settlement.

Defendants agree they are entitled to an offset from Dr. Conti's settlement. Moreover, Defendants are entitled to cross examine Plaintiffs' witnesses on the actual costs of any of the items purchased and paid with the settlement funds. Further, if Plaintiffs intend to claim, for example, the cost of the handicap-accessible car as damages, the actual cost of this item, including receipts and invoices, must be supplemented pursuant to NRCP 16.1. In essence, Plaintiffs cannot argue to the jury an imaginary sum for purchasing items that have been

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

purchased. These items are no longer "future estimates", but are a sum certain. Even had Plaintiffs not settled with Dr. Conti, purchased these items on their own, then tried to claim them as damages at trial, NRCP 16.1 requires Plaintiffs supplement and Defendants have the ability to cross examine on those items.

Therefore, the receipts for all items and/or services purchased with the settlement funds should be supplemented pursuant to NRCP 16.1. Defendants are entitled to cross examine Plaintiffs and Plaintiffs' experts regarding the actual costs for these items. Although, Sunrise Hospital agrees not to mention these items were purchased with settlement proceeds, this is the fairest and most accurate method to present this evidence to the jury.

. . .

. . .

. . .

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

III.

CONCLUSION

Based on the foregoing, Sunrise Hospital respectfully requests this Court Order that Plaintiffs' Motion in Limine No. 2: Exclude Dr. Conti's Settlement From Trial be denied as to the verdict form, granted as to mention of the settlement to the jury, and granted in part as to permitting an offset of Dr. Conti's settlement, requiring Plaintiffs' produce receipts and bills for any and all items Plaintiffs intend to claim as damages that have been purchased, and permitting Defendants to cross examine Plaintiffs and their experts as to these items.

DATED this 9th day of December, 2013.

HALL PRANGLE & SCHOONVELD, LLC

By: _____

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

. . .

. . .

. . .

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 9th day of December, 2013, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL** in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Dennis M. Prince, Esq.
PRINCE & KEATING
3230 South Buffalo Drive, Suite 108
Las Vegas, NV 89117
-and-
Jacquelynn D. Carmichael, Esq.
EISENBERG & GILCHRIST
215 South State Street, Suite 900
Salt Lake City, UT 84111
Attorneys for Plaintiffs

John H. Cotton, Esq.
Chris Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorney for Defendant
Ali Piroozi, M.D.

Robert McBride, Esq.
Kim Mandelbaum, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Martin Blahnick, MD

An employee of HALL PRANGLE & SCHOONVELD, LLC

4851-2358-0183, v. 1

EXHIBIT "A"

FILED

JUN 23 2010

4:32 pm

HOWARD W. CONYERS, CLERK

BY: DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

YVETTE BARTON,

Plaintiff,

vs.

Case No. CV08-02832

Dept. No. 9

NORTHERN NEVADA AMBULATORY SURGICAL CENTER, LLC., dba SURGICAL ARTS SURGERY CENTER; and DOES I-X, Inclusive,

Defendant.

_____/

VERDICT

We, the jury in the above entitled action, find for the Plaintiff, YVETTE BARTON, and against Defendant and assess the amount of the plaintiff's damages as follows:

Past Medical Expenses $ 500.00

Future Medical Expenses $ 0.00

Past Physical and Mental Pain, Suffering, Anguish, Disability and Loss of Enjoyment of Life of Yvette Barton $ 5000.00

Future Physical and Mental Pain, Suffering, Anguish, Disability and Loss of Enjoyment of Life of Yvette Barton $ 0.00

TOTAL DAMAGES: $ 5500.00

It is now your responsibility to determine what percentage of these damages to Plaintiff, if any, were caused by Northern Nevada Surgical Center, LLC and what percentage was caused by any other party involved in Plaintiff's procedure.

1. The percentage of negligence on the part of Northern Nevada Surgical Center, LLC, if any, which was a proximate cause of the plaintiff's injury was 27 %

2. The percentage of negligence on the part of Dr. Lloyd, if any, which was a proximate cause of plaintiff's injury was 73 %.

DATED this 6/23 day of June, 2010.

Sheldon Parker

FOREPERSON

RPLY

PRINCE & KEATING
Dennis M. Prince, Esq. (NV #5092)
3230 South Buffalo Drive, Suite 108
Las Vegas, Nevada 89117
Telephone: (702) 228-6800

EISENBERG GILCHRIST & CUTT
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Telephone: (801) 366-9100
Facsimile: (801) 350-0065
jcarmichael@egclegal.com

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

Tiffani D. Hurst and Brian Abbington, jointly and on behalf of their minor child, MayRose Lili-Abbington Hurst,

Plaintiffs,

vs.

Sunrise Hospital and Medical Center, LLC, Martin Blahnik, M.D., and Ali Piroozi, M.D.,

Defendants.

CASE NO. A-10-616728-C

DEPT. NO. XXIV

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL

HEARING DATE: January 8, 2014
HEARING TIME: 9:00 a.m.

Plaintiffs, by and through their attorneys of record, hereby reply in support of their *Motion in Limine No. 2: Exclude Dr. Conti's Settlement from Trial.*

This Reply is made and based upon the papers and pleadings on file herein, the point and authorities attached hereto and such argument of counsel, which may be adduced at the time of hearing this *Motion*.

DATED this 30th day of December, 2013.

EISENBERG, GILCHRIST & CUTT

/s/ Jacquelynn D. Carmichael
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

Plaintiffs' *Motion* seeks the following: (1) to preclude Defendants from introducing evidence of Dr. Conti's settlement or settlement amount; (2) to preclude Defendants from allocating or comparing fault to Dr. Conti; and (3) to permit Plaintiffs to introduce to the jury the full measure of their damages.

A. Exclusion of Dr. Conti's Settlement and Amount of Settlement at Trial.

Defendants agree that Dr. Conti's settlement cannot be mentioned at trial. Therefore, the court should enter an order to that effect since there is no dispute that this evidence is not admissible at trial.

B. Precluding Defendants from Allocating or Comparing their Fault to Dr. Conti's.

Defendants argue that Nevada law permits them to allocate fault to Dr. Conti, even though he is no longer a party to this case. Defendants cite to NRS 41A.045 and NRS 17.245 for support.

NRS 17.245 – "Effect of Release or Covenant Not To Sue" provides in its entirety:

> 1. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> > (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
> >
> > (b) It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.
>
> 2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

NRS 17.245 (West). This statute essentially permits a plaintiff to settle with one or more of the defendants while continuing to prosecute the claims against the other defendants. It also provides for a credit to the remaining defendants in the amount of the settlement.[1] It also discharges that party from any claims by other parties for contribution or equitable indemnity. However, no portion of this section relates to apportioning fault at trial.

NRS 41A.045 – "Several liability of defendants for damages; abrogation of joint and several liability" provides in its entirety:

> 1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.
>
> 2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.

NRS 41A.045 (West). This statute provides for several liability, stating that each defendant doctor is only liable for his own share of damages.

[1] All the parties agree that Defendants are entitled to a credit in the amount of Dr. Conti's settlement.

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

Neither of these statutes that Defendants rely upon is instructive as to if and how Defendants may allocate fault to Dr. Conti at trial. However, the Nevada legislature has specifically addressed the situation in this case – where one defendant settles with the plaintiff before trial and the remaining defendants wish to allocate fault to that former defendant.

NRS 41.141 – "When comparative negligence not bar to recovery; jury instructions; liability of multiple defendants" – provides in its entirety:

> 1. In any action to recover damages for death or injury to persons or for injury to property in which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the parties to the action against whom recovery is sought.
>
> 2. In those cases, the judge shall instruct the jury that:
>
> > (a) The plaintiff may not recover if the plaintiff's comparative negligence or that of the plaintiff's decedent is greater than the negligence of the defendant or the combined negligence of multiple defendants.
> >
> > (b) If the jury determines the plaintiff is entitled to recover, it shall return:
> >
> > > (1) By general verdict the total amount of damages the plaintiff would be entitled to recover without regard to the plaintiff's comparative negligence; and
> > >
> > > (2) A special verdict indicating the percentage of negligence attributable to each party remaining in the action.
>
> 3. If a defendant in such an action settles with the plaintiff before the entry of judgment, **the comparative negligence of that defendant and the amount of the settlement must not thereafter be admitted into evidence nor considered by the jury**. The judge shall deduct the amount of the settlement from the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts.
>
> 4. Where recovery is allowed against more than one defendant in such an action, except as otherwise provided in subsection 5, **each defendant is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to that defendant.**
>
> 5. This section does not affect the joint and several liability, if any, of the defendants in an action based upon:
>
> > (a) Strict liability;

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

(b) An intentional tort;

(c) The emission, disposal or spillage of a toxic or hazardous substance;
(d) The concerted acts of the defendants; or

(e) An injury to any person or property resulting from a product which is manufactured, distributed, sold or used in this State.

6. As used in this section:

(a) "Concerted acts of the defendants" does not include negligent acts committed by providers of health care while working together to provide treatment to a patient.

(b) "Provider of health care" has the meaning ascribed to it in NRS 629.031.

NRS 41.141 (West) (emphasis added). The language of this statute makes a few things clear. When a party attempts to allocate/compare its fault to another party, NRS 41.141 applies. Like the medical malpractice statute – NRS 41A.045 – this statute only provides for several, not joint and several, liability among the defendants. However, it specifically states that "**[i]f a defendant in such an action settles with the plaintiff before the entry of judgment, the comparative negligence of that defendant and the amount of the settlement must not thereafter be admitted into evidence nor considered by the jury.**" *See id.* Based on the clear, unambiguous language of this governing statute, Defendants are prohibited from allocating or comparing their fault to Dr. Conti at trial since he settled with Plaintiffs before the entry of judgment. Defendants may, however, argue that they were not negligent or that MayRose's injuries are 100% caused by Dr. Conti. The Nevada Supreme Court has clarified this in *Banks v. Sunrise Hospital*, 120 Nev. 822, 102 P.3d 52 (2004) when it explained:

> We conclude that NRS 41.141(3) has no bearing on the issues of whether Sunrise could argue a nonparty's fault in this instance and whether such an argument per force leads to the conclusion that the jury reduced the award based upon the nonparty's relative culpability. First, NRS 41.141 only prevents admission of evidence in support of a "comparative fault" or apportionment analysis of the case as to nonparties, and a jury may only "compare" the negligence as between parties and nonparties. **Nothing in NRS 41.141 prohibits a party defendant from attempting**

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

to establish that either no negligence occurred or that the entire responsibility for a plaintiff's injuries rests with nonparties, including those who have separately settled their liabilities with the plaintiff.

Id. at 844-45 (emphasis added).

Defendants attempt to circumvent the plain language of these statutes and the Nevada Supreme Court's interpretation of them by claiming the 2004 "Keep Our Doctors In Nevada" Initiative somehow supersedes the comparative fault scheme set forth in NRS 41.141. They argue that since the Initiative was passed in 2004, it also supersedes the Court's decision in *Banks*. They also argue that since NRS 41A.045 abrogates joint and several liability, they should be allowed to compare their fault to Dr. Conti's fault.

Defendants' arguments are baseless. *First*, NRS 41A.045 allows for each doctor-defendant to be liable for his/her own "percentage of fault". "Percentages of Fault" are governed by the comparative fault statute, which specifically states that, in this case since Dr. Conti is a settled out defendant, Defendants may not allocate fault to him. *Second*, like NRS 41A.045, NRS 41.141 also permits for several liability among defendants, not joint and several liability. Therefore the two statutes are not at odds with one another so as to suggest that the Legislature intended one statute to supersede the other. *Third*, the objective of this court is to construe the statutes in the manner the Legislature intended, not to rewrite the law. *Olson v. Richard*, 120 Nev. 240, 243, 89 P.3d 31, 33 (2004). If the Legislature wanted to create a completely different scheme for allocating fault to settled defendants in medical malpractice cases, it would have done so.

Defendants also cite the court to case law from other jurisdictions. However, given the Legislature and Supreme Court's unambiguous decision on this very issue, there is no need for this Court to consider those decisions and apply law at odds with Nevada law.

Dr. Piroozi separately argues that the court should require the jury to complete "special interrogatories" to allow the jury to decide Dr. Conti's fault. This request is at odds with Nevada

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

law. Dr. Conti is not on trial, only Defendants are. Dr. Piroozi's request is nothing more than a last minute attempt to try to shift the jurors' focus during their deliberations away from his negligence and onto Dr. Conti. Dr. Conti will not be present at trial to defend himself and Nevada law specifically prohibits the jury from considering Dr. Conti's fault. Granting Dr. Piroozi's request would therefore be in violation of Nevada law and would constitute reversible error. *See Warmbrodt v. Blanchard*, 100 Nev. 703, 709, 692 P.2d 1282, 1286 (1984) (holding that district court erred in instructing the jury to consider and apportion negligence of nonparties to the trial via special verdict) (cited by *Banks v. Sunrise Hospital*, 120 Nev. at 845.

Under Nevada law, Defendants are not permitted to allocate a percentage of fault to Dr. Conti at trial. They are, however, permitted to argue they did not act negligently or that Dr. Conti (as a non-party) is 100% responsible for MayRose's injuries. Permitting Defendants to argue differently would be in violation of Nevada's comparative fault statute and cases interpreting it. It would also constitute reversible error. Plaintiff's *Motion* should be granted as it seeks to correctly apply Nevada law.

C. Plaintiff's Damages.

To clarify, Plaintiffs only intend to seek as economic damages MayRose's past medical bills to date and those damages contemplated in the life care plan already provided to Defendants. Plaintiffs filed this *Motion* to exclude evidence that Plaintiffs used portions of Dr. Conti's settlement to buy and retrofit a handicap accessible home for MayRose, pay off MayRose's outstanding medical bills, purchase a handicap-accessible car, and other medical and educational things for the benefit of MayRose, as contemplated by the life care plan. Plaintiffs *Motion* is not an attempt to argue to the jury that they require far more than MayRose needs to secure these things. In fact, the opposite is true. For example, the life care plan allows for an initial $44,000 to retrofit MayRose's home. This is the amount Plaintiffs will request the jury to award, not the

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

$250,000 that had to ultimately be spent on this endeavor.

The objective of Plaintiffs' *Motion* is to simply ensure that Plaintiffs are entitled to pursue recovery based on the life care plan and not have Defendants introduce to the jury that those items have already been purchased. Plaintiffs will not ask the jury for hypothetical amounts of money for things already purchased. Plaintiffs will only seek recovery for May's past medical expenses and those damages set forth in the life care plan. Informing the jury that other purchases have been made could suggest that a settlement was obtained from Dr. Conti. It also could yield a double discount on those things contemplated in the life care plan that have already been purchased. This is not what is contemplated under Nevada law.

Defendants further argue that Plaintiffs should be bound by their representations made to the court in their Petition to Compromise the claim against Dr. Conti. However, MayRose has incurred additional medical expenses since then so that Petition is not reflective of Plaintiffs' current measure of damages. Furthermore, the Petition contains evidence of collateral sources, which are inadmissible under Nevada law. Finally, the Petition does not include all of May's past expenses, a large share of which were paid for by her mother and for which her mother did not seek reimbursement. Accordingly, the amounts set forth in the Petition did not accurately reflect all of May's past damages—only those for which various parties were seeking reimbursement.

II.

CONCLUSION

Based on the foregoing, Plaintiffs hereby request an Order granting this *Motion* and excluding exclude evidence of Dr. Conti's settlement or settlement amount, precluding Defendants from allocating or comparing their fault to Dr. Conti's fault at trial, and allowing Plaintiffs to prove their full measure of damages sustained by Defendants' negligence.

//

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

//

//

//DATED this 30th day of December, 2013.

EISENBERG GILCHRIST & CUTT

/s/ Jacquelynn D. Carmichael
Jacquelynn D. Carmichael (UT #6522)
Robert G. Gilchrist (UT #3715)
Jeff M. Sbaih (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December, 2013, I mailed a true and correct copy, postage prepaid, of the foregoing **REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL** to the following:

Kenneth M. Webster
Jonquil L. Urdaz
HALL PRANGLE & SCHOONVELD LLC
1160 North Town Center Drive
Suite 200
Las Vegas, NV 89144
jurdaz@hpslaw.com
Attorneys for Sunrise Hospital & Medical Center, LLC

John H. Cotton
Christopher G. Rigler
COTTON DRIGGS WALCH HOLLEY WOLOSON & THOMPSON
400 S. Fourth Street, 3rd Floor
Las Vegas, NV 89101
crigler@jhcottonlaw.com
Attorneys for Ali Piroozi, MD

Robert C. McBride
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
bob@memlaw.net
Attorneys for Martin Blahnik, MD

/s/ Candace Gleed

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Medical/Dental **COURT MINUTES** **January 08, 2014**

A-10-616728-C Tiffani Hurst, Plaintiff(s)
vs.
Sunrise Hospital and Medical Center LLC, Defendant(s)

January 08, 2014 **9:00 AM** **All Pending Motions**

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Theresa Lee

RECORDER:

REPORTER: Bill Nelson (at request of Mr. Webster)

PARTIES PRESENT:

Rigler, Christopher	Attorney for Deft Dr. Piroozi
Sbaih, Jeff M. &	Attorneys for Pltf
Carmichael, Jackie	
Webster, Kenneth M.	Attorney for Deft Sunrise Hospital
Ellerton, Marie	Attorney for Deft Dr. Blahnick

JOURNAL ENTRIES

PLTF'S MOTION IN LIMINE NO. 1: EXCLUDE EVIDENCE OF RALPH CONTI, M.D.'S CRIMINAL MATTERS AND INDICTMENTS...PLTF'S MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL...PLTF'S MOTION IN LIMINE NO. 3: EXCLUDE COLLATERAL SOURCES...PLTF'S MOTION IN LIMINE NO. 4: EXCLUDE EVIDENCE/DISCUSSION ON CAP ON NONECONOMIC DAMAGES

Court noted; this case has a FIRM TRIAL DATE of 2/18/14 through 2/28/14. two week trial. Court queried counsel regarding any settlement conference set between now and trial. Counsel stated there is none set.

PLTF'S MOTION IN LIMINE NO. 1: EXCLUDE EVIDENCE OF RALPH CONTI, M.D.'S CRIMINAL MATTERS AND INDICTMENTS...Court noted, Dr. Conti passed away prior to being sentenced, therefore, he will not be testifying, but his deposition was taken, and counsel can ask about the conviction. The Deposition is in favor of the deft. Only one other party opposed the motion and that was Dr. Blahnick's attorney. Counsel stated Sunrise Hospital also objected. Court stated counsel is

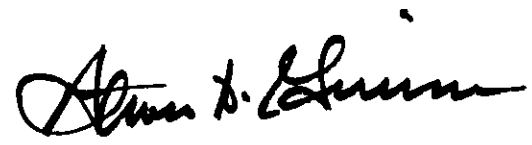
asking to publish the deposition and then impeach him. Mr. Webster stated he will not introduce the Video Deposition unless another deponent testifies that Dr. Conti was a great Doctor. Mr. Webster stated he just wants the evidence available to him if it comes up. Ms. Carmichael stated she does not want any of the evidence produced at the deposition introduced indicating Dr. Conti was Federally Indicted. Court stated, Dr. Conti's indictment has nothing to do with his treatment of the Pltf. The Court will address this issue at trial, but has double that it will come in, and advised counsel to be careful to exclude any reference to the Indictment.

PLTF'S MOTION IN LIMINE NO. 3: EXCLUDE COLLATERAL SOURCES...Arguments by counsel...COURT ORDERED, the Federal Rule pre-empts this, and defense counsel cannot recover. Court does not feel under existing Nevada Law that it gets to be presented what was paid as opposed to what the reasonable value is for the medical services provided. COURT ORDERED, motion GRANTED; once the verdict come in, Counsel can deduct what needs to be deducted.

PLTF'S MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL...Following arguments by counsel, COURT ORDERED, this motion is CONTINUED to 1/22/14. The Court wants counsel to brief this motion on how the Court and counsel should approach this issue. Each side to provide the Court with what they are proposing on how it should be handled. Counsel can file a Supplement to this motion with some authority why it should be handled in their prospective.

PLTF'S MOTION IN LIMINE NO. 4: EXCLUDE EVIDENCE/DISCUSSION ON CAP ON NONECONOMIC DAMAGES...Arguments by counsel. COURT ORDERED, the Court is not declaring the CAP unconstitutional. The Court will ignore the CAP, but if the Verdict exceeds the CAP, the Court will place the matter on calendar and reduce the Verdict.

1/22/14 @ 9:00 A.M. PLTF'S MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL...



SUPP
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@cdwnvlaw.com
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
E-mail: CRigler@cdwnvlaw.com
COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912
Attorneys for Defendant Ali Piroozi, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST,

Plaintiffs,

v.

SUNRISE HOSPITAL AND MEDICAL CENTER; MARTIN BLAHNIK, M.D.; ALI PIROOZI, M.D.; RALPH CONTI, M.D.; and FOOTHILLS PEDIATRICS, LLC,

Defendants.

Case No.: A-10-616728-C
Dept. No.: 24

DEFENDANT PIROOZI'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2 AND PARTIAL JOINDER TO DEFENDANT SUNRISE'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 3

\\\

\\\

\\\

\\\

\\\

\\\

\\\

\\\

\\\

\\\

Defendant Ali Piroozi, M.D., by and through his counsel of record, COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON hereby submits this Supplemental Opposition to Plaintiffs' Motion in Limine No. 2 and Partial Joinder to Defendant Sunrise's Supplemental Opposition to Plaintiffs' Motion in Limine No. 3. Based on the arguments made in the previous Motions in Limine Oppositions, arguments made herein and any arguments made during the hearing on this matter, this Court should deny Plaintiffs' Motion in Limine No. 2 and Motion in Limine No. 3 as requested below.

Dated this 17th day of January, 2014.

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
CHRISTOPHER G. RIGLER, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Defendant Ali Piroozi, M.D.

MEMORANDUM AND POINTS OF AUTHORITY

I. Introduction/Facts

A previous hearing was held on January 8, 2013 to address various Motions in Limine filed by Plaintiff. The Court requested additional briefing on Motion in Limine No. 2. and Motion in Limine No. 3.

A. Motion in Limine No. 2

Through Motion in Limine No. 2, Plaintiffs wish to keep former Defendants, Dr. Conti and Foothills Pediatrics, off of the verdict form because they settled and Plaintiffs believe that the remaining Defendants only get an offset for the settlement amount. Plaintiffs also wish to allow for introduction of all past medical expense damages that they allegedly incurred as a result of the alleged negligence on behalf of Defendants.[1]

In connection with the first request, it is necessary for both Dr. Conti and Foothills Pediatics to be on the verdict form as Nevada law in medical malpractice cases only allows for a judgment in the amount consistent with percentage of negligence.

In connection with the second request, Plaintiffs filed a Motion for Compromise of Minor's Claim under seal (hereinafter "Compromise Motion") after the settlement was reached. In that Compromise Motion, various assertions were made regarding amounts of past medical expenses. As the Compromise Motion was filed under seal, those figures are not listed herein but Defendant Piroozi contends that Plaintiffs should not be able to assert any additional past medical expense other than those provided in the Compromise Motion for the period from birth until the date of the Motion for Compromise filing (November 21, 2012).

[1] Of note, Plaintiffs also request that the parties not mention the settlement with Dr. Conti and Foothills Pediatrics to the jury. That point is not challenged by any party and is moot.

B. Motion in Limine No. 3

Through Motion in Limine No. 3, Plaintiffs wish to bar collateral source evidence in connection with any past medical expenses.

In connection with this, Defendant Piroozi understands that medical bills may have been incurred after the filing of the Compromise Motion. However, as is asserted by Defendant Sunrise in their Supplemental Briefing, this Court should follow California law and only allow for presentation of evidence in connection of medical expenses paid, not medical expenses billed, for the period from November 21, 2012 until present.

II. Law and Argument

A. A Medical Malpractice Defendant's Right To Apportionment Is Absolute

Additional briefing in not necessary on this point as the primary Opposition to Motion in Limine No. 2 fully lays out Defendant Piroozi's position. The plain and simple fact is that NRS 41A.045 clearly and unambiguously abrogates joint and several liability for medical malpractice defendants and only allows for a judgment "which represents the percentage of negligence attributable to the defendant." Without parties that Plaintiffs themselves believe are negligent (see Plaintiffs Complaint with attached affidavit from Alan H. Rosenthal, M.D.)[2] on the verdict form, proper percentages of negligence to the remaining Defendants cannot be allocated. The jury will only properly be able to allocate percentage of fault, as is required under Nevada law, if all previous or current named Defendants who are alleged to be negligent are on the verdict form.

Given the above, this Court must deny Plaintiff's Motion in Limine No. 2 as it pertains to the request by Plaintiff to leave both former Defendants off of the verdict form.

---

[2] The Complaint is not attached as submitting prior filed documents as Exhibits is prohibited by local rule. In the Complaint and affidavit, Plaintiffs and their experts assert how they believe former Defendants, Dr. Conti and Foothills Pediatrics, were negligent and caused damages to MayRose.

B. In Accordance With the Doctrine Of Judicial Estoppel, Plaintiffs Should Only Be Allowed To Present Evidence Of Past Medical Expense Damages For Less Than Or Equal To The Amount Of Damages Asserted In The Compromise Motion For The Period From Birth To November 21, 2012

Plaintiffs argue that they should be allowed to present all medical expense damages incurred from birth until present day. See Plaintiffs' Motion In Limine No. 2 at 8-9. However, as discussed below, with regard to any medical expenses incurred from birth until the filing of the Compromise Motion on November 21, 2012, Plaintiffs should be limited as to the amounts they can try to prove at trial in accordance with the general principles laid out the in doctrine of judicial estoppel.

In Nevada, a party is judicially estopped for taking a position that is contrary to an assertion alleged or admitted in a prior pleading. Sterling Builders v. Fuhrman, 80 Nev. 543, 549-550, 396 P.2d 850, 854 (1964). Specifically, the Nevada Supreme Court has held:

> It has been said that the purpose of the doctrine of judicial estoppel is to suppress fraud, and to prohibit the deliberate shifting of position to suit exigencies of each particular case that may arise concerning the subject matter in controversy; but at least in so far as this doctrine is applied to statements under oath, its distinctive feature has been said to be the expressed purpose of the court, on broad grounds of public policy, to uphold the sanctity of an oath, and to eliminate the prejudice that would result to the administration of justice if a litigant were to swear one way one time and a different way another time.

Sterling Builders, 80 Nev. at 550, 396 P.2d at 854 (quoting 31 C.J.S., Estoppel § 121, at 649, 650).[3]

Based on the principles stated in the doctrine of judicial estoppel, with regard to medical expenses incurred from birth until the date of the filing of the Compromise Motion, Plaintiffs should be estopped from asserting at trial that the medical expenses for that time period are any more than the amounts provided in the Compromise Motion. Specifically, both Ms. Hurst and Mr. Abbington submitted a verification attesting to the accuracy of the calculation of damages

[3] Of note, the doctrine is usually applied when there was a prior case. However, the rationale behind the doctrine would apply herein as well.

asserted in support of the Compromise Motion. As such, they should not now be able to argue any further medical expenses in connection with that time period. To allow for such would place a fraud on the jury and allow for deliberate shifting of positions to suit exigencies which the Nevada Supreme Court clearly does not allow.[4]

As such, this Court should deny Plaintiffs' Motion in Limine No. 2 at least in part and only allow Plaintiff to try to prove damages asserted in the Compromise Motion.

C. Partial Joinder To Defendant Sunrise's Supplemental Opposition To Motion In Limine No. 3

Defendant Piroozi realizes that, during the period from November 21. 2012 until present, MayRose may have incurred additional medical expenses. Given the possible additional medical expenses, Defendant Piroozi joins Defendant Sunrise's supplemental briefing in connection with Motion in Limine No. 3. Specifically, Defendant Sunrise argues that only the amount paid, not the amount billed, for past medical expenses should be presented to the jury. Defendant Piroozi fully supports this position in connection with any and all medical expenses incurred from November 21, 2012 until present, if any, and hereby Joins Defendant Sunrise in connection with that argument.

III. CONCLUSION

This Court must have former Defendants, Dr. Conti and Foothills Pediatrics, on the verdict form to assure that the remaining Defendants are only responsible for their percentage of fault in the event of a Plaintiffs' verdict.

This Court must only permit Plaintiffs to argue medical expense damages verified in the Compromise Motion for the time period from birth until November 21, 2012. Such is in accordance with the doctrine of judicial estoppel.

---

[4] As this is a judicial estoppel issue and not a collateral source issue, there is no need to discuss collateral sources in connection with the past medical expenses from birth until November 21, 2012.

This Court must only permit Plaintiffs to submit paid medical expenses, not charged medical expenses, in connection with any medical expenses incurred from November 21, 2012 until present, if any.

Finally, Defendant Piroozi respectfully requests that this Court fashion an Order in accordance with the positions taken by Defendant Piroozi in his briefing when denying Plaintiffs' Motion in Limine No. 2 and Motion in Limine No. 3.

Dated this 17th day of January, 2014.

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Defendant Ali Piroozi, M.D.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 17th day of January, 2014 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **DEFENDANT PIROOZI'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2 AND PARTIAL JOINDER TO DEFENDANT SUNRISE'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 3**, postage prepaid and addressed to:

Jackie Carmichael, Esq.
EISENBERG, GILCHRIST & CUTT
215 South State Street, Suite 900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

Jonquil L. Whitehead, Esq.
Kenneth Webster, Esq.
HALL, PRANGLE & SCHOONVELD
1160 North Town Center Drive, Suite 200
Las Vegas, Nevada 89144
Attorneys for Defendant Sunrise Hospital

Robert McBride, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant Martin Blahnik, M.D.

An employee of Cotton, Driggs, Walch, Holley, Woloson & Thompson

Electronically Filed
01/17/2014 03:34:21 PM

CLERK OF THE COURT

SUPP
ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
S. MARIE ELLERTON, ESQ.
Nevada Bar. No.: 004581
MANDELBAUM, ELLERTON & McBRIDE
2012 Hamilton Lane
Las Vegas, Nevada 89106
(702) 367-1234
(702) 367-1978 (Fax)
filing@memlaw.net
Attorneys for Defendant
Martin Blahnik, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST,

Plaintiffs,

vs.

SUNRISE HOSPITAL AND MEDICAL CENTER, LLC.; MARTIN BLAHNIK, M.D.; ALI PIROOZI, M.D.; RALPH CONTI, M.D.; and FOOTHILLS PEDIATRICS, LLC.,

Defendants.

CASE NO.: A-10-616728
DEPT. NO.: 24

DEFENDANT MARTIN BLAHNIK, M.D.'S SUPPLEMENTAL BRIEFING TO OPPOSITION TO PLAINTIFFS' MOTIONS IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL, ALLOCATION OF FAULT AND MEASURE OF DAMAGES

Date of Hearing: January 8, 2014
Time of Hearing: 9:00 a.m.

Defendant, MARTIN BLAHNIK, M.D., by and through his counsel of record, ROBERT C. McBRIDE, ESQ. and S. MARIE ELLERTON, ESQ., of the law firm of MANDELBAUM, ELLERTON, & McBRIDE hereby submits his Supplemental Briefing to Opposition to Plaintiffs' Motion in Limine No. 2: Exclude Dr. Conti's Settlement from Trial, Allocation of Fault, and Measure of Damages

This Supplemental Brief is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities and Exhibits, such other documentary evidence as may be

presented, and any oral arguments at the time of the hearing of this matter.

DATED this 17th day of January, 2014.

MANDELBAUM, ELLERTON & McBRIDE

By: _____
ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
S. MARIE ELLERTON, ESQ.
Nevada Bar No.: 004581
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Martin Blahnik, M.D.

FOR #8504

MEMORANDUM OF POINTS & AUTHORITIES

1. An Apportionment Of Fault Is Appropriate Because Dr. Blahnik Must Be Held Severally Liable

Nevada law mandates that a provider of health care be severally liable for a claim based upon professional negligence. It is undisputed that this is a medical malpractice case brought in accordance with Nevada Revised Statute ("NRS") Chapter 41A. NRS 41A.045 states:

> 1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.
>
> 2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.

If the plain meaning of a statute is clear on its face, then the Court will not go beyond the language of the statute to determine the meaning. Beazer Homes Nev. Inc. v. Eighth Judicial Dist. Court, 125 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004) *citing* Rosequist v Int'l Ass'n of Firefighters, 118 Nev. 444,448-449, 49 P.3d 653 (2002). Importantly, in Sparks v. State, 121 Nev. 107, 110-11, 110 P.3d 486, 488 (2005), the Nevada Supreme Court stated, "Where the legislative intent can be clearly discerned from the plain language of the statute, it is the duty of the court to give effect to that intent and to effectuate, rather than nullify, the legislative purpose."

As is evident from the plain, clear, and unambiguous language of NRS 41A.045, defendants in a medical malpractice are held severally liable. The statute explicitly states that its intent is to abrogate joint and several liability of a provider of health in action for injury based upon professional negligence. This instant matter is undoubtedly a medical malpractice case and Dr. Blahnik must be held severally liable. At the time of trial, the jury must apportion liability amongst Dr. Blahnik and all Co-Defendants.

Importantly, when examining the legislative history of NRS 41A.045, public policy specifically mandates a medical malpractice defendant to be held severally liable. NRS 41A.045 was part of an Act proposed by Initiative Petition and approved by the Nevada voters in the 2004 general election.[1] The Initiative, on the Ballot as Question 3 and entitled "Keep Our Doctors in Nevada" (KODIN), contained several sections which made various changes to the statutory framework of a medical malpractice action in Nevada. Section 6 was added to expressly abolish joint and several liability for a provider of health and hold a provider of health liable severally liable for both economic and non-economic damages

The Initiative was placed on the ballot to address "skyrocketing medical malpractice insurance costs [which] have resulted in a potential breakdown in the delivery of health care for the medically indigent, a denial of access to health care for the economically marginal, and the depletion of physicians such as to substantially worsen the quality of health care available to the residents of this state." When the Initiative passed, Section 6 was codified in NRS 41A.045.

Dr. Blahnik request that all Defendants, including settled Co-Defendant, Ralph Conti, M.D. ("Settled Defendant"), be on the verdict form so Dr. Blahnik's degree of fault can be apportioned in the case as to remaining defendants. If Settled Defendant is not on the verdict form, then the remaining defendants will be precluded from arguing that Settled Defendant was at fault for the alleged injuries. The jury, in its analysis of liability, must be able to consider all defendants so it can allocate an accurate percentage of liability. Excluding Settled Defendant from the verdict form risks Non-settling Defendants being allocated a higher percentage of fault. Further, Non-Settling

---

[1] *See* KODIN Initiative Petition attached as Exhibit "A."

Defendants would essentially be joint and severally liable in direct contradiction to Nevada law. Assuming *arguendo*, the Court is inclined to put Settled Defendant on the verdict form, Dr. Blahnik respectfully request that Dr. Conti's name be specifically listed on the verdict form or, in the alternative, be listed as "Pediatrician" or "Other Medical Providers." Therefore, Dr. Blahnik respectfully request that his Settled Defendant be placed on the verdict form

2. Conclusion

Dr. Blahnik respectfully request that he be held severally liable in accordance with NRS 41A.045. Further, Dr. Blahnik request that Ralph Conti, M.D. be placed on the verdict form so the jury can apportion Dr. Blahnik's potential liability as to the other defendants. Therefore, Plaintiffs' Motion in Limine No. 2 must be denied.

DATED this 17th day of January, 2014.

MANDELBAUM, ELLERTON & McBRIDE

By: Pamela C. Ellerton FOR #8540

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
S. MARIE ELLERTON, ESQ.
Nevada Bar No.: 004581
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Martin Blahnik, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2014, I forwarded a copy of the above and foregoing **DEFENDANT MARTIN BLAHNIK, M.D.'S SUPPLEMENTAL BRIEFING TO OPPOSITION TO PLAINTIFFS' MOTIONS IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL, ALLOCATION OF FAULT AND MEASURE OF DAMAGES** as follows:

X by depositing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope; or

____ by facsimile transmission as indicated below;

____ Via hand-delivery; or

____ both U.S. Mail and facsimile TO:

Jackie Carmichael, Esq.
Eisenberg, Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

John H. Cotton, Esq.
400 S. 4th Street, 3rd Floor
Las Vegas, NV 89101
Fax (702) 791-1912
Attorneys for Ali Piroozi, M.D.

Jonquil Whitehead, Esq.
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144
Fax (702) 384-6025
Attorneys for Sunrise Hospital & Medical Center

Patricia Egan Daehnke, Esq.
3441 S. Eastern Avenue, Suite 402
Las Vegas, NV 89169
Fax (702) 383-9882
Attorneys for Ralph Conti, M.D. and Foothills Pediatrics, Inc.

Rebecca Daly
An Employee of *Mandelbaum, Ellerton & McBride*

EXHIBIT A

INITIATIVE PETITION

INITIATIVE PETITION

FEBRUARY 21, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to certain actions against providers of health care.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to medical malpractice; limiting attorney's fees in actions against providers of health care; eliminating the exceptions pertaining to noneconomic damages; making changes concerning the payment of damages; revising the statute of limitations for the filing of actions; eliminating joint and several liability; making various other changes concerning such actions; and providing for other matters properly relating thereto.

WHEREAS, There exists a major health care crisis in this state attributable to the skyrocketing cost of medical malpractice insurance; and

WHEREAS, Such skyrocketing medical malpractice insurance costs have resulted in a potential breakdown in the delivery of health care in this state, severe hardships concerning the availability of health care for the medically indigent, a denial of access to health care for the economically marginal, and the depletion of physicians such as to substantially worsen the quality of health care available to the residents of this state; and

WHEREAS, It is necessary to provide an adequate and reasonable remedy to address this health care crisis and to protect the health, welfare and safety of the residents of this state; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY DO ENACT AS FOLLOWS:

Section 1. Chapter 7 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in connection with an action for injury or death against a provider of health care based upon professional negligence in excess of:

(a) Forty percent of the first $50,000 recovered;

(b) Thirty-three and one-third percent of the next $50,000 recovered;

(c) Twenty-five percent of the next $500,000 recovered; and

(d) Fifteen percent of the amount of recovery that exceeds $600,000.

2. The limitations set forth in subsection 1 apply to all forms of recovery, including, without limitation, settlement, arbitration and judgment.

3. For the purposes of this section, "recovered" means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs.

4. As used in this section:

(a) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(b) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 2. Chapter 41A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. *"Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the*

provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

Sec. 4. *"Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.*

Sec. 5. *In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed $350,000.*

Sec. 6. *1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.*

2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.

Sec. 7. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 41A.004 to 41A.013, inclusive, *and sections 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 41A.097 is hereby amended to read as follows:

41A.097 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.

2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or ~~[2 years]~~ *1 year* after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to him.

4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of his disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

~~[5. As used in this section, "provider of health care" means a physician licensed under chapter 630 or 633 of NRS, a dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital as the employer of any such person.]~~

Sec. 9. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In an action for injury or death against a provider of health care based upon professional negligence, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state

or federal income disability or worker's compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence.

2. A source of collateral benefits introduced pursuant to subsection 1 may not:

(a) Recover any amount against the plaintiff; or

(b) Be subrogated to the rights of the plaintiff against a defendant.

3. In an action for injury or death against a provider of health care based upon professional negligence, a district court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages.

4. In entering a judgment ordering the payment of future damages by periodic payments pursuant to subsection 3, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

5. A judgment ordering the payment of future damages by periodic payments entered pursuant to subsection 3 must specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments will be made. Such payments must only be subject to modification in the event of the death of the judgment creditor. Money damages awarded for loss of future earnings must not be reduced or payments terminated by reason of the death of the judgment creditor, but must be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before his death. In such cases, the court that rendered the original judgment may,

upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection.

6. If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the periodic payments as specified pursuant to subsection 5, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including, but not limited to, court costs and attorney's fees.

7. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given pursuant to subsection 4 reverts to the judgment debtor.

8. As used in this section:

(a) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(b) "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

(c) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(d) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 10. NRS 41A.031, 41A.041 and 42.020 are hereby repealed.

Sec. 11. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. The amendatory provisions of sections 5, 6 and 8 of this act apply only to a cause of action that accrues on or after the effective date of this act.

TEXT OF REPEALED SECTIONS

41A.031 Limitations on liability for noneconomic damages; exceptions.

1. Except as otherwise provided in subsection 2 and except as further limited in subsection 3, in an action for damages for medical malpractice or dental malpractice, the noneconomic damages awarded to each plaintiff from each defendant must not exceed $350,000.

2. In an action for damages for medical malpractice or dental malpractice, the limitation on noneconomic damages set forth in subsection 1 does not apply in the following circumstances and types of cases:

(a) A case in which the conduct of the defendant is determined to constitute gross malpractice; or

(b) A case in which, following return of a verdict by the jury or a finding of damages in a bench trial, the court determines, by clear and convincing evidence admitted at trial, that an award in excess of $350,000 for noneconomic damages is justified because of exceptional circumstances.

3. Except as otherwise provided in subsection 4, in an action for damages for medical malpractice or dental malpractice, in the circumstances and types of cases described in subsections 1 and 2, the noneconomic damages awarded to each plaintiff from each defendant must not exceed the amount of money remaining under the professional liability insurance policy limit covering the defendant after subtracting the economic damages awarded to that plaintiff. Irrespective of the number of plaintiffs in the action, in no event may any single defendant be liable to the plaintiffs in the aggregate in excess of the professional liability insurance policy limit covering that defendant.

4. The limitation set forth in subsection 3 does not apply in an action for damages for medical malpractice or dental malpractice unless the defendant was covered by professional liability insurance at the time of the occurrence of the alleged malpractice and on the date on which the insurer receives notice of the claim, in an amount of:

(a) Not less than $1,000,000 per occurrence; and

(b) Not less than $3,000,000 in the aggregate.

5. This section is not intended to limit the responsibility of any defendant for the total economic damages awarded.

6. For the purposes of this section, "gross malpractice" means failure to exercise the required degree of care, skill or knowledge that amounts to:

(a) A conscious indifference to the consequences which may result from the gross malpractice; and

(b) A disregard for and indifference to the safety and welfare of the patient.

41A.041 Medical malpractice: Several liability for noneconomic damages.

1. In an action for damages for medical malpractice, each defendant is liable for noneconomic damages severally only, and not jointly, to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to the defendant.

2. As used in this section, "medical malpractice" means the failure of a physician, hospital, employee of a hospital, certified nurse midwife or certified registered nurse anesthetist in rendering services to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

42.020 Actions for damages for medical malpractice: Reduction of damages by amount previously paid or reimbursed; payment of future economic damages.

1. Except as otherwise provided in subsection 2, in any action for damages for medical malpractice, the amount of damages, if any, awarded in the action must be reduced by the amount of any prior payment made by or on behalf of the provider of health care against whom the action is brought to the injured person or to the claimant to meet reasonable expenses of medical care, other essential goods or services or reasonable living expenses.

2. In any action described in subsection 1 in which liability for medical malpractice is established or admitted, the court shall, before the entry of judgment, hold a separate hearing to determine if any expenses incurred by the claimant for medical care, loss of income or other financial loss have been paid or reimbursed as a benefit from a collateral source. If the court determines that a claimant has received such a benefit, the court shall reduce the amount of damages, if any, awarded in the action by the amount of the benefit. The amount so reduced must not include any amount for which there is a right of subrogation to the rights of the claimant if the right of subrogation is exercised by serving a notice of lien on the claimant before the settlement of or the entry of judgment in the action. Notice of the action must be provided by the claimant to any statutory holder of a lien.

3. If future economic damages are awarded in an action for medical malpractice, the court may, at the request of the claimant, order the award to be paid:

(a) In a lump sum which has been reduced to its present value as determined by the trier of fact and approved by the court; or

(b) Subject to the provisions of subsections 5 and 6 and the discretion of the court, in periodic payments either by an annuity purchased to provide periodic payments or by other means if the defendant posts an adequate bond or other security to ensure full payment by periodic payments of the damages awarded by the judgment.

As used in this subsection, "future economic damages" includes damages for future medical treatment, care or custody, and loss of future earnings.

4. If the claimant receives periodic payments pursuant to paragraph (b) of subsection 3, the award must not be reduced to its present value. The amount of the periodic payments must be equal to the total amount of all future damages awarded by the trier of fact and approved by the court. The period for which the periodic payments must be made must be determined by the trier of fact and approved by the court. Before the entry of judgment, each party shall submit to the court a plan specifying the recipient of the payments, the amount of the payments and a schedule of periodic payments for the award. Upon receipt and review of the plans, the court shall specify in its judgment rendered in the action the recipient of the payments, the amount of the payments and a schedule of payments for the award.

5. If an annuity is purchased pursuant to paragraph (b) of subsection 3, the claimant shall select the provider of the annuity. Upon purchase of the annuity, the claimant shall:

(a) Execute a satisfaction of judgment or a stipulation for dismissal of the claim with prejudice; and

(b) Release forever the defendant and his insurer, if any, from any obligation to make periodic payments pursuant to the award.

6. If the defendant posts a bond or other security pursuant to paragraph (b) of subsection 3, upon termination of the payment of periodic payments of damages, the court shall order the return of the bond or other security, or as much as remains, to the defendant.

7. As used in this section:

(a) "Benefit from a collateral source" means any money, service or other benefit which is paid or provided or is reasonably likely to be paid or provided to a claimant for personal injury or wrongful death pursuant to:

(1) A state or federal act which provides benefits for sickness, disability, accidents, loss of income or workers' compensation;

(2) A policy of insurance which provides health benefits or coverage for loss of income;

(3) A contract of any group, organization, partnership or corporation which provides, pays or reimburses the cost of medical, hospital or dental benefits or benefits for loss of income; or

(4) Any other publicly or privately funded program which provides such benefits.

(b) "Medical malpractice" has the meaning ascribed to it in NRS 41A.009.

SUPP
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
kwebster@hpslaw.com
jwhitehead@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST, Plaintiffs, vs. SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, MARTIN BLAHNICK, M.D., ALI PIROOZI, M.D., RALPH CONTI, M.D. and FOOTHILL PEDIATRICS LLC, Defendants.	CASE NO. A616728 DEPT NO. XXIV

DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL

COMES NOW, Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (hereinafter "Sunrise Hospital"), by and through its attorneys, HALL PRANGLE & SCHOONVELD, LLC, and hereby supplements its opposition to Plaintiffs' Motion in Limine No. 2: Exclude Dr. Conti's Settlement at Trial.

This supplemental brief is made and based upon the papers and pleadings on file herein, the points and authorities attached hereto, and such argument of counsel which this Court has heard and may further entertain.

DATED this 15th day of January, 2014.

HALL PRANGLE & SCHOONVELD, LLC

By: _____ #11953
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

POINTS AND AUTHORITIES

I.

INTRODUCTION

At the hearing on Plaintiff's Motion in Limine #2, which seeks to exclude Dr. Conti's Settlement from trial, this Court requested supplemental briefing related to the apportionment of any liability to Dr. Conti. Specifically, the issue before this Court is whether Dr. Conti, who previously settled out of this case, may yet be included on a special verdict form to accurately apportion the liability in this case.

Plaintiff disputes apportionment, contending that NRS 41.141 prevents the Court from apportioning liability to settled defendants. However, as set forth below, NRS 41.141 is inapplicable to this case under Nevada law as contributory negligence may not be properly asserted "as a bona fide issue" in this case. Moreover, to give effect to the pure several liability

of medical malpractice mandated by NRS41A.045, the percentage of fault attributable to non-parties must be accounted for by the jury. Therefore, notwithstanding Dr. Conti's settlement, the jury must be allowed to determine his percentage of fault.

II.

LEGAL ARGUMENT

A. NRS 41.141 does not prohibit Dr. Conti from being included on the Jury Verdict Form because NRS 41.141 is inapplicable to this Case.

Under NRS 41A.045(1), "each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant." This statute was "intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence." NRS 41A.045(2). Thus the remaining defendants in this action can only be found liable "for that portion of the judgment which represents the percentage of negligence attributable to [them]." *Id.* Accordingly, it makes no difference whether Dr. Conti is currently a party to this case or not. Defendants are not liable for any percentage of negligence that is attributable to Dr. Conti.

Nevertheless, Defendants contend that NRS 41.141 prohibits defendants from apportioning liability to settled defendants, such as Dr. Conti. NRS 41.141 applies to "*any action* to recover damages for death or injury . . . *in which comparative negligence is asserted as a defense* . . ." Nev. Rev. Stat. § 41.141(1). In these cases, NRS 41.141 abolishes the common law doctrine of joint and several liability, and allows recovery by a plaintiff notwithstanding the plaintiff's own negligence if that negligence "was not greater than [that] of the parties to the action against whom recovery is sought." *Id.* Subsection (3) of the statute further provides that "in *such an action*" – meaning an action in which comparative negligence is asserted as a

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

defense – "the comparative negligence of a [settled] defendant and the amount of the settlement must not thereafter be admitted into evidence nor considered by the jury" in the case against the remaining parties. *See* Nev. Rev. Stat. § 41.141(3). Consequently, the applicability of NRS 41.141, and specifically subsection (3), hinges on whether the action is one in which "comparative negligence is asserted as a defense."

Fortunately, the Nevada Supreme Court specifically addressed this issue in *Buck v. Greyhound Lines, Inc.*, 105 Nev. 756, 783 P.2d 437 (1989). *Buck* involved a personal injury action arising from a car accident. *See Id.* at 759, 783 P.2d at 439. Two of the plaintiffs in the case were twin three-year-old children who were passengers in one of the cars involved. *Id.* The two defendants in the case were ultimately found to be severally liable for their respective percentage of fault. *Id.* On appeal, the plaintiffs argued that the judgment against the defendants should have been joint and several rather than just several. *Id.* at 763, 783 P.2d at 442.

The Nevada Supreme Court agreed with the Plaintiffs, holding that NRS 41.141 "must be read as applying to situations where a plaintiff's contributory negligence may be properly asserted as a bona fide issue in the case." *Id.* at 764, 783 P.2d at 442. The Court thus found that "claims asserted on behalf of the three-year-old twins sleeping in the Bucks' Mustang at the time of the collision would not, as a matter of law, be subject to the defense of contributory negligence." *Id.* Accordingly, the Court concluded that NRS 41.141 "has no application to [the three-year-old plaintiffs] and the judgments entered in their favor are to be joint and several as to all defendants." *Id.*; *see also Coughlin v. Hilton Hotels Corp.*, 879 F. Supp. 1047, 1049 n.3 (D. Nev. 1995) (finding "NRS § 41.141 rather than § 17.245 applicable because Plaintiff Coughlin's own negligence was an issue at trial"); *Banks v. Sunrise Hosp.*, 120 Nev. 822, 845, 102 P.3d 52, 67 n.62 (2004) (finding NRS 41.141 had "no bearing" on whether hospital could argue a non-

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

party's fault where hospital had merely asserted comparative negligence as an affirmative defense, the mere assertion of which "does not in any case, implicate the operation of NRS 41.141").

Like the Plaintiffs in *Buck*, the Plaintiff in this case is a child. In fact, the Plaintiff was a mere five months when the alleged malpractice occurred. Hence, as was the case in *Buck*, there is no question that contributory/comparative negligence is *not* a "bona fide issue" in this case. Thus, NRS 41.141 is inapplicable to this case. As such, there is no restriction on apportioning liability to settled defendants such as Dr. Conti.

B. <u>Dr. Conti must be included on the Jury Verdict form.</u>

Since NRS 41.141 is inapplicable to this case, joint liability would be appropriate if not for NRS 41A.045. *See Buck,* at 764, 783 P.2d at 442 (holding defendants were to be jointly liable because NRS 41.141 was inapplicable due to the fact that the plaintiffs' claims were not subject to a contributory negligence defense). However, NRS 41A.045 expressly creates several liability for defendants in medical malpractice cases. Such defendants are specifically liable only "for that portion of the judgment which represents the percentage of negligence attributable to [them]." *Id.* Thus, NRS 41A.045 is unlike the comparative negligence statute – NRS 41.141 – as there are no qualifications or restrictions on the abrogation of joint and several liability.

To illustrate, under NRS 41.141, even in a case in which "comparative negligence is asserted as a defense," several liability is conditional. This is because a defendant is only entitled to several liability where the Plaintiff names multiple defendants. *See, e.g., Humphries v. Eighth Jud.*, Dist. Ct., 129 Nev. Adv. Op. 85, 312 P.3d 484 (holding that under NRS 41.141 "a negligent defendant should be held severally liable *only* . . . where a plaintiff has sued multiple tortfeasors and recovery is allowed against more than one defendant") (emphasis added). Hence,

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

if a Plaintiff chooses to sue only one of multiple tortfeasors, that one defendant would be jointly liable for the negligence of the other defendants regardless of whether the case is one in which "comparative negligence is asserted as a defense." Such a defendant would only be severally liable if another defendant was added. Thus, under Nevada's comparative negligence statute a defendant may necessarily bear the entire financial responsibility for a plaintiff's misfortune despite only having been slightly negligent in comparison to the total negligence of all those involved in the underlying injury.

Such a result is entirely inconsistent with Nevada's *complete* abrogation of joint and several liability in medical malpractice cases. *See, e.g., Paul v. N.L. Indus.*, 624 P.2d 68, 79 (Okla. 1980) (finding the purpose of several liability defeated where "the slightly negligent party [is required] to pay for a disproportionate part of the others not party to the suit," and stating that "[s]uch a result should not be permitted if we are to remain true to . . . several liability . . . ."). NRS 41A.045 specifically mandates pure several liability for each defendant. It is not contingent upon the plaintiff including or naming multiple defendants in the complaint. Hence whether or not a person is a named defendant or has settled out of the case is irrelevant.

On the contrary, the only way to give effect to the clear express intention of NRS 41A.045, is to account for the negligence of all persons involved in the alleged misconduct, regardless of their party status in the litigation. *See, e.g., DeBenedetto v. CLD Consulting Engineers, Inc.,* 153 N.H. 793, 800, 903 A.2d 969, 978 (N.H.,2006) (stating that the rationale for apportioning negligence to non-parties "is that true apportionment cannot be achieved unless that apportionment includes all tortfeasors who are causally negligent by either causing or contributing to the occurrence in question, whether or not they are named parties to the case").

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

This is not inconsistent with the Nevada Supreme Court's holding in *Banks v. Sunrise Hosp.*, 120 Nev. 822, 845, 102 P.3d 52, 67 (2004). In *Banks*, the plaintiff argued that it was improper under NRS 41.141 for the defendant to argue that a non-party was solely responsible for the plaintiff's injuries. The Court, however, found NRS 41.141 inapplicable since comparative negligence was not at issue in the case. *Id.* Instead the Court relied on NRS 17.245, finding the statute did "not prevent a defendant from pointing the blame at another defendant or from arguing that it was not responsible for the plaintiff's injury." *Id.* To the extent the Court could be said to have found apportionment inappropriate as to non-parties, the determination was expressly limited to NRS 41.141. *See id.* However, as set forth above, NRS 41.141 is inapplicable to this case.

However, here, where the application of several liability is required and unconditional, "the jury should consider the negligence of actors involved in the event giving rise to the negligence, even if the actors are not parties to the particular action or they cannot be liable to the plaintiff by operation of law or settlement." *See Le'Gall v. Lewis County,* 923 P.2d 427, 430 (Idaho 1996) (citing *Hickman v. Fraternal Order of Eagles*, 758 P.2d 704, 706 (Idaho 1988)); *see also Wilson v. Ritto*, 105 Cal.App.4th 361, 129 Cal.Rptr.2d 336 (2003) (finding apportionment to non-parties appropriate in medical malpractice when the defendant proves the fault of the non-party doctor). Furthermore, "if the jury could conclude, based on the evidence, that an actor negligently contributed to the plaintiff's injury, then the actor must be included on the special verdict form." *See Le'Gall v. Lewis County,* 923 P.2d 427, 430 (Idaho 1996) (citing *Hickman v. Fraternal Order of Eagles*, 758 P.2d 704, 706 (Idaho 1988)).

It is undisputable that Nevada imposes pure several liability on medical malpractice defendants. As such, the only way to truly apportion the damages as required by statute is to

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

include non-parties in such apportionment. Accordingly, so long as defendants are able to establish that the fault of Dr. Conti contributed to Plaintiff's injuries, Dr. Conti should be included on the jury verdict form to accurately determine the remaining defendants' proportionate share of liability.

III.

CONCLUSION

Based on the foregoing, Sunrise Hospital respectfully requests this Court Order that Plaintiffs' Motion in Limine No. 2: Exclude Dr. Conti's Settlement From Trial be denied as to Plaintiffs' attempt to exclude Dr. Conti from inclusion on the jury verdict form.

DATED this 15th day of January, 2014.

HALL PRANGLE & SCHOONVELD, LLC

By: _____ #11953
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

. . .

. . .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 15th day of January, 2014, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2: EXCLUDE DR. CONTI'S SETTLEMENT FROM TRIAL** in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Dennis M. Prince, Esq.
PRINCE & KEATING
3230 South Buffalo Drive, Suite 108
Las Vegas, NV 89117
-and-
Jacquelynn D. Carmichael, Esq.
EISENBERG & GILCHRIST
215 South State Street, Suite 900
Salt Lake City, UT 84111
Attorneys for Plaintiffs

John H. Cotton, Esq.
Chris Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorney for Defendant
Ali Piroozi, M.D.

Robert McBride, Esq.
Kim Mandelbaum, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Martin Blahnick, MD

An employee of HALL PRANGLE & SCHOONVELD, LLC

4824-2104-2711, v. 1

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

SUPP

PRINCE & KEATING
Dennis M. Prince, Esq. (NV #5092)
3230 South Buffalo Drive, Suite 108
Las Vegas, Nevada 89117
Telephone: (702) 228-6800

EISENBERG GILCHRIST & CUTT
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Telephone: (801) 366-9100
Facsimile: (801) 350-0065
jcarmichael@egclegal.com

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

Tiffani D. Hurst and Brian Abbington, jointly and on behalf of their minor child, MayRose Lili-Abbington Hurst,

Plaintiffs,

vs.

Sunrise Hospital and Medical Center, LLC, Martin Blahnik, M.D., and Ali Piroozi, M.D.,

Defendants.

CASE NO. A-10-616728-C

DEPT. NO. XXIV

PLAINTIFFS' SUPPLEMENTAL BRIEFING REGARDING THEIR MOTIONS IN LIMINE
HEARING DATE: January 22, 2014
HEARING TIME: 9:00 a.m.

Pursuant to the Court's request during the January 8, 2014 pre-trial conference, Plaintiffs respectfully submit this supplemental memorandum of points and authorities regarding the issues

that still require the Court's decision.

INTRODUCTION

Plaintiffs filed five Motions in Limine. Four were opposed. The court has ruled on a few issues raised in those Motions. The Court intends on ruling on the other issues at the final pre-trial conference scheduled for January 22, 2014. The issues to be decided are consolidated as follows:

(1) Can Defendants allocate fault to Dr. Conti under NRS 41.141(b)?[1]

(2) Are Plaintiffs entitled to present their full measure of damages at trial?[2]

Plaintiffs will address each in turn herein.

ARGUMENT

ISSUE NO. 1: CAN DEFENDANTS ALLOCATE FAULT TO DR. CONTI UNDER NRS 41.141(B)?

The answer – No. NRS 41.141 is directly on point and, contrary to Defendants' assertions is not in conflict with the statutes upon which they rely and specifically recognizes and provides for "several" liability. Furthermore, NRS 41.141 is the only Nevada statute that directly addresses whether or not a party may allocate fault to a settled-out party during trial. Finally, NRS 41.141 is in harmony with the other statutes upon which Defendants rely and has not been abolished, overturned or distinguished by any subsequent statute or case decision. Accordingly, its provisions control and must be followed. Specifically, NRS 41.141 provides in pertinent part:

> Where recovery is allowed against more than one defendant in such an action, except as otherwise provided in subsection 5, **each defendant is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to that defendant.**

NRS 41.141(4) (emphasis added). NRS 41.141 goes on to carve out a narrow exception to this rule, namely when a party intends to allocate fault to a party who has settled his claims prior to the entry

---

[1] *See Plaintiffs' Motion in Limine No. 2*, Section B, pages 7-8.

[2] *See id.* at Section C, pages 8-9

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

of judgment:

> If a defendant in such an action settles with the plaintiff before the entry of judgment, **the comparative negligence of that defendant and the amount of the settlement must not thereafter be admitted into evidence nor considered by the jury . . .**

NRS 41.141(3) (emphasis added). In order to address the seeming inequity of this provision, the statute goes on to allow the defendants a full credit for the already paid settlement amount:

> . . . . **The judge shall deduct the amount of the settlement from the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts.**

Id. Thus, the remaining non-settling defendants are not held liable for the entire verdict amount. They are allowed to deduct from the verdict the amount paid by the settling party. Accordingly, they are not being held "jointly" liable for the entire verdict amount. Depending on the jury's verdict, the credit the defendants are entitled to receive may actually end up making them responsible for *less* than their respective percentages of fault. For example, if a jury found liability against two remaining defendants and awarded damages in the amount of $500,000, but the credit to be applied against the settlement was $1 million already paid by a settling party, the party defendants would end up paying nothing. Notwithstanding this inequity (which in the example given works in favor of the defendants and to the detriment of the plaintiff), this is the manner in which the Nevada legislature has determined that verdicts be paid as between party defendants and those defendants who have settled-out.

In the present case, under this statute, because Dr. Conti reached a settlement with Plaintiffs before the entry of judgment, the remaining Defendants may not apportion fault to him by placing him on the verdict form at trial. Nor can the amount of his settlement be admitted or considered by the jury.[3] Nevada law is unequivocally clear on this issue and should be applied

[3] After the briefing on whether the settlement or its amount can be discussed at trial, the parties reached a stipulation and agreed not to discuss the settlement or its amount in front of the jury.

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

accordingly.

Despite the plain language of NRS 41.141, Defendants argue that they may allocate fault in accordance with NRS 41A.045 and NRS 17.245. Neither statute supports this conclusion. NRS 17.245 entitled "Effect of Release or Covenant Not To Sue" provides in its entirety:

> 1. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> > (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
> >
> > (b) It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.
>
> 2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

NRS 17.245 (West). This statute essentially permits a plaintiff to settle with one or more of the defendants while continuing to prosecute the claims against the other defendants. It also provides for a credit to the remaining defendants in the amount of the settlement. Thus, it is completely consistent with NRS 41.141 which provides for the same credit to be given against the jury's verdict to the non-settling defendants. NRS 17.245 also discharges the settling party from any claims by other parties for contribution or equitable indemnity. However, no portion of this section relates to apportioning fault at trial.

The other statute Defendants rely upon – NRS 41A.045 entitled "Several liability of defendants for damages; abrogation of joint and several liability" – provides in its entirety:

> 1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

> 2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.

NRS 41A.045 (West). This statute provides for several liability (just like NRS 41.141 does), stating that each defendant doctor is only liable for his own share of damages. However like the NRS 17.245, it also does not address when and if damages may be apportioned to ***non-parties***. It only speaks to ***existing defendants*** who are going to trial. Indeed, the only statute that addresses apportioning fault as between party-defendants and dismissed, settled-out parties is NRS 41.141 – which explicitly prohibits a trial defendant from allocating fault to a previously settled out party.

The Nevada Supreme Court addressed this issue in *Banks v. Sunrise Hosp.*, 102 P.3d 52 (Nev. 2004). There, the court explained:

> NRS 41.141 only prevents admission of evidence in support of a "comparative fault" or apportionment analysis of the case as to nonparties, and a jury may only "compare" the negligence as between parties and nonparties. Nothing in NRS 41.141 prohibits a party defendant from attempting to establish that either no negligence occurred or that the entire responsibility for a plaintiff's injuries rests with nonparties, including those who have separately settled their liabilities with the plaintiff.

Id. at 67. In other words, Defendants cannot compare their fault with Dr. Conti, but they may argue either (a) they were not negligent in their care of MayRose, or (b) Dr. Conti's fault is the sole and proximate cause of MayRose's injuries. That is what Nevada law permits in this circumstance. The fact that Defendants would prefer to allocate fault to Dr. Conti does not change this reality.

Defendants attempt to circumvent the plain language of these statutes and the Nevada Supreme Court's interpretation of them by claiming the 2004 "Keep Our Doctors In Nevada" Initiative somehow supersedes the comparative fault scheme set forth in NRS 41.141. They argue that since the Initiative was passed in 2004, it also supersedes the Court's decision in *Banks*. They also argue that since NRS 41A.045 abrogates joint and several liability, they should be allowed to compare their fault to Dr. Conti's fault.

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

Defendants' arguments are baseless. *First*, NRS 41A.045 allows for each doctor-defendant to be liable for his/her own "percentage of fault". It says nothing, however, with respect to non-parties/settled-out defendants. "Percentages of Fault" are governed by the comparative fault statute, which specifically states that, in this case since Dr. Conti is a settled out defendant, Defendants may not allocate fault to him.

Second, like NRS 41A.045, NRS 41.141 also provides for several liability among defendants, not joint and several liability. Therefore the two statutes are not at odds with one another so as to suggest that the one statute is intended to supersede the other.

Third, it is this court's obligation to apply the express language of the statute. *Hernandez v. Bennett–Haron*, 287 P.3d 305, 315 (2012). The court must also "avoid statutory interpretation that renders language meaningless or superfluous, and if the statute's language is clear and unambiguous, [the court must] enforce the statute as written." *George J. v. State (In re George J.)*, 279 P.3d 187, 190 (2012). Additionally, the court must construe "statutes to preserve harmony among them." *Canarelli v. Eighth Judicial Dist. Court*, 265 P.3d 673, 677 (2011). Adopting Defendants' position would require this court to apply the statutes in a manner different than how they are written and in a manner which renders NRS 41.141 meaningless.

Therefore, the court should not allow Defendants to place Dr. Conti on the verdict form for purposes of allocating fault to him. They may, however, argue they are not at fault or that Dr. Conti bears 100% of the fault. Because no allocation of fault is permitted, Dr. Conti should not appear on the verdict form.

ISSUE NO. 2: **ARE PLAINTIFFS ENTITLED TO PRESENT THEIR FULL MEASURE OF DAMAGES AT TRIAL?**

The answer – Yes. It is fundamental in tort law that a plaintiff is entitled to recover all damages directly and proximately caused by the defendant's negligence. Plaintiffs filed their Motion out of an abundance of caution to prevent Defendants from claiming some of Plaintiffs'

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

damages have been satisfied or paid by Dr. Conti's settlement funds. Defendants oppose this request, claiming that all claimed expenses that were reimbursed/satisfied by the settlement funds are no longer damages that may be presented. This argument lacks merit for several reasons.

First, under the relevant statutes, Defendants are entitled to receive a credit for the full amount of the settlement, post-verdict. However, in order to prevent Defendants from receiving a double discount off the verdict, the full measure of damages must be admitted without reduction. If it is not, Defendants will get the full settlement amount as credit, and also another discount in the amount of the damages that Plaintiffs are not permitted to present to the jury

Second, evidence of MayRose's entire measure of damages, particularly past medical bills, must be admitted to show the jury how much providers bill for the services, equipment and medical care MayRose has received and will continue to require. This is especially important because Plaintiffs' life care plan projects the cost of MayRose's future treatment expenses. Plaintiffs will be prejudiced if they cannot show the jury how substantial MayRose's medical bills have been these past 5 years, while arguing that she is entitled to a large sum of money to compensate her for future medical bills to be incurred. If Plaintiffs are not permitted to claim the past bills that have been satisfied by the settlement, or are limited to claiming only paid amounts instead of billed amounts, this will cause the jury to speculate that there has been a prior settlement and also will confuse the jury with regard to why the medical bills projected for the future (which are based upon what health care providers charge for their services, equipment and medical care) are higher than what the costs have been in the past. For all of the reasons previously argued on Plaintiffs' Motion in Limine pertaining to whether billed vs. paid amounts should be introduced, Plaintiffs should be allowed to introduce the full measure of their damages notwithstanding the settlement with Dr. Conti.

Finally, Defendants have argued that Plaintiffs should be bound by the amounts set forth in

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

their Petition for approval of Minor's settlement in which reimbursement for certain medical expenses was being sought by various third parties. The amounts specified in the subject Petition do not reflect the true measure of MayRose's damages, as reimbursement was not sought for all expenses paid. Furthermore, MayRose has incurred additional medical expenses since then so that Petition is not reflective of Plaintiffs' current measure of damages. Additionally, the Petition contains evidence of collateral sources, which are inadmissible under Nevada law. Finally, the Petition does not include all of May's past expenses, a large share of which were paid for by her mother and for which her mother did not seek reimbursement. Accordingly, the amounts set forth in the Petition do not accurately reflect all of May's past damages—only those for which various parties were seeking reimbursement.

To present the amounts in the Petition as the full measure of MayRose's past medical expenses would be to totally distort the true costs for those services and would improperly influence the jury with regard to what her future medical costs will be. There is no guaranty that MayRose will continue to be insured. If MayRose's mother loses her job, dies or become unable to work, MayRose will have no insurance coverage. Furthermore, there is nothing to say that the subject insurance carrier will agree to compromise its medical liens in the future as it was willing to do in the past. In order for the jury to have a clear picture of what MayRose's health care providers charge for their services, equipment and medical care, MayRose should be allowed to introduce the amounts actually ***billed*** for those services. If Defendants want to seek a reduction of the jury's award for past medical expenses to the amount MayRose was actually required to pay as a result of a contractual arrangement between her health insurance carrier and her medical providers as well as negotiations between her carrier and herself, then such is best reserved for a post-trial motion and discussion with the Court after the verdict is received. To do otherwise will distort for the jury the costs associated with the care MayRose will continue to require throughout

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

her life.

Plaintiffs represent and want Defendants to understand that MayRose's damages case will be confined to her past medical bills as well as the costs for the future care she will need as contained in the life-care plan and those additional amounts of damage to which she is entitled under the law (such as pre and post-judgment interest). MayRose will *not* be seeking any amounts in excess of those already disclosed to defendants in the subject life-care plan and economic loss report (which has been recently updated, to include May's additional past medical expenses incurred since the report was initially authored and to deduct for future care that has already been provided).

For example, the life-care plan does not provide for the purchase of a handicap accessible home. It only provides for approximately $44,000 of expenses to retrofit an existing home to be handicap accessible. In reality, MayRose has spent $250,000 for her home that is held in the name of her trust and an additional $80,000 to make the home fully-handicap accessible. Notwithstanding the reality of the situation, MayRose will not claim $330,000 for a handicap accessible home (the amount she has actually paid for these items). Instead, she will claim only what has already been disclosed to Defendants in the life-care plan and economic loss report prepared by Plaintiffs' experts.

The objective of Plaintiffs' *Motion* is to simply ensure that Plaintiffs are entitled to pursue recovery based on Plaintiffs' past medical bills, life care plan and economic loss report and not have Defendants introduce to the jury that some of the items in the plan have already been purchased. Since they were purchased with the settlement dollars for which Defendants will receive full credit, it would be unfair to suggest to the jury that those items are no longer part of MayRose's damages. Plaintiffs seek only to try this case as if it were taking place prior to the settlement with Dr. Conti. As previously stated, Plaintiffs will only seek recovery for MayRose's

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

past medical expenses and those damages set forth in the life care plan and calculated in the economic loss report, as updated. Informing the jury that some items of MayRose's damages have already been paid and/or purchased could suggest that a settlement was obtained from Dr. Conti. It also could yield a double discount on those things contemplated in the life care plan that have already been purchased. This is not what is intended under Nevada law. Accordingly, MayRose Hurst should be allowed to present her full damages case as contained in the past medical billing, life-care plan and economic loss report.

DATED this 17th day of January, 2014.

EISENBERG, GILCHRIST & CUTT

/s/ Jacquelynn D. Carmichael
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2014, I mailed a true and correct copy, postage prepaid, of the foregoing **PLAINTIFFS' SUPPLEMENTAL BRIEFING REGARDING THEIR MOTIONS IN LIMINE** to the following:

Kenneth M. Webster
Jonquil L. Urdaz
HALL PRANGLE & SCHOONVELD LLC
1160 North Town Center Drive
Suite 200
Las Vegas, NV 89144
jurdaz@hpslaw.com
Attorneys for Sunrise Hospital & Medical Center, LLC

John H. Cotton
Christopher G. Rigler
COTTON DRIGGS WALCH HOLLEY WOLOSON & THOMPSON
400 S. Fourth Street, 3rd Floor
Las Vegas, NV 89101
crigler@jhcottonlaw.com
Attorneys for Ali Piroozi, MD

Robert C. McBride
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
bob@memlaw.net
Attorneys for Martin Blahnik, MD

/s/ Candace Gleed

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100· Fax (801) 650-0065

Electronically Filed
02/04/2014 09:56:06 AM

CLERK OF THE COURT

NEO

PRINCE & KEATING
Dennis M. Prince, Esq. (NV #5092)
3230 South Buffalo Drive, Suite 108
Las Vegas, Nevada 89117
Telephone: (702) 228-6800

EISENBERG GILCHRIST & CUTT
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Telephone: (801) 366-9100
Facsimile: (801) 350-0065
jcarmichael@egclegal.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

Tiffani D. Hurst and Brian Abbington, jointly and on behalf of their minor child, MayRose Lili-Abbington Hurst,

Plaintiffs,

vs.

Sunrise Hospital and Medical Center, LLC, Martin Blahnik, M.D., and Ali Piroozi, M.D.,

Defendants.

CASE NO. A-10-616728-C

DEPT. NO. XXIV

NOTICE OF ENTRY OF ORDER

Please take notice that an order regarding the parties' pre-trial motions and Motions for Summary Judgment was entered in this matter on the 3rd day of February, 2014. A copy of said Order is attached hereto.

DATED this 4th day of February, 2014.

EISENBERG, GILCHRIST & CUTT

/s/ Jacquelynn D. Carmichael
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2014, I emailed and mailed a true and correct copy, postage prepaid, of the foregoing **NOTICE OF ENTRY OF ORDER** to the following:

John H. Cotton
Christopher G. Rigler
COTTON DRIGGS WALCH HOLLEY WOLOSON & THOMPSON
400 S. Fourth Street, 3rd Floor
Las Vegas, NV 89101
crigler@jhcottonlaw.com
Attorneys for Ali Piroozi, MD

Robert C. McBride
S. Marie Ellerton
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
bob@memlaw.net
Attorneys for Martin Blahnik, MD

/s/ Candace Gleed

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

Electronically Filed
02/03/2014 05:29:06 PM

CLERK OF THE COURT

ORD

PRINCE & KEATING
Dennis M. Prince, Esq. (NV #5092)
3230 South Buffalo Drive, Suite 108
Las Vegas, Nevada 89117
Telephone: (702) 228-6800

EISENBERG GILCHRIST & CUTT
Jacquelynn D. Carmichael, Esq. (UT #6522)
Robert G. Gilchrist, Esq. (UT #3715)
Jeff M. Sbaih, Esq. (NV #13016)
215 South State Street, #900
Salt Lake City, Utah 84111
Telephone: (801) 366-9100
Facsimile: (801) 350-0065
jcarmichael@egclegal.com

Attorneys for Plaintiff

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

DISTRICT COURT
CLARK COUNTY, NEVADA

Tiffani D. Hurst and Brian Abbington, jointly and on behalf of their minor child, MayRose Lili-Abbington Hurst,

Plaintiffs,

vs.

Sunrise Hospital and Medical Center, LLC, Martin Blahnik, M.D., and Ali Piroozi, M.D.,

Defendants.

CASE NO. A-10-616728-C

DEPT. NO. XXIV

PRETRIAL ORDER
re: Motions for Summary Judgment and Motions in Limine

Plaintiffs and Defendants filed several Motions in the above-captioned case that came before the Court for hearing on November 6, 2013, January 8, 2014 and January 23, 2014. Jacquelynn D. Carmichael, Jeff Sbaih and Robert G. Gilchrist appeared on behalf of Plaintiffs. Marie Ellerton and Robert McBride appeared on behalf of Dr. Blahnik. Christopher G. Rigler appeared on behalf of Dr. Piroozi. Jonquil Whitehead and Kenneth Webster appeared on behalf of Sunrise Hospital.

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

The Court, having reviewed the parties' Motions, and having heard argument from the parties, HEREBY ORDERS the following:

1. Defendants' Motion for Summary Judgment is **DENIED**. The parties dispute whether Dr. Blahnik and Dr. Piroozi caused MayRose's injuries. Causation is a question of fact traditionally resolved by the jury. In this case, there is a dispute regarding material facts surrounding the issue of causation. Therefore, this issue is left for the jury to decide and summary judgment is inappropriate.
2. Plaintiffs' Motion for Partial Summary Judgment is **DENIED**. Defendants may allocate fault to Plaintiffs provided they are able to introduce evidence during the trial that would support such an allocation of fault.
3. Plaintiffs' Motion in Limine No. 1 to exclude evidence of Dr. Conti's criminal matters and indictments is **GRANTED**. Defendants may not introduce evidence of Dr. Conti's criminal matters unless it is for the purpose of impeaching his credibility. Defendants will not be permitted to introduce Dr. Conti's deposition testimony favorable to them and also attempt to impeach him with evidence of his criminal matters unless Plaintiffs open the door for such impeachment by attempting to introduce evidence of Dr. Conti's good character. Accordingly, Dr. Conti's deposition testimony that will be played for the jury will be edited to exclude any references or discussion with regard to his criminal matters. If Defendants believe that Plaintiff has opened the door so as to permit impeachment of Dr. Conti with his criminal matters, the parties shall address this issue with the court outside the presence of the jury in order to obtain a ruling.
4. Plaintiffs' Motion in Limine No. 2 regarding Dr. Conti's settlement is **GRANTED.** Specifically, (1) The fact that a settlement has occurred and the amount of the settlement paid by Dr. Conti and Foothills Pediatrics will not be discussed at trial; (2)

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

Defendants are not permitted to allocate fault to Dr. Conti and/or Foothills Pediatrics, compare their fault to Dr. Conti's and/or Foothills Pediatric's fault or place Dr. Conti and/or Foothills Pediatrics on the jury verdict form pursuant to NRS 41.141 and Banks v. Sunrise Hospital, 120 Nev. 822, 102 P.3d 52 (2004); (3) Defendants may argue to the jury that they are not at fault for MayRose's injuries and/or that Dr. Conti and/or Foothills Pediatrics is 100% at fault for her injuries; and (4) Plaintiffs are permitted to introduce the full measure of their damages and the Defendants will receive an offset if any verdict is rendered in the amount of any previous settlement amounts pursuant to NRS 41.141.

5. Plaintiffs' Motion in Limine No. 3 regarding collateral sources is **GRANTED**. The court finds that NRS 42.021 is expressly preempted by 5 U.S.C. § 8902(m)(1) and thus evidence of collateral sources is inadmissible at trial. In addition, the Court finds that the billed amount of MayRose's medical bills is the reasonable amount of her medical services, not the amount that was paid. Accordingly, any evidence of collateral sources showing reductions or write-offs to the billed amounts is excluded.

6. Plaintiffs' Motion in Limine No. 4 to exclude discussion of the cap on non-economic damages is **GRANTED IN PART and DENIED IN PART**. The court declines to rule on the constitutionality of the damages cap at this time. If necessary, an award for non-economic damages may be reduced post-trial by motion. Accordingly, evidence of or discussion about the non-economic damages cap under NRS 41A.035 is inadmissible.

The parties previously stipulated to a portion of Plaintiff's Motion in Limine No. 2, the entirety of Plaintiffs' Motion in Limine No. 5 and other issues relating to the admissibility of evidence. These Stipulations are attached as Exhibits A and B.

APPROVED AS TO FORM:

John H. Cotton
Christopher G. Rigler
Attorneys for Dr. Piroozi

1/31/14
Robert C. McBride
Marie Ellerton
Attorneys for Dr. Blahnik

DATED this 31st day of February, 2014.

CLARK COUNTY DISTRICT COURT

Honorable James M. Bixler

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100- Fax (801) 650-0065

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of January, 2014, I mailed a true and correct copy, postage prepaid, of the foregoing **[Proposed] PRETRIAL ORDER** to the following:

John H. Cotton
Christopher G. Rigler
COTTON DRIGGS WALCH HOLLEY WOLOSON & THOMPSON
400 S. Fourth Street, 3rd Floor
Las Vegas, NV 89101
crigler@jhcottonlaw.com
Attorneys for Ali Piroozi, MD

Robert C. McBride
Marie Ellerton
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
bob@memlaw.net
Attorneys for Martin Blahnik, MD

/s/ Candace Gleed

4812-2502-8376, v. 1

Eisenberg Gilchrist & Cutt
215 South State Street, Suite 900
Salt Lake City, Utah 84111
(801) 366-9100 Fax (801) 650-0065

EXHIBIT A

ORIGINAL

NEO
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
kwebster@hpslaw.com
jwhitehead@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST, Plaintiffs, vs. SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, MARTIN BLAHNICK, M.D., ALI PIROOZI, M.D., RALPH CONTI, M.D. and FOOTHILL PEDIATRICS LLC, Defendants.	CASE NO. A616728 DEPT NO. XXIV

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Stipulation and Order Regarding Certain Trial Evidentiary/Procedural Rulings was entered in the above-entitled Court on the 21st day of October, 2013, a copy of which is attached hereto.

DATED this 23rd day of October, 2013.

HALL PRANGLE & SCHOONVELD, LLC

By: */s/: Jonquil Whitehead*

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 23rd day of October, 2013, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Dennis M. Prince, Esq.
PRINCE & KEATING
3230 South Buffalo Drive, Suite 108
Las Vegas, NV 89117
Attorney for Plaintiffs
-and-
Jacquelynn D. Carmichael, Esq.
EISENBERG & GILCHRIST
215 South State Street, Suite 900
Salt Lake City, UT 84111
Attorneys for Plaintiffs

John H. Cotton, Esq.
Chris Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorney for Defendant
Ali Piroozi, M.D.

Robert McBride, Esq.
Kim Mandelbaum, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Martin Blahnick, MD

/s/: Diana Cox
An employee of HALL PRANGLE & SCHOONVELD, LLC

4824-7233-3334, v. 1

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

SAO

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
kwebster@hpslaw.com
jwhitehead@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

Electronically Filed
10/21/2013 03:53:18 PM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST, Plaintiffs, vs. SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, MARTIN BLAHNICK, M.D., ALI PIROOZI, M.D., RALPH CONTI, M.D. and FOOTHILL PEDIATRICS LLC, Defendants.	CASE NO. A616728 DEPT NO. XXIV

STIPULATION AND ORDER REGARDING CERTAIN TRIAL EVIDENTIARY/PROCEDURAL RULINGS

Trial Date: February 18, 2014

IT IS HEREBY STIPULATED AND AGREED, by all parties, by and through their respective counsel of record, to entry of the following trial evidentiary/procedural rulings.

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1. Alan H. Rosenthal, M.D., Kathleen Sakamoto, M.D., and Mark H. Rothschild, M.D., will not be called to testify at trial; and

2. It is uncontested and agreed by all parties that Plaintiff's Diamond Blackfan Anemia not being diagnosed in the NICU by Defendants Martin Blahnick, M.D., and Ali Piroozi, M.D., was not below the standard of care. All parties agree that it will not be argued before the jury that Plaintiff's Diamond Blackfan Anemia should have been diagnosed in the NICU by Defendants Martin Blahnick, M.D., and Ali Piroozi, M.D.; however, Plaintiff specifically reserves the right to argue, among other things, that the standard of care did require Defendants Martin Blahnick and Ali Piroozi to recognize (1) that MayRose Hurst's anemia was not "due to prematurity"; (2) that there was an undiagnosed pathological cause for the anemia; and (3) that further investigation into the cause of MayRose's anemia was warranted by said Defendants; and

3. It is uncontested and agreed by all parties and their respective experts that MayRose Hurst did not require further hospitalization at the time of her discharge from the NICU. However, Plaintiffs reserve the right to argue that MayRose Hurst's hematocrit and hemoglobin were not stable at the time of discharge and were in fact on a downward decline which indicated MayRose's need for both (1) investigation into the cause of her ongoing anemia on either an inpatient or outpatient basis; as well as (2) instructions to MayRose's parents and pediatrician that she had ongoing anemia that would need to be closely followed to determine if she would continue to require transfusions on a weekly and/or bi-weekly basis as she had done from the date of her birth. All parties agree that Defendants Martin Blahnick, M.D., and Ali Piroozi, M.D., did not fall below the standard of care by discharging Plaintiff from the NICU on August 2, 2008; however, Plaintiffs reserve the right to argue that the method and manner of

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

MayRose's discharge, including the discharge plan, instructions, orders, as well as the information given to the parents and/or pediatrician at the time of discharge was below the standard of care; and

4. Settling-Defendant Ralph Conti, M.D., is deceased and is therefore unavailable to testify at trial. All parties agree to the use of his deposition testimony at trial; and

5. All parties agree that lay witnesses will not provide opinion testimony regarding medical care and treatment; and

6. All parties agree to refrain from arguing the "golden rule"; and

7. All parties agree that any evidence or inference regarding the relative wealth and/or "for profit" status of either party is of no consequence to the underlying issues and must be barred; and

8. All parties agree that in order to promote judicial economy, it will be beneficial to all parties concerned if the Court and all counsel know in advance the sequence of witnesses to be called. This will allow all of the parties to adequately prepare their examinations of the witnesses and to have the pertinent file material at court. This procedure is within the discretion of the Court and will serve to enhance the trial judge's control over the orderly flow of evidence; and

9. All parties agree that evidence regarding other lawsuits filed against the defendants and/or other negligence ascribed to the defendants should be barred because such evidence would allow the jury to infer the defendants' propensity for negligence. Such reference is completely irrelevant to a final determination of the merits of this particular case; and

10. All parties agree that all non-party lay witnesses shall be barred from the courtroom prior to their testimony, with the exception of expert witnesses; and

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

11. All parties agree that the parties and their counsel shall refrain from any reference to or insinuation about the parties' settlement negotiations; and

12. All parties agree there shall be no mentioning or examining witnesses directly or indirectly, regarding the existence of professional liability insurance covering defendants as said information is irrelevant and prejudicial; and

13. All parties agree that parties and their counsel are barred from eliciting testimony or examining any health care provider with regard to that provider's personal treatment preferences, because that information is irrelevant to the issue of the standard of care and would be prejudicial and misleading to the jury, unless appropriately laid foundation that such treatment is within the generally accepted standard of care; and

14. All parties agree that the parties and their experts shall be restricted to the standard of care applicable in the medical community in May 2008; and

15. All parties agree that parties are barred from presenting evidence or making argument about discovery disputes which took place before trial. Such evidence or argument would be wholly irrelevant to any issue raised in this case, are highly prejudicial, and should be barred; and

16. All parties agree that parties are barred from making any insinuation about or reference to counsel being from Chicago and Utah. Such information is completely irrelevant to a final determination of the merits of this particular case and would be prejudicial and misleading to the jury; and

17. All parties agree that parties and their counsel will not make any insinuation about or reference to the origins of Plaintiffs Tiffani Hurst and Brian Abbington's sexual relationship; and

18. All parties agree that parties and their counsel will not make any insinuation about or reference to the incident at Toys 'R Us involving Plaintiff Tiffani Hurst and her child in the car; and

19. All parties agree that no evidence exists to support a claim of agency and/or vicarious liability against Defendant Sunrise Hospital and Medical Center for the conduct of Defendant Ralph Conti, M.D.

The parties represent that this Stipulation is a full and accurate representation of certain evidentiary/procedural agreements that they wish for this Court to enter as a binding order for the upcoming trial.

IT IS SO STIPULATED.

Respectfully submitted by:

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center LLC

Approved as to form and content:

PRINCE & KEATING

Dennis M. Prince, Esq.
PRINCE & KEATING
3230 South Buffalo Drive, Suite 108
Las Vegas, NV 89117
Attorney for Plaintiffs
-and-
Jacquelynn D. Carmichael, Esq.
EISENBERG & GILCHRIST
215 South State Street, Suite 900
Salt Lake City, UT 84111
Attorneys for Plaintiffs

...

...

...

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Approved as to form and content:

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

John H. Cotton, Esq.
Christopher Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorney for Defendant
Ali Piroozi, M.D.

Approved as to form and content:

MANDELBAUM, ELLERTON & MCBRIDE

4581

10/10/13

Robert C. McBride, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Martin Blahnick, M.D.

Case Name: Hurst vs. Sunrise Hospital, et al.
Case Number: A616728

ORDER

Pursuant to the foregoing stipulation of counsel for all parties, and good cause appearing therefore,

IT IS SO ORDERED.

DATED this 17th day of OCT., 2013.

DISTRICT COURT JUDGE

Respectfully submitted by:

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

EXHIBIT B

ORIGINAL

NEO
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
kwebster@hpslaw.com
jwhitehead@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST, Plaintiffs, vs. SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, MARTIN BLAHNICK, M.D., ALI PIROOZI, M.D., RALPH CONTI, M.D. and FOOTHILL PEDIATRICS LLC, Defendants.	CASE NO. A616728 DEPT NO. XXIV

NOTICE OF ENTRY OF ORDER

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

PLEASE TAKE NOTICE that a Stipulation and Order Regarding Plaintiffs' Motions in Limine Nos. 2 and 5 was entered in the above-entitled Court on the 27th day of December, 2013, a copy of which is attached hereto.

DATED this 30th day of December, 2013.

HALL PRANGLE & SCHOONVELD, LLC

By: */s/: Jonquil Whitehead*
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 30th day of December, 2013, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Dennis M. Prince, Esq.
PRINCE & KEATING
3230 South Buffalo Drive, Suite 108
Las Vegas, NV 89117
Attorney for Plaintiffs
-and-
Jacquelynn D. Carmichael, Esq.
EISENBERG & GILCHRIST
215 South State Street, Suite 900
Salt Lake City, UT 84111
Attorneys for Plaintiffs

John H. Cotton, Esq.
Chris Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorney for Defendant
Ali Piroozi, M.D.

Robert McBride, Esq.
Kim Mandelbaum, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Martin Blahnick, MD

/s/: Diana Cox
An employee of HALL PRANGLE & SCHOONVELD, LLC

4846-8110-9527, v. 1

Electronically Filed
12/27/2013 03:11:22 PM

CLERK OF THE COURT

SAO
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
kwebster@hpslaw.com
jwhitehead@hpslaw.com
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DISTRICT COURT

CLARK COUNTY, NEVADA

TIFFANI D. HURST and BRIAN ABBINGTON, jointly and on behalf of their minor child, MAYROSE LILI-ABBINGTON HURST, Plaintiffs, vs. SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, MARTIN BLAHNICK, M.D., ALI PIROOZI, M.D., RALPH CONTI, M.D. and FOOTHILL PEDIATRICS LLC, Defendants.	CASE NO. A616728 DEPT NO. XXIV

STIPULATION AND ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE NOS. 2 AND 5

Trial Date: February 18, 2014

IT IS HEREBY STIPULATED AND AGREED, by all parties, by and through their respective counsel of record, as to the following:

1. All parties agree not to mention to or before the jury the settlement between Plaintiffs and Defendant Dr. Conti; and

2. All parties agree to refrain from use of arguments as stated within PLAINTIFFS' MOTION IN LIMINE NO. 5: EXCLUDE IMPROPER ATTORNEY ARGUMENTS.

The parties represent that this Stipulation is a full and accurate representation of certain evidentiary/procedural agreements that they wish for this Court to enter as a binding order for the upcoming trial.

IT IS SO STIPULATED.

Respectfully submitted by:

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center LLC

Approved as to form and content:

PRINCE & KEATING

Dennis M. Prince, Esq.
PRINCE & KEATING
3230 South Buffalo Drive, Suite 108
Las Vegas, NV 89117
-and-
Jacquelynn D. Carmichael, Esq.
EISENBERG & GILCHRIST
215 South State Street, Suite 900
Salt Lake City, UT 84111
Attorneys for Plaintiffs

Approved as to form and content:

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

Christopher Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorney for Defendant Ali Piroozi, M.D.

Approved as to form and content:

MANDELBAUM, ELLERTON & MCBRIDE

Marie Ellerton 12/9/13

Marie Ellerton, Esq.
MANDELBAUM, ELLERTON & MCBRIDE
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Martin Blahnick, M.D.

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Case Name: Hurst vs. Sunrise Hospital, et al.
Case Number: A616728

ORDER

Pursuant to the foregoing stipulation of counsel for all parties, and good cause appearing therefore,

IT IS SO ORDERED.

DATED this 4th day of December, 2013.

DISTRICT COURT JUDGE

Respectfully submitted by:

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center LLC

4814-2944-6935, v. 1

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025