

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE E. SZYMBORSKI,
Appellant(s),

vs.

SPRING MOUNTAIN TREATMENT
CENTER; AND DARRYL DUBROCA, IN
HIS OFFICIAL CAPACITY,
Respondent(s),

Case No: A700178

SC Case No: 66398

Electronically Filed
Dec 15 2014 10:57 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
LEE E. SZYMBORSKI, PROPER PERSON
4605 BLACK STALLION AVE.
N. LAS VEGAS, NV 89031

ATTORNEY FOR RESPONDENT
MICHAEL PRANGLE, ESQ.
1160 N. TOWN CENTER DR., STE. 200
LAS VEGAS, NV 89144

**A-14-700178-C Lee Szymborski, Plaintiff(s)
vs.
Spring Mountain Treatment Center,
Defendant(s)**

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**A-14-700178-C Lee Szymborski, Plaintiff(s)
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LEE E. SZYMBORSKI
4605 Black Stallion Ave
N. Las Vegas, NV 89031
(702) 609-6762
Plaintiff in Proper Person

A-14-700178-C
COMP
Complaint
3755285



FILED
MAY 02 2014
John J. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE E. SZYMBORSKI,
Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT CENTER,
DARRYL DUBROCA, in his official capacity,
DOES I-XX, inclusive, and ROE
CORPORATIONS I-XX, inclusive,
Defendants.

Case No.
Dept No.

A-14-700178-C
XXXI

EXEMPT FROM ARBITRATION
SUMS IN EXCESS OF \$50,000

COMPLAINT

COMES NOW, Plaintiff, named above, and for cause of action, alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, at all times relevant hereto has been and is now, a resident of the State of Nevada, County of Clark. Jurisdiction and Venue are appropriate in Clark County, Nevada.
2. Defendant DARRYL DUBROCA is the CEO/Managing Director of SPRING MOUNTAIN TREATMENT CENTER.
3. Plaintiff is informed and believes, and on that basis alleges, that Defendants SPRING MOUNTAIN TREATMENT CENTER is a mental treatment hospital, who admitted SEAN T. SZYMBORSKI for treatment and discharged him in violation of Nevada Law.
4. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendant sued herein as DOES I through XX, inclusive, and ROES I through XX, inclusive, are unknown to Plaintiff, who is informed, believes and alleges that each of these

1 fictitiously named Defendants is in some way liable to Plaintiff on the causes of action below and
2 therefore sues these defendants by such fictitious names. Plaintiff believes said fictitious
3 Defendants assisted, devised, schemed, planned or took part in the actions set forth hereinbelow.
4 Plaintiff will move to amend this Complaint and insert the true names and capacities of
5 fictitiously named Defendants when the same have been ascertained.

6 5. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, each actually and fictitiously named Defendant was the principal, agent, co-venturer,
8 partner, surety, guarantor, officer, director and/or employee of each co-defendant and in doing the
9 things herein alleged, was acting within the scope of authority and with the permission of each
10 co-defendant or took some part in the acts and omissions hereinafter set forth, and by reason
11 thereof, each of said Defendants is liable to Plaintiff for the relief prayed.

12 6. That on or about May 14, 2013, at approximately 3:30 p.m., Defendant SPRING
13 MOUNTAIN TREATMENT CENTER, 7000 W. Spring Mountain Road, Las Vegas, Nevada
14 89117, due an "UNAUTHORIZED UNSAFE DISCHARGE" of a mentally ill adult patient, to
15 wit: SEAN T. SZYMBORSKI, in violation of NAC 449.332, to the residence of Plaintiff. See
16 Exhibit "1".

17 7. That said SEAN T. SZYMBORSKI was provided a taxi ride, released without any
18 money; without appropriate medication, without the ability to care for himself, and being a
19 danger to both himself and other.

20 8. Defendant SPRING MOUNTAIN TREATMENT CENTER was directed by
21 KATHLEEN BUCHANAN to provide a Guardianship for Defendant SEAN T. SZYMBORSKI,
22 and failed to do so.

23 9. Defendant SPRING MOUNTAIN TREATMENT CENTER Caseworker
24 "REBECCA" was directed NOT to release SEAN T. SZYMBORSKI to the residence of
25 Plaintiff, however he was transported by taxi directly to the home of Plaintiff, where he smashed
26 windows, walls, doors, furniture, and completely destroyed the interior of the residence, before
27 going missing for three weeks. (A missing persons report was filed by NLVPD.)

10. An investigation by the Division of Public and Behavioral Health substantiated that Defendant SPRING MOUNTAIN TREATMENT CENTER was in violation of NAC 449.332, Discharge Planning, based upon evidence by interview of staff, record review and document review.

11. It was determined that the facility failed to assure the patient was discharged to a **safe environment** due to the following issues in this matter:

a. Patient was admitted to the facility on 5/3/13, and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.

b. On 5/13/13 at 1 p.m. the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.

c. On 5/15/13 at 2:0 p.m. the Masters of Art (MA) met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up patient's debit card prior to going to the new apartment.

d. Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.

e. The Patient Continuing Care Plan, dated 5/14/13 identified the parties was to go to father's home first then on to an address in North Las Vegas, Nevada.

f. The Acute Physician Discharge Progress Note on 5/14/13 at 8:50 a.m. documented the patient did not want to return to the patient's father's home due to ongoing conflict. The note documented the patient participated in treatment planning to find housing.

g. The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.

1 h. On 7/9/13 at 8:49 a.m. the Risk Manager confirmed the MA did not follow up on
2 verifying the identified apartment.

3 i. On 7/9/13 at 11:20 a.m., Licensed Social Worker (LSW) indicated multiple telephone
4 messages were left by the patient's father. The father would state the patient could return to the
5 home; the next telephone message from the father would demand the patient not be discharged to
6 the father's home. The LSW acknowledged she did not speak directly with the patient's father.
7 The LSW stated due to the large number of patients on the LSW's caseload, the LSW had to
8 delegate telephone calls and discharge planning to the MA.

9 j. The LSW indicated when a patient identified their own placement, the LSW would try
10 to obtain as much information as possible regarding the address and name of the apartment. If
11 unable to verify placement, the physician would be notified prior to discharge from the facility.

12 k. The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 a.m. documented
13 the patient did not want to return to his father's home due to ongoing conflict. The note
14 documented the patient participated in treatment planning to find housing.

15 12. An evaluation of the needs of a patient relating to discharge planning must include,
16 without limitation, consideration of:

17 a. The needs of the patient for postoperative services and the availability of those
18 services.

19 b. The capacity of the patient for self-care; and

20 c. The possibility of returning the patient to a previous care setting or making
21 another appropriate placement of the patient after discharge.

22 13. Defendant SPRING MOUNTAIN TREATMENT CENTER is in violation of NAC
23 449.394, Psychiatric Services, which requires that a hospital shall develop and carry out policies
24 and procedures for the provision of psychiatric treatment and behavioral management services
25 that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and
26 services are safely and appropriately used. The hospital shall ensure that the policies and
27 procedures protect the safety and rights of the parties - and the public at large.

14. That Defendant SPRING MOUNTAIN TREATMENT CENTER **has failed to met these statutes and regulations**, for the reasons set forth above.

15. That due to the failure to meet these responsibilities, SEAN T. SZYMBORSKI, was driven by taxi to the home of Plaintiff, and dropped off, at the expense of the Defendant SPRING MOUNTAIN TREATMENT CENTER, where he proceeded to cause significant property damage to Plaintiff's residence, and go missing.

16. That when SEAN T. SZYMBORSKI was located, he had sustained wounds from a self inflicted injuries with a sharp object, using weapons obtained at the home of his mother; and not at the home of his father.

17. The patient care plan, dated 5/14/13 indicated that safety concerns, including weapons, in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification. Furthermore, Defendant SPRING MOUNTAIN TREATMENT CENTER indicated they assisted in obtaining a home for SEAN T. SZYMBORSKI, therefore, even confirming no weapons in father's home was not reasonable to consider this non-applicable.

18. In violation of the stated statutes, it was determined that the LSW did not follow up on identifying what weapons and if the patient had access to weapons prior to discharge. (8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to located and secure items...Weapons are not considered secured until verification has been received that the task is completed...")

19. Due to the inactions of Defendant SPRING MOUNTAIN TREATMENT CENTER, SEAN T. SZYMBORSKI was convicted of criminal charges related to the property destruction at the home of Plaintiff, rather than receiving treatment for his known mental illness.

20. Defendant SPRING MOUNTAIN TREATMENT CENTER acted in reckless disregard of SEAN T. SZYMBORSKI's psychiatric condition in pre-paying for a taxi to dump him at an verified location [Plaintiff's residence], without notice to occupants, without money, and without the ability to provide care for himself due to long standing mental illness.

1 21. The failures of Defendant SPRING MOUNTAIN TREATMENT CENTER to deliver
2 the statutory mandated care to patients in their custody and control resulted in systematic
3 disregard of the serious psychological and medical conditions and resulted in adverse
4 consequences, which predictably flow from such failures, and caused damages to patients and
5 others, who became victims of such disregard.

6 22. Defendant SPRING MOUNTAIN TREATMENT CENTER is a for profit
7 corporation, whose estimated annual revenue is in excess of TWO BILLION DOLLARS
8 (\$2,000,000,000).

9 **FIRST CLAIM FOR RELIEF**

10 **(NEGLIGENCE)**

11 23. Plaintiff realleges and incorporates by reference all of the previous allegations of
12 this Complaint at this point as if set forth fully herein.

13 24. Nevada recognizes negligence claims, where a Plaintiff establishes: (1) the
14 existence of a duty of care (2) breach of that duty; (3) legal causation; and (4) damages.

15 25. Defendants, in the exercise of reasonable care had a duty to know, or should have
16 known, that they are required to comply with NAC 449.332, regarding DISCHARGE PLAN of
17 Patients; and with NRS 449.765 to 449.786.

18 26. Defendants breached their duty by failing to carefully investigate, monitor and/or
19 oversee discharge activities at SPRING MOUNTAIN TREATMENT CENTER, including but
20 not limited to, the development, implementation, and supervision of discharge policies and
21 practices.

22 27. That Defendants negligently and/or carelessly, permitted the dumping of SEAN T.
23 SZYMBORSKI, by taxi to the home of Plaintiff, without notice to Plaintiff, in violation of their
24 own internal policies; NAC 449.332; and NRS 449.865 to 449.786.

25 28. Defendants knew or should have known that patients, including SEAN T.
26 SZYMBORSKI are members of the class of patients that could foreseeably suffer injury to
27 themselves, and/or inflict injury on others, as a result of Defendants' failure to exercise

1 reasonable care in the discharge of their statutorily imposed duties, and/or common-law duties of
2 care.

3 29. As a direct and proximate result of the negligence and carelessness of Defendants,
4 Plaintiff has suffered extreme emotional and mental distress, further issues and conflict in the
5 family unit, in addition to approximately \$20,000 in physical damage to the residence, including
6 smashed windows, which required immediate action to secure assets in the residence, and other
7 damages the full extent of which shall be provided through discovery.

8 30. As a direct and proximate result of Defendants' acts or omissions, Plaintiff has
9 suffered punitive, general and special damages.

10 **SECOND CLAIM FOR RELIEF**

11 (Professional Negligence)

12 (Negligent act or omission to act by a provider of health care in rendering of professional
13 services, which act or omission is the proximate cause of a personal injury or wrongful death,
NRS 41A.015)

14 31. Plaintiff realleges and incorporates by reference all of the previous allegations of
15 this Complaint at this point as if set forth fully herein.

16 32. Defendants in the capacity of a for profit hospital providing medical care to the
17 public, government agencies overseeing the hospital's operations, licensed social workers,
18 registered nurses, psychiatrists, and the hospital administrator owed Plaintiff a duty to employ
19 medical staff adequately trained in the care and treatment of patients consistent with the degree
20 of skill and learning possessed by competent medical personnel practicing in the United States of
21 America under the same or similar circumstances; and a duty to comply with Nevada statutes,
22 including NRS 41A.015.

23 33. Defendants breached its duty of care by failing to function as a patient advocate by
24 providing proper care to the patients at the time of discharge, and specifically causing physical,
25 mental and emotional pain and suffering to the patient; as well as physical, mental and emotional
26 pain and suffering to the public at large, and specifically in this matter, to the Plaintiff.

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1 46. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
2 mental and emotional pain and suffering, in addition to financial loss.

3 WHEREFORE, Plaintiff prays judgement as follows:

4 1. For a temporary restraining order and/or preliminary injunction and permanent
5 injunction enjoining and restraining Defendants from continuing or repeating the unlawful
6 policies, practices and conduct complained of herein;

7 2. For declaratory judgment against Defendants' policies, practices and conduct as
8 alleged herein in violation of patient rights, and the safety of the public at large;

9 3. For compensatory damages according to proof;

10 4. For punitive damages in consideration of the annual income in excess of
11 \$2,000,000,000.

12 5. For emotional distress caused by the violations herein.

13 6. For costs of suit, including attorney fees, and other costs.

14 7. For such other and further relief as the Court may deem appropriate.

15 DATED this ____ day of ____, 2014.

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17 LEE E. SZYMBORSKI
18 Plaintiff in Proper Person
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EXHIBIT 1

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
State Health Officer

STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH DIVISION

☐ Health Facilities/Lab Services
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-1030
Fax: (775) 684-1073

☒ Health Facilities/Lab Services
4220 S. Maryland Parkway
Suite B10, Building D
Las Vegas, NV 89119
(702) 486-5515
Fax: (702) 486-6520

☐ Radiation Control
4150 Technology Way
Suite 300
Carson City, Nevada 89706
(775) 687-7550
Fax: (775) 687-7552

☐ Radiation Control
2080 E. Flamingo
Suite 319
Las Vegas, Nevada 89119
(702) 486-5280
Fax: (702) 486-5024

☐ Child Care Licensing
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-4463
Fax: (775) 684-4464

☐ Child Care Licensing
4180 S. Pecos, Ste 150
Las Vegas, Nevada 89121
(702) 486-7918
Fax: (702) 486-6660

☐ Child Care Licensing
1010 Ruby Vista, Ste 101
Elko, Nevada 89801
(775) 753-1237
Fax: (775) 753-1336

May 22, 2013

Lec Szyzborski
4605 Black Stallion Avenue
North Las Vegas, NV 89032

RE: Complaint # NV00035655

Dear Mr. Szyzborski,

Thank you for alerting us about your dissatisfaction with Spring Mountain Treatment Center. We understand your concerns about admission, transfer and discharge, quality of care-responsible party not notified of patients change in condition, patient not assessed after change in condition, patient's medications improperly administered.

Our team of investigators will review your specific concerns, and evaluate the facility's actions, to determine if the facility is in compliance with state and/or federal regulations. Please refer to the enclosed fact sheet that describes the investigation process.

We will inform you of the investigation results, and send you a copy of the report. If you want to know the status of your complaint, please call the team supervisor, Rosemary Palladino-Marcus, HFI III, and refer to the complaint number listed above.

Please know that the Nevada State Health Division takes all complaints very seriously. By reporting your concerns, you play an important role in promoting the safety of health care recipients and improving the quality of care and services that facilities provide. We thank you.

Sincerely,

Johna Thacker, AAII/Complaint Intake Coordinator

cc: Rosemary Palladino-Marcus, Health Facilities Inspector III

Encl: 1 Page Complaint Process Fact Sheet

Public Health Working for a Safer and Healthier Nevada

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	---	--	--

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of a complaint investigation initiated on 6/25/13, and finalized in your facility on 7/9/13, in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the investigation was 63. Five discharged medical records were reviewed.</p> <p>Complaint #NV00035655 was substantiated with deficiencies cited. (See Tags S0146, S0153 and S0602)</p> <p>The findings and conclusions of any investigation by the Health Division shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.</p>	S 000		
S 146 SS=D	<p>NAC 449.332 Discharge Planning</p> <p>4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of:</p> <ul style="list-style-type: none"> (a) The needs of the patient for postoperative services and the availability of those services; (b) The capacity of the patient for self-care; and (c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge. <p>This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to assure the patient was discharged to a safe environment for 1 of 5 sampled patients (Patient #1).</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 1</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/13/13 at 1:00 PM, the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.</p> <p>On 5/14/13 at 2:30 PM, the Masters of Art (MA) documented the MA met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up the patient's debit card prior to going to the new apartment.</p> <p>Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified the patient was to go to the father's home first then on to an address in North Las Vegas.</p> <p>The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 AM, documented the patient did not want to return to the patient's fathers home due to on-going conflict. The note</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

2299

ODKP11

If continuation sheet 2 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 2</p> <p>documented the patient participated in treatment planning to find housing.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.</p> <p>On 7/9/13 at 11:20 AM, Licensed Social Worker (LSW) #2 explained multiple telephone messages were left by the patient's father. The father would state the patient could return to the father's home. The next telephone message from the father would demand the patient not be discharged to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW explained during the first meeting with the patient, the patient expressed a willingness to return to the father's home and would work on finding an apartment from the father's home. The LSW explained due to the large number of patient's on the LSW's case load, the LSW had to delegate telephone calls and discharge planning to the MA.</p> <p>The LSW explained when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If the LSW was unable to verify placement, the physician would be notified prior to discharge from the facility.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268H051	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X6) COMPLETE DATE
S 146	<p>Continued From page 3</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager:... 4.4 Housing needs and/or placement issues;...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate, and documented in the medical record...5.2 Where and with whom the patient will live following discharge..."</p> <p>"...6.0 The Social Services Discharge Note is completed for every patient at the time of discharge. This note includes, but is not limited to: 6.1 Living arrangements..."</p> <p>Severity: 2 Scope: 1</p> <p>Complaint #NV00035655</p>	S 146		
S 153 SS=0	<p>NAC 449.332 Discharge Planning</p> <p>11. The patient, members of the family of the patient and any other person involved in caring for the patient must be provided with such information as is necessary to prepare them for the post-hospital care of the patient.</p> <p>This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to notify 2 of 5 sampled patients families prior to discharge (Patient #1 and #5).</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 4 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3266HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 4</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/10/13 at 9:00 AM, the LSW #2 documented the case manager received a voice mail from the patient's father saying the patient was not to return to his home. The LSW documented the case manager would assist the patient with alternative placement.</p> <p>On 5/10/13 at 11:15 AM, the MA documented the patient's father wanted the patient to return to his home, but not to be discharged "today".</p> <p>There was no further documented evidence the patient's father was contacted to confirm discharge to the patient's father's home.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the MA met with the patient. The patient requested the father's telephone number and told the father of being discharged and a taxi would transport the patient to the father's home.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented the discharge was not coordinated with the family. Documentation with the father on the day of discharge was not documented.</p> <p>On 7/9/13 at 9:50 AM, the Risk Manager acknowledged the facility should have arranged for the taxi driver to wait at the patient's father's</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HC81	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 5</p> <p>house until the patient retrieved the debit card, then drive the patient to the new apartment.</p> <p>On 7/9/13 at 11:34 AM, LSW #2 explained the family member should be contacted prior to the patient's discharge to assure the family was alright with the patient returning home. The LSW acknowledged the patient's father should have been contacted by the facility staff prior to the patient being discharged.</p> <p>Four additional discharged medical records were reviewed.</p> <p>Patient #5</p> <p>Patient #5 was admitted to the facility on 6/4/13 and discharged on 6/18/13, with a diagnosis of major depressive disorder.</p> <p>There was no documented evidence the social worker/Case Manager notified the family of the patient's discharge. There was no documented evidence the family was educated on the patient's medications and follow up care needed. There was no family contact from the social worker/Case Manager after 6/6/13.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate,</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 5 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	Continued From page 6 and documented in the medical record..." Severity: 2 Scope: 1 Complaint #NV00035655	S 153		
S 602 SS=D	NAC 449.394 Psychiatric Services 3. A hospital shall develop and carry out policies and procedures for the provision of psychiatric treatment and behavioral management services that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately used. The hospital shall ensure that the policies and procedures protect the safety and rights of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to identify what weapons were at Patient #1's mother's home and if the patient would have access to the weapons. Findings include: Patient #1 Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse. On 5/3/13 at 12:00 PM, the Comprehensive Assessment Tool documented patient had multiple scab areas on his legs. The Comprehensive Assessment Tool documented the patient's father stated the patient's wounds were self inflicted with a sharp object.	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 7 of 8

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3288HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	--	--	---

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

7000 WEST SPRING MOUNTAIN ROAD

LAS VEGAS, NV 89117

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 602	<p>Continued From page 7</p> <p>On 5/6/13 at 2:42 PM, LSW #1 documented weapons were at the patient's mothers home, but not at the patient's fathers home. The LSW did not identify what weapons were at the patient's mothers home. There was no documented evidence the patient's mother was contacted to verify where the weapons were located.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified safety concerns, including weapons in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the patient asked the MA if the taxi would be able to take the patient to the mother's house after the patient went to the father's house. The MA documented the patient would have to pay for any taxi after being dropped off at the father's house.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the LSW did not follow up on identifying what weapons and if the patient had access to the weapons prior to discharge.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>"8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to locate and secure the items...Weapons are not considered secured until verification has been received that the task is completed..."</p>	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 8 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

7000 WEST SPRING MOUNTAIN ROAD

LAS VEGAS, NV 89117

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 602	Continued From page 8 Severity: 2 Scope: 1 Complaint #NV00035655	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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00KP11

If continuation sheet 8 of 9

1 APPL

FILED

MAY 02 2014

2 NAME Lee E. Szymborski

3 ADDRESS 4605 Black Stallion Ave.

4 CITY, STATE, ZIP CODE NLV NV. 89031

6 TELEPHONE (702) 609-6762

[Signature]
CLERK OF COURT

7 IN PROPER PERSON

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 Lee E. Szymborski
12 Plaintiff

13 vs.

Case No. A-14-700178-C

14 Spring Mountain Treatment Center
15 Darryl Dubroca, in his official capacity
16 Defendant

Dept. No. XXXI

17 DOES I-XX, inclusive and ROE Corporations

18 1-XX inclusive
19 DEFENDANTS
20 APPLICATION TO PROCEED INFORMA PAUPERIS
21 (Filing Fees/Service Only)


22 Pursuant to NRS 12.015, and based on the following Affidavit, I request
23 permission from this Court to proceed without paying court costs or other costs and fees
24 as provided in NRS 12.015, because I lack sufficient financial ability.

CLERK OF THE COURT

MAY 02 2014

RECEIVED

© Clark County Civil Resource Center
Civil-IFP Costs/Fees

A-14-700178-C
PIFP
Application to Proceed In Forma Pauperis
3766271

ALL RIGHTS RESERVED
u:\COC\fee_waiver\packet_8\appfeewaiver_0501.wpd

AFFIDAVIT

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

I, Lee E. Szymanski after being duly sworn, depose and state as follows:

I wish to file with this Court the pleading submitted with this Application. I cannot pay the filing fees and costs of this action because I lack sufficient income, assets, or other resources. Including myself, there are 1 adults and _____ children age(s) _____ in my household.

My total monthly income is: 2,168.00

From all sources including employment, self-employment, social security, child support, etc
Any other household income from another member of the household is

\$ 1,668.00
\$ 400.00 (this month NOT Depoable)

My employer is permanently Disabled located at _____, my job title is _____.

The following represents a list of all of my assets and their value:

Automobile	Value	Loan Balance
<u>1978 Dodge Van</u>	<u>\$ 900.00</u>	<u>\$ 0</u>
YEAR, MAKE, AND MODEL		

Mobile Home, House or Other Real Estate	Value	Loan Balance
<u>2 Story Colonial 1989</u>	<u>125,000</u>	<u>\$</u>
SIZE, TYPE, AND YEAR		

Bank Accounts	Value	Loan Balance
<u>U.S. Bank</u>	<u>\$ 4.90</u>	<u>\$</u>
NAME OF BANK AND TYPE OF ACCOUNT		
<u>checking</u>	<u>\$</u>	<u>\$</u>
NAME OF BANK AND TYPE OF ACCOUNT		
Other	<u>\$</u>	<u>\$</u>
DESCRIPTION		

$$\frac{17}{2} = 8 \frac{1}{2}$$

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120
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31 45

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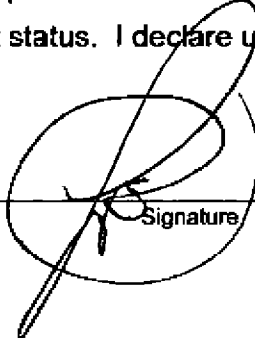
082373

1 _____ \$ _____ \$ _____
2 _____ \$ _____ \$ _____

3 The following represents my total monthly expenses:

4 Rent or Mortgage		\$ <u>720.32</u> / 754
5 Phone, Gas, Electricity, and Other Utilities		\$ <u>195.16</u>
6 Food		\$ <u>500.00</u>
7 Child Care		\$ _____
8 Insurance		\$ <u>50.00</u>
9 Medical		\$ <u>140.00</u>
10 Transportation		\$ <u>280.00</u>
11 Other: Auto Insurance		\$ <u>18.00</u>
12 None		\$ <u>220.00</u> / 1610 IMPROVANCE
	Taxes	<u>150</u>
13 TOTAL MONTHLY EXPENSES		\$ <u>2823.73</u> /

15 I request the Court hold a hearing on this Application if the Court is inclined to deny
16 same, so that I may testify as to my indigent status. I declare under penalty of perjury
17 that the foregoing is true and correct.

18
19
20  Signature
21
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27
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FILED₂₄

MAY 20 2014

Ann L. Williams
CLERK OF COURT

1
2 ORDR

3 EIGHTH JUDICIAL DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 LEE SZYMBORSKI

6 Plaintiff,

7 vs.

Case No. A-14-700178

8 SPRING MOUNTAIN TREATMENT CENTER

Dep't No. XXXI

9 Defendant.

10 ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S APPLICATION TO PROCEED IN

11 FORMA PAUPERIS

12 The Court, having reviewed Petitioner Lee Szymborski's Application to Proceed *In Forma*
13 *Pauperis* and all information therein submitted to this Court,

14 ORDERS the Application GRANTED IN PART AND DENIED IN PART.

15 In addition to the instant Application, Petitioner contacted Department IX chambers to
16 request a refund of the civil filing fee in the amount of \$270.00 that Petitioner paid on May 2, 2014.¹
17 Unfortunately, this Court is unable to issue refunds of filing fees paid, and this Court cannot issue a
18 *nunc pro tunc* order in this situation. The \$270.00 fee therefore stands paid, and Petitioner's request
19 for a refund is DENIED. However, in light of Petitioner's income amount, and after taking into
20 consideration the expensive nature of protracted litigation, this Court GRANTS the Application as to
21 all future fees.

22 /

23 /

24 /

25 /

26
27 ¹ This Court notes that Department IX staff attempted to communicate the contents of this order to Petitioner on May
28 9th, 12th, and 13th via the phone number provided on Petitioner's application. Despite several attempts, no phone contact
could be made with Petitioner.



RECEIVED

JENNIFER TOGLIATTI

DISTRICT JUDGE


DEPARTMENT IX

MAY 20 2014

CLERK OF THE COURT

Therefore, IT IS HEREBY ORDERED that Petitioner's Application to Proceed *In Forma Pauperis* is GRANTED IN PART and DENIED IN PART.

DATED this 19th of May, 2014.

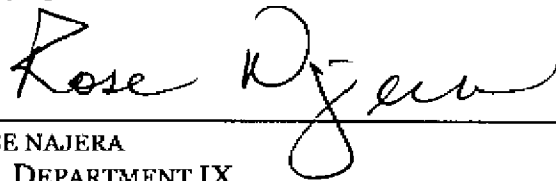

JENNIFER P. TOGLIATTI
CHIEF DISTRICT COURT JUDGE

JENNIFER TOGLIATTI
DISTRICT JUDGE
DEPARTMENT IX

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed, she served the foregoing Order Denying In Part Granting in Part the Application to Proceed in Forma Pauperis by mailing a copy to Defendant as listed below:

LEE E. SZYMBORSKI
4605 BLACK STALLION AVE
NORTH LAS VEGAS NV 89031



ROSE NAJERA
JEA, DEPARTMENT IX

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A-14-700178-C DOES NOT contain the social security number of any person.

/s/ ROSE NAJERA Date 5/20/14
Judicial Executive Assistant


CLERK OF THE COURT

IAFD

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: mprangle@hpslaw.com
Email: kdoyle@hpslaw.com
Attorneys for Defendant Spring Mountain Treatment Center

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S
INITIAL APPEARANCE FEE DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above entitled action as indicated below:

///

///

///

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-389-6400 FACSIMILE: 702-384-6025

Name of Defendant: Spring Mountain Treatment Center \$223.00

Total Remitted: \$223.00

Dated this 22nd day of May, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/: Kerry J. Doyle, Esq.

Michael Prangle, Esq.

Nevada Bar No. 8619

Kerry J. Doyle, Esq.

Nevada Bar No. 10571

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Spring Mountain Treatment Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC;

that on the 22 day of May, 2014, I served a true and correct copy of the foregoing

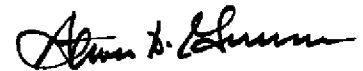
DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S INITIAL

APPEARANCE FEE DISCLOSURE attached hereto in a sealed envelope, via U.S. Mail, first-

class postage pre-paid to the following parties at their last known address:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person


An employee of HALL PRANGLE & SCHOONVELD, LLC



CLERK OF THE COURT

MDSM

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: mprangle@hpslaw.com
Email: kdoyle@hpslaw.com
Attorneys for Defendant Spring Mountain Treatment Center

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S
MOTION TO DISMISS**

Hearing Date: _____

Hearing Time: _____

COMES NOW, Defendant Spring Mountain Treatment Center (hereinafter referred to as
"Spring Mountain"), by and through their attorneys, Hall Prangle & Schoonveld, LLC, and
respectfully submits this Motion to Dismiss.

///

///

1 This Motion is made and based on the following Points and Authorities, pleadings and
2 papers on file herein and any arguments of counsel at the time of hearing of this matter.

3 Dated this 22nd day of May, 2014.

4 HALL PRANGLE & SCHOONVELD, LLC

5 /s/: Kerry J. Doyle, Esq.
6 Michael Prangle, Esq.
7 Nevada Bar No. 8619
8 Kerry J. Doyle, Esq.
9 Nevada Bar No. 10571
10 1160 N. Town Center Dr., Ste. 200
11 Las Vegas, NV 89144
12 *Attorneys for Defendant*
13 *Spring Mountain Treatment Center*

14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that the undersigned will bring the foregoing DEFENDANT
16 SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS for hearing before
17 the above entitled court on the 24 day of JUNE, 2014 at the hour of 9:30A a.m. in Department
18 No. XXXI, or as soon thereafter as counsel can be heard.

19 Dated this 22nd day of May, 2014.

20 HALL PRANGLE & SCHOONVELD, LLC

21 /s/: Kerry J. Doyle, Esq.
22 Michael Prangle, ESQ.
23 Nevada Bar No. 8619
24 Kerry J. Doyle, Esq.
25 Nevada Bar No. 10571
26 1160 N. Town Center Dr., Ste. 200
27 Las Vegas, NV 89144
28 *Attorneys for Defendant*
Spring Mountain Treatment Center

///

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff's Complaint against Defendant, Spring Mountain must be dismissed because the claims asserted therein are medical malpractice allegations and the Complaint fails to attach an expert affidavit as required by statute. Although Plaintiff attempts to side-step the affidavit requirement by alleging general negligence as well as medical malpractice, it is clear that this case is based solely on an alleged act of medical malpractice. Therefore, Spring Mountain respectfully requests that the Complaint be dismissed.

II.

STATEMENT OF FACTS

This is a medical malpractice action arising out of the care and treatment rendered to Sean Szyborski at Spring Mountain. According to Plaintiff's complaint, Sean Szyborski, a mentally ill patient, was improperly discharged from Spring Mountain to Lee Szyborski's (Plaintiff) home in violation of NAC 449.332. See Plaintiff's Complaint, hereinafter **Exhibit A**. Further, as a result of this improper discharge, Sean Szyborski smashed the windows, walls, doors, furniture, and completely destroyed the interior of the residence before going missing for three weeks. *Id.* As a result of the alleged improper discharge, Plaintiff has filed suit against Spring Mountain for the damages to his residence as well as emotional distress suffered by Plaintiff. However, no expert affidavit supporting his claims was attached. Accordingly, Defendant Spring Mountain respectfully requests that Plaintiff's Complaint be dismissed.

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III.

LEGAL STANDARD

NRCP 12(b) states in part:

[E]very defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

...

(5) failure to state a claim upon which relief can be granted.

On a motion to dismiss for failure to state a claim for relief, the trial court, and the Supreme Court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff. *Merluzzie v. Larson*, 96 Nev. 409, 411-12, 610 P.2d 739, 741 (1980) overruled on other grounds by *Smith v. Clough*, 106 Nev. 568, 796 P.2d 592 (1990). A complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief. *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 169, 400 P.2d 621, 624 (1965).

As set forth below, Plaintiff has failed to state a claim for relief for medical malpractice since Plaintiff did not attach an expert affidavit as required by statute.

IV.

ARGUMENT

A. Plaintiff's Complaint must be dismissed because it is not supported by an Expert Affidavit.

Dismissal of Plaintiff's Complaint is required by NRS 41A.071 because Plaintiff's claims are for medical malpractice but are not supported by an expert affidavit. NRS 41A.071 states:

[i]f an action for medical malpractice or dental malpractice is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit, supporting the allegations contained in the action,

1 submitted by a medical expert who practices or has practiced in an area that is
2 substantially similar to the type of practice engaged in at the time of the alleged
malpractice.

3 The Nevada Supreme Court has held that “under NRS 41A.071, a complaint filed without
4 a supporting expert affidavit is void ab initio and must be dismissed.” *Washoe Med. Ctr. v.*
5 *Second Judicial Dist. Court*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006). And since “a void
6 complaint does not legally exist, it cannot be amended.” *Id.* In *Washoe*, the Court reasoned that:

7
8 “shall” is mandatory and does not denote judicial discretion. The Legislature’s
9 choice of the words “shall dismiss” instead of “subject to dismissal” indicates that
10 the legislature intended that the court have no discretion with respect to dismissal
and that a complaint filed without an expert affidavit would be void and must be
11 automatically dismissed.

12 *Id.* at 1303, 148 P.3d at 793-94. Moreover, the Court discussed the legislative intent underlying
13 NRS 41A.071, stating that the

14 legislative history further supports the conclusion that a complaint defective under
15 NRS 41A.071 is void NRS 41A.071 was adopted as part of the 2002
16 medical malpractice tort reform that abolished the Medical-Legal Screening
17 Panel. NRS 41A.071’s purpose is to “lower costs, reduce frivolous lawsuits, and
18 ensure that medical malpractice actions are filed in good faith based upon
19 competent expert medical opinion.” According to NRS 41A.071’s legislative
20 history, the requirement that a complaint be filed with a medical expert affidavit
21 was designed to streamline and expedite medical malpractice cases and lower
22 overall costs, and the Legislature was concerned with strengthening the
23 requirements for expert witnesses.

24 *Id.* at 1304, 148 P.3d at 794. Accordingly, the Supreme Court has made it very clear that any
25 medical malpractice case must be dismissed if it is filed without an expert affidavit.

26 Here, Plaintiff is asserting that the Spring Mountain negligently discharged Sean
27 Szymborski in violation of NAC 449.332. It is clear that Plaintiff failed to file an expert
28 affidavit in support of his claims. Thus, the only question remains is whether this is a medical
malpractice claim.

1 NRS 41A.009 defines "medical malpractice" as "the failure of a physician, hospital or
2 employee of a hospital, in rendering services to use the reasonable care, skill or knowledge
3 ordinarily used under similar circumstances." The decision to discharge is a medical decision
4 and clearly falls under the definition of a hospital rendering services as set forth in NRS
5 41A.009. Thus, Plaintiff's allegations clearly fall under the requirements of NRS 41A.071.

6
7 NAC 449.332, the administrative code that Plaintiff relies on to support his claim,
8 further demonstrates that the decision to discharge is a medical decision. NAC 449.332 states in
9 part:

10 3. A hospital shall, at the earliest possible stage of hospitalization, identify each
11 patient who is likely to suffer adverse health consequences upon discharge if
12 the patient does not receive adequate discharge planning. The hospital shall
13 provide for an evaluation of the needs related to discharge planning of each
14 patient so identified.

15 NAC 449.332 (emphasis added). Thus, the decision to discharge requires medical care providers
16 to identify whether a patient will need additional health care based upon their diagnosis and
17 current medical status.

18 Plaintiff himself also acknowledges that the allegations in this case are medical in nature.
19 He specifically alleges that Defendants were "entrusted to provide medical care owed to patients
20 and a duty to provide adequate medical treatment..." Ex A at para 36. Plaintiff goes on to state
21 that "Defendant breached the duty of care by discharging the patient...in violation of discharge
22 policies and procedures, pursuant to NAC 449.332." Plaintiff's entire theory of liability is based
23 upon the allegation that Spring Mountain breached a duty owed to Plaintiff to provide his son
24 with medical treatment by improperly discharging him.

25
26 As a result of the above, it is undisputed that Plaintiff's Complaint is based solely on
27 allegations of medical malpractice and each cause of action relies solely on whether the
28

discharge of Sean Szymborski was medically negligent. Therefore, having failed to comply with NRS 41A.071 by attaching an expert affidavit to the Complaint, Plaintiff's Complaint must be dismissed.

B. Plaintiff's claim for Punitive Damages fails as Plaintiff has not alleged facts that warrant punitive damages against an employer under NRS § 42.007.

As Plaintiff's causes of action are all based in medical malpractice, any claims for punitive damages also must be dismissed. However, even if those claims survive, Plaintiff has asserted no facts that support a claim for punitive damages against Spring Mountain.

Plaintiffs' are not entitled to punitive damages against Spring Mountain because Plaintiff's Complaint merely alleges negligence by the hospital's employees; yet, it does not allege any independent wrong-doing or ratification by the hospital itself as is required by law. NRS § 42.007 governs an award of punitive damages against an employer for the conduct of employees as follows:

Except as otherwise provided in subsection 2, in an action for the breach of an obligation in which exemplary or punitive damages are sought pursuant to subsection 1 of NRS 42.005 from an employer for the wrongful act of his or her employee, the employer is not liable for the exemplary or punitive damages unless:

- (a) The employer had advance knowledge that the employee was unfit for the purposes of the employment and employed the employee with a conscious disregard of the rights or safety of others;
- (b) The employer expressly authorized or ratified the wrongful act of the employee for which the damages are awarded; or
- (c) The employer is personally guilty of oppression, fraud or malice, express or implied.

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If the employer is a corporation, the employer is not liable for exemplary or punitive damages unless the elements of paragraph (a), (b) or (c) are met by an officer, director or managing agent of the corporation who was expressly authorized to direct or ratify the employee's conduct on behalf of the corporation.

Nev. Rev. Stat. § 42.007(1).

In this case, Plaintiff is requesting punitive damages against a corporation, Spring Mountain, for the actions of its employees in treating Sean Szymborski's condition. While Plaintiff does list Darryl Dubroca in his official capacity in the caption of the Complaint, there are no allegations of any wrongdoing on his part or that he was aware or ratified any of the alleged acts. In fact, the only mention of Mr. Dubroca in the Complaint is that he is the CEO/Managing Director of Spring Mountain. Ex. A, at para. 2. Consequently, to succeed in this request under NRS § 42.007, Plaintiffs must allege and prove one of the following:

- That an officer/director/managing agent of Spring Mountain had advance knowledge that the employees attending to Sean Szymborski were unfit for their employment, but nonetheless were employed with a conscious disregard of the safety of others;
- That an officer/director/managing agent of Spring Mountain "expressly authorized or ratified" the negligent treatment of Sean Szymborski; or
- That an officer/director/managing agent of Spring Mountain was himself/herself guilty of "oppression, fraud or malice."

Here, there are no such allegations in the Complaint. On the contrary, Plaintiff merely concludes that the alleged "negligent" treatment by Spring Mountain's *employees* warrants punitive damages. Therefore, Plaintiffs' claims for punitive damages are insufficient as a matter of law, and must be dismissed.

Moreover, as set forth above, Plaintiff's allegations against the hospital staff are for negligence, which is not a permissible basis for a punitive damage claim. *See* NRS 42.005

(stating that a plaintiff must, by clear and convincing evidence, prove “the defendant has been guilty of oppressions, fraud or malice . . .” to warrant punitive damages). “A plaintiff is never entitled to punitive damages as a matter of right.” *Dillard Department Stores v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985)). “[E]ven unconscionable irresponsibility will not support a punitive damages award.” *Maduikie v. Agency Rent-A-Car*, 114 Nev. 1, 5-6, 953 P.2d 24, 27 (1998)(quoting *First Interstate Bank v. Jafros Auto Body*, 106, Nev. 54, 57, 787 P.2d 765, 767 (1990)). The Nevada Supreme Court has further stated that “[s]ince its language plainly requires evidence that a defendant acted with a culpable state of mind, we conclude that NRS 42.001(1) denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence.” *Countrywide v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243 (2008).

Thus, notwithstanding Plaintiff’s inability to overcome the employer specific hurdles under NRS 42.007, Plaintiffs’ allegations of negligent medical treatment are insufficient as a matter of law to warrant punitive damages. Therefore, Plaintiff’s claim for punitive damages should be dismissed.

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V.

CONCLUSION

Based upon the foregoing, Spring Mountain respectfully requests this Honorable Court issue an Order Dismissing, Plaintiffs' Complaint.

Dated this 22nd day of May, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/: Kerry J. Doyle, Esq.
Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
Attorneys for Defendant
Spring Mountain Treatment Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 22 day of May, 2014, I served a true and correct copy of the foregoing

DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS

attached hereto in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person


An employee of HALL PRANGLE & SCHOONVELD, LLC

4810-8686-6440, v. 1

EXHIBIT A

1 fictitiously named Defendants is in some way liable to Plaintiff on the causes of action below and
2 therefore sues these defendants by such fictitious names. Plaintiff believes said fictitious
3 Defendants assisted, devised, schemed, planned or took part in the actions set forth hereinbelow.
4 Plaintiff will move to amend this Complaint and insert the true names and capacities of
5 fictitiously named Defendants when the same have been ascertained.

6 5. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, each actually and fictitiously named Defendant was the principal, agent, co-venturer,
8 partner, surety, guarantor, officer, director and/or employee of each co-defendant and in doing the
9 things herein alleged, was acting within the scope of authority and with the permission of each
10 co-defendant or took some part in the acts and omissions hereinafter set forth, and by reason
11 thereof, each of said Defendants is liable to Plaintiff for the relief prayed.

12 6. That on or about May 14, 2013, at approximately 3:30 p.m., Defendant SPRING
13 MOUNTAIN TREATMENT CENTER, 7000 W. Spring Mountain Road, Las Vegas, Nevada
14 89117, due an "UNAUTHORIZED UNSAFE DISCHARGE" of a mentally ill adult patient, to
15 wit: SEAN T. SZYMBORSKI, in violation of NAC 449.332, to the residence of Plaintiff. See
16 Exhibit "1".

17 7. That said SEAN T. SZYMBORSKI was provided a taxi ride, released without any
18 money; without appropriate medication, without the ability to care for himself, and being a
19 danger to both himself and other.

20 8. Defendant SPRING MOUNTAIN TREATMENT CENTER was directed by
21 KATHLEEN BUCHANAN to provide a Guardianship for Defendant SEAN T. SZYMBORSKI,
22 and failed to do so.

23 9. Defendant SPRING MOUNTAIN TREATMENT CENTER Caseworker
24 "REBECCA" was directed NOT to release SEAN T. SZYMBORSKI to the residence of
25 Plaintiff, however he was transported by taxi directly to the home of Plaintiff, where he smashed
26 windows, walls, doors, furniture, and completely destroyed the interior of the residence, before
27 going missing for three weeks. (A missing persons report was filed by NLVPD.)
28

10. An investigation by the Division of Public and Behavioral Health substantiated that Defendant SPRING MOUNTAIN TREATMENT CENTER was in violation of NAC 449.332, Discharge Planning, based upon evidence by interview of staff, record review and document review.

11. It was determined that the facility failed to assure the patient was discharged to a **safe environment** due to the following issues in this matter:

a. Patient was admitted to the facility on 5/3/13, and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.

b. On 5/13/13 at 1 p.m. the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.

c. On 5/15/13 at 2:0 p.m. the Masters of Art (MA) met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up patient's debit card prior to going to the new apartment.

d. Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.

e. The Patient Continuing Care Plan, dated 5/14/13 identified the parties was to go to father's home first then on to an address in North Las Vegas, Nevada.

f. The Acute Physician Discharge Progress Note on 5/14/13 at 8:50 a.m. documented the patient did not want to return to the patient's father's home due to ongoing conflict. The note documented the patient participated in treatment planning to find housing.

g. The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.

1 h. On 7/9/13 at 8:49 a.m. the Risk Manager confirmed the MA did not follow up on
2 verifying the identified apartment.

3 i. On 7/9/13 at 11:20 a.m., Licensed Social Worker (LSW) indicated multiple telephone
4 messages were left by the patient's father. The father would state the patient could return to the
5 home; the next telephone message from the father would demand the patient not be discharged to
6 the father's home. The LSW acknowledged she did not speak directly with the patient's father.
7 The LSW stated due to the large number of patients on the LSW's caseload, the LSW had to
8 delegate telephone calls and discharge planning to the MA.

9 j. The LSW indicated when a patient identified their own placement, the LSW would try
10 to obtain as much information as possible regarding the address and name of the apartment. If
11 unable to verify placement, the physician would be notified prior to discharge from the facility.

12 k. The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 a.m. documented
13 the patient did not want to return to his father's home due to ongoing conflict. The note
14 documented the patient participated in treatment planning to find housing.

15 12. An evaluation of the needs of a patient relating to discharge planning must include,
16 without limitation, consideration of:

17 a. The needs of the patient for postoperative services and the availability of those
18 services.

19 b. The capacity of the patient for self-care; and

20 c. The possibility of returning the patient to a previous care setting or making
21 another appropriate placement of the patient after discharge.

22 13. Defendant SPRING MOUNTAIN TREATMENT CENTER is in **violation of NAC**
23 **449.394**, Psychiatric Services, which requires that a hospital shall develop and carry out policies
24 and procedures for the provision of psychiatric treatment and behavioral management services
25 that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and
26 services are safely and appropriately used. The hospital shall ensure that the policies and
27 procedures protect the safety and rights of the parties - and the public at large.

1 14. That Defendant SPRING MOUNTAIN TREATMENT CENTER **has failed to met**
2 **these statutes and regulations**, for the reasons set forth above.

3 15. That due to the failure to meet these responsibilities, SEAN T. SZYMBORSKI, was
4 driven by taxi to the home of Plaintiff, and dropped off, at the expense of the Defendant SPRING
5 MOUNTAIN TREATMENT CENTER, where he proceeded to cause significant property
6 damage to Plaintiff's residence, and go missing.

7 16. That when SEAN T. SZYMBORSKI was located, he had sustained wounds from a
8 self inflicted injuries with a sharp object, using weapons obtained at the home of his mother; and
9 not at the home of his father.

10 17. The patient care plan, dated 5/14/13 indicated that safety concerns, including
11 weapons, in the patient's home were non-applicable and verified by the patient's father. There
12 was no documented evidence the patient's father was contacted for verification. Furthermore,
13 Defendant SPRING MOUNTAIN TREATMENT CENTER indicated they assisted in obtaining a
14 home for SEAN T. SZYMBORSKI, therefore, even confirming no weapons in father's home was
15 not reasonable to consider this non-applicable.

16 18. In violation of the stated statutes, it was determined that the LSW did not follow up
17 on identifying what weapons and if the patient had access to weapons prior to discharge. (8.0
18 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining
19 permission and contacting any person that may be able to located and secure items...Weapons are
20 not considered secured until verification has been received that the task is completed...")

21 19. Due to the inactions of Defendant SPRING MOUNTAIN TREATMENT CENTER,
22 SEAN T. SZYMBORSKI was convicted of criminal charges related to the property destruction at
23 the home of Plaintiff, rather than receiving treatment for his known mental illness.

24 20. Defendant SPRING MOUNTAIN TREATMENT CENTER acted in reckless
25 disregard of SEAN T. SZYMBORSKI's psychiatric condition in pre-paying for a taxi to dump
26 him at an verified location [Plaintiff's residence], without notice to occupants, without money,
27 and without the ability to provide care for himself due to long standing mental illness.

1 21. The failures of Defendant SPRING MOUNTAIN TREATMENT CENTER to deliver
2 the statutory mandated care to patients in their custody and control resulted in systematic
3 disregard of the serious psychological and medical conditions and resulted in adverse
4 consequences, which predictably flow from such failures, and caused damages to patients and
5 others, who became victims of such disregard.

6 22. Defendant SPRING MOUNTAIN TREATMENT CENTER is a for profit
7 corporation, whose estimated annual revenue is in excess of TWO BILLION DOLLARS
8 (\$2,000,000,000).

9 **FIRST CLAIM FOR RELIEF**

10 (NEGLIGENCE)

11 23. Plaintiff realleges and incorporates by reference all of the previous allegations of
12 this Complaint at this point as if set forth fully herein.

13 24. Nevada recognizes negligence claims, where a Plaintiff establishes: (1) the
14 existence of a duty of care (2) breach of that duty; (3) legal causation; and (4) damages.

15 25. Defendants, in the exercise of reasonable care had a duty to know, or should have
16 known, that they are required to comply with NAC 449.332, regarding DISCHARGE PLAN of
17 Patients; and with NRS 449.765 to 449.786.

18 26. Defendants breached their duty by failing to carefully investigate, monitor and/or
19 oversee discharge activities at SPRING MOUNTAIN TREATMENT CENTER, including but
20 not limited to, the development, implementation, and supervision of discharge policies and
21 practices.

22 27. That Defendants negligently and/or carelessly, permitted the dumping of SEAN T.
23 SZYMBORSKI, by taxi to the home of Plaintiff, without notice to Plaintiff, in violation of their
24 own internal policies; NAC 449.332; and NRS 449.865 to 449.786.

25 28. Defendants knew or should have known that patients, including SEAN T.
26 SZYMBORSKI are members of the class of patients that could foreseeably suffer injury to
27 themselves, and/or inflict injury on others, as a result of Defendants' failure to exercise
28

1 reasonable care in the discharge of their statutorily imposed duties, and/or common-law duties of
2 care.

3 29. As a direct and proximate result of the negligence and carelessness of Defendants,
4 Plaintiff has suffered extreme emotional and mental distress, further issues and conflict in the
5 family unit, in addition to approximately \$20,000 in physical damage to the residence, including
6 smashed windows, which required immediate action to secure assets in the residence, and other
7 damages the full extent of which shall be provided through discovery.

8 30. As a direct and proximate result of Defendants' acts or omissions, Plaintiff has
9 suffered punitive, general and special damages.

10 **SECOND CLAIM FOR RELIEF**

11 (Professional Negligence)

12 (Negligent act or omission to act by a provider of health care in rendering of professional
13 services, which act or omission is the proximate cause of a personal injury or wrongful death,
NRS 41A.015)

14 31. Plaintiff realleges and incorporates by reference all of the previous allegations of
15 this Complaint at this point as if set forth fully herein.

16 32. Defendants in the capacity of a for profit hospital providing medical care to the
17 public, government agencies overseeing the hospital's operations, licensed social workers,
18 registered nurses, psychiatrists, and the hospital administrator owed Plaintiff a duty to employ
19 medical staff adequately trained in the care and treatment of patients consistent with the degree
20 of skill and learning possessed by competent medical personnel practicing in the United States of
21 America under the same or similar circumstances; and a duty to comply with Nevada statutes,
22 including NRS 41A.015.

23 33. Defendants breached its duty of care by failing to function as a patient advocate by
24 providing proper care to the patients at the time of discharge, and specifically causing physical,
25 mental and emotional pain and suffering to the patient; as well as physical, mental and emotional
26 pain and suffering to the public at large, and specifically in this matter, to the Plaintiff.

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FOURTH CLAIM FOR RELIEF

(Negligent Hiring, Supervision and Training)

38. Plaintiff realleges and incorporates by reference all of the previous allegations of this Complaint at this point as if set forth fully herein.

39. At the times mentioned herein, Defendants knew, or in the exercise of reasonable care should have known, that the provisions of medical care and treatment was of such a nature that, if it was not properly given, it was likely to injure the persons to whom it was given. Defendants owed a duty to its patients, and the community at large, to hire, train, and/or supervise competent medical and staff personnel, including supervisors, and LSW, to provide care and treatment to its patients.

40. Defendants breached that duty of care by failing to adequately provide competent employees, in the performance of the job, as it appears dumping patients is an ongoing problem.

41. At all times herein mentioned, Defendants established and/or followed, unsafe medical practices, including "dumping" patients without complying with discharge instructions.

42. As a result of the lack of medical care and treatment provided by Defendant, Defendants breached their duty to Plaintiff and the members of the class by failing to protect them from foreseeable harm, resulting in a lack of mental health treatment for Plaintiff and the public at large.

43. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff has been injured financially, as well as mentally and emotionally in this matter.

44. Defendants conduct demonstrated a conscious disregard of known accepted procedures, protocols, care and treatment, all with the knowledge or utter disregard that such conduct could or would expose Plaintiff to harm as set forth herein.

45. Defendants conduct was willful, reckless, malicious, and in total disregard to the health and safety of not only the patient, but the public at large, thereby justifying an award of punitive damages.

1 46. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
2 mental and emotional pain and suffering, in addition to financial loss.

3 WHEREFORE, Plaintiff prays judgement as follows:

4 1. For a temporary restraining order and/or preliminary injunction and permanent
5 injunction enjoining and restraining Defendants from continuing or repeating the unlawful
6 policies, practices and conduct complained of herein;

7 2. For declaratory judgment against Defendants' policies, practices and conduct as
8 alleged herein in violation of patient rights, and the safety of the public at large;

9 3. For compensatory damages according to proof;

10 4. For punitive damages in consideration of the annual income in excess of
11 \$2,000,000,000.

12 5. For emotional distress caused by the violations herein.

13 6. For costs of suit, including attorney fees, and other costs.

14 7. For such other and further relief as the Court may deem appropriate.

15 DATED this ____ day of ____, 2014

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17 
18 LEE E. SZYMBORSKI
19 Plaintiff in Proper Person
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EXHIBIT 1



STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH DIVISION

☐ Health Facilities/Lab Services
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-1030
Fax: (775) 684-1073

☒ Health Facilities/Lab Services
4220 S. Maryland Parkway
Suite 810, Building D
Las Vegas, NV 89119
(702) 486-6515
Fax: (702) 486-6520

☐ Radiation Control
4150 Technology Way
Suite 300
Carson City, Nevada 89706
(775) 687-7550
Fax: (775) 687-7552

☐ Radiation Control
2090 E. Flamingo
Suite 319
Las Vegas, Nevada 89119
(702) 486-5280
Fax: (702) 486-5024

☐ Child Care Licensing
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-4463
Fax: (775) 684-4464

☐ Child Care Licensing
4180 S. Pecos, Ste 150
Las Vegas, Nevada 89121
(702) 486-7918
Fax: (702) 486-6660

☐ Child Care Licensing
1010 Ruby Vista, Ste 101
Elko, Nevada 89801
(775) 753-1237
Fax: (775) 753-1336

May 22, 2013

Lee Szymborski
4605 Black Stallion Avenue
North Las Vegas, NV 89032

RE: Complaint # NV00035655

Dear Mr. Szymborski,

Thank you for alerting us about your dissatisfaction with Spring Mountain Treatment Center. We understand your concerns about admission, transfer and discharge, quality of care-responsible party not notified of patients change in condition, patient not assessed after change in condition, patient's medications improperly administered.

Our team of investigators will review your specific concerns, and evaluate the facility's actions, to determine if the facility is in compliance with state and/or federal regulations. Please refer to the enclosed fact sheet that describes the investigation process.

We will inform you of the investigation results, and send you a copy of the report. If you want to know the status of your complaint, please call the team supervisor, Rosemary Palladino-Marcus, HFI III, and refer to the complaint number listed above.

Please know that the Nevada State Health Division takes all complaints very seriously. By reporting your concerns, you play an important role in promoting the safety of health care recipients and improving the quality of care and services that facilities provide. We thank you.

Sincerely,

Johna Thacker, AAII/Complaint Intake Coordinator

cc: Rosemary Palladino-Marcus, Health Facilities Inspector III

Encl: 1 Page Complaint Process Fact Sheet

Public Health Working for a Safer and Healthier Nevada

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of a complaint investigation initiated on 6/25/13, and finalized in your facility on 7/9/13, in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the investigation was 63. Five discharged medical records were reviewed.</p> <p>Complaint #NV00035655 was substantiated with deficiencies cited. (See Tags S0146, S0153 and S0602)</p> <p>The findings and conclusions of any investigation by the Health Division shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.</p>	S 000		
S 146 SS=D	<p>NAC 449.332 Discharge Planning</p> <p>4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of:</p> <p>(a) The needs of the patient for postoperative services and the availability of those services;</p> <p>(b) The capacity of the patient for self-care; and</p> <p>(c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge.</p> <p>This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to assure the patient was discharged to a safe environment for 1 of 5 sampled patients (Patient #1).</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 1</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/13/13 at 1:00 PM, the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.</p> <p>On 5/14/13 at 2:30 PM, the Masters of Art (MA) documented the MA met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up the patient's debit card prior to going to the new apartment.</p> <p>Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified the patient was to go to the father's home first then on to an address in North Las Vegas.</p> <p>The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 AM, documented the patient did not want to return to the patient's fathers home due to on-going conflict. The note</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 2 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 2</p> <p>documented the patient participated in treatment planning to find housing.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.</p> <p>On 7/9/13 at 11:20 AM, Licensed Social Worker (LSW) #2 explained multiple telephone messages were left by the patient's father. The father would state the patient could return to the father's home. The next telephone message from the father would demand the patient not be discharged to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW explained during the first meeting with the patient, the patient expressed a willingness to return to the father's home and would work on finding an apartment from the father's home. The LSW explained due to the large number of patient's on the LSW's case load, the LSW had to delegate telephone calls and discharge planning to the MA.</p> <p>The LSW explained when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If the LSW was unable to verify placement, the physician would be notified prior to discharge from the facility.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 146	Continued From page 3 Procedure: "...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager:... 4.4 Housing needs and/or placement issues;...4.8 Personal support systems..." "...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate, and documented in the medical record...5.2 Where and with whom the patient will live following discharge..." "...6.0 The Social Services Discharge Note is completed for every patient at the time of discharge. This note includes, but is not limited to: 6.1 Living arrangements..." Severity: 2 Scope: 1 Complaint #NV00035655	S 146			
S 153 SS=D	NAC 449.332 Discharge Planning 11. The patient, members of the family of the patient and any other person involved in caring for the patient must be provided with such information as is necessary to prepare them for the post-hospital care of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to notify 2 of 5 sampled patients families prior to discharge (Patient #1 and #5).	S 153			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 4 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 153	<p>Continued From page 4</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/10/13 at 9:00 AM, the LSW #2 documented the case manager received a voice mail from the patient's father saying the patient was not to return to his home. The LSW documented the case manager would assist the patient with alternative placement.</p> <p>On 5/10/13 at 11:15 AM, the MA documented the patient's father wanted the patient to return to his home, but not to be discharged "today".</p> <p>There was no further documented evidence the patient's father was contacted to confirm discharge to the patient's father's home.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the MA met with the patient. The patient requested the father's telephone number and told the father of being discharged and a taxi would transport the patient to the father's home.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented the discharge was not coordinated with the family. Documentation with the father on the day of discharge was not documented.</p> <p>On 7/9/13 at 9:50 AM, the Risk Manager acknowledged the facility should have arranged for the taxi driver to wait at the patient's father's</p>	S 153			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 5 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 153	<p>Continued From page 5</p> <p>house until the patient retrieved the debit card, then drive the patient to the new apartment.</p> <p>On 7/9/13 at 11:34 AM, LSW #2 explained the family member should be contacted prior to the patient's discharge to assure the family was alright with the patient returning home. The LSW acknowledged the patient's father should have been contacted by the facility staff prior to the patient being discharged.</p> <p>Four additional discharged medical records were reviewed.</p> <p>Patient #5</p> <p>Patient #5 was admitted to the facility on 6/4/13 and discharged on 6/18/13, with a diagnosis of major depressive disorder.</p> <p>There was no documented evidence the social worker/Case Manager notified the family of the patient's discharge. There was no documented evidence the family was educated on the patient's medications and follow up care needed. There was no family contact from the social worker/Case Manager after 6/6/13.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate,</p>	S 153			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 6 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	Continued From page 6 and documented in the medical record..." Severity: 2 Scope: 1 Complaint #NV00035655	S 153		
S 602 SS=D	NAC 449.394 Psychiatric Services 3. A hospital shall develop and carry out policies and procedures for the provision of psychiatric treatment and behavioral management services that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately used. The hospital shall ensure that the policies and procedures protect the safety and rights of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to identify what weapons were at Patient #1's mother's home and if the patient would have access to the weapons. Findings include: Patient #1 Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse. On 5/3/13 at 12:00 PM, the Comprehensive Assessment Tool documented patient had multiple scab areas on his legs. The Comprehensive Assessment Tool documented the patient's father stated the patient's wounds were self inflicted with a sharp object.	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 7 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 602	<p>Continued From page 7</p> <p>On 5/6/13 at 2:42 PM, LSW #1 documented weapons were at the patient's mothers home, but not at the patient's fathers home. The LSW did not identify what weapons were at the patient's mothers home. There was no documented evidence the patient's mother was contacted to verify where the weapons were located.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified safety concerns, including weapons in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the patient asked the MA if the taxi would be able to take the patient to the mother's house after the patient went to the father's house. The MA documented the patient would have to pay for any taxi after being dropped off at the father's house.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the LSW did not follow up on identifying what weapons and if the patient had access to the weapons prior to discharge.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>"8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to locate and secure the items...Weapons are not considered secured until verification has been received that the task is completed..."</p>	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 8 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 602	Continued From page 8 Severity: 2 Scope: 1 Complaint #NV00035655	S 602			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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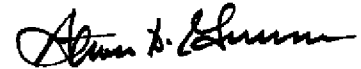
If continuation sheet 9 of 9

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

IAFD

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
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(702) 889-6400 – Office
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Email: mprangle@hpslaw.com
Email: kdoyle@hpslaw.com
*Attorneys for Defendant Spring Mountain Treatment Center
and Darryl Dubroca*

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**DEFENDANT DARRYL DUBROCA'S
INITIAL APPEARANCE FEE DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above entitled action as indicated below:

///

///

///

Name of Defendant: Darryl Dubroca

\$223.00

Total Remitted:

\$223.00

Dated this 29th day of May, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/: Kerry J. Doyle, Esq.

Michael Prangle, Esq.

Nevada Bar No. 8619

Kerry J. Doyle, Esq.

Nevada Bar No. 10571

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Spring Mountain Treatment Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 29th day of May, 2014, I served a true and correct copy of the foregoing

DEFENDANT DARRYL DUBROCA'S INITIAL APPEARANCE FEE DISCLOSURE

attached hereto in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Lec E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person

/s/: Audrey Ann Stephanski

An employee of HALL PRANGLE & SCHOONVELD, LLC

4813-3212-8027, v. 1


CLERK OF THE COURT

JOIN

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
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(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: mprangle@hpslaw.com
Email: kdoyle@hpslaw.com
*Attorneys for Defendant Spring Mountain Treatment Center
and Darryl Dubroca*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**DEFENDANT DARRYL DUBROCA'S JOINDER TO SPRING MOUNTAIN
TREATMENT CENTER'S
MOTION TO DISMISS**

**Hearing Date: June 24, 2014
Hearing Time: 9:30 am**

COMES NOW, Defendant, Darryl Dubroca, by and through his attorneys, Hall Prangle &
Schoonveld, LLC, and respectfully submits this Joinder to Defendant Spring Mountain
Treatment Center's Motion to Dismiss as follows:

///

1 That Defendant, Darryl Dubroca, adopts, as though fully set forth herein, the points and
2 authorities, and arguments contained in said Defendant Spring Mountain Treatment Center's
3 Motion to Dismiss.

4 Additionally, Plaintiff has set forth no allegations against Mr. Dubroca in the entire
5 Complaint. As a result, Plaintiff has failed to state a claim upon which relief can be granted
6 against Mr. Dubroca.

7 WHEREFORE, Defendant Darryl Dubroca, pray that Defendant Spring Mountain
8 Treatment Center's Motion to Dismiss be GRANTED.

9
10 Dated this 29th day of May, 2014.

11 HALL PRANGLE & SCHOONVELD, LLC

12
13 /s/: Kerry J. Doyle, Esq.
14 Michael Prangle, Esq.
15 Nevada Bar No. 8619
16 Kerry J. Doyle, Esq.
17 Nevada Bar No. 10571
18 1160 N. Town Center Dr., Ste. 200
19 Las Vegas, NV 89144
20 *Attorneys for Defendant*
21 *Spring Mountain Treatment Center*
22 *and Darryl Dubroca*

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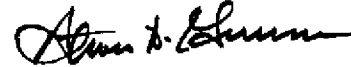
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 29th day of May, 2014, I served a true and correct copy of the foregoing **DEFENDANT DARRYL DUBROCA'S JOINDER TO SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS** attached hereto in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person

/s/: Audrey Ann Stephanski
An employee of HALL PRANGLE & SCHOONVELD, LLC

4822-6110-7995, v. 1



CLERK OF THE COURT

LEE E. SZYMBORSKI
4605 Black Stallion Ave
N. Las Vegas, NV 89031
(702) 609-6762
Plaintiff in Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE E. SZYMBORSKI,
Plaintiff,

Case No. A-14-700178-C
Dept No. XXXI

vs.

SPRING MOUNTAIN TREATMENT CENTER,
DARRYL DUBROCA, in his official capacity,
DOES I-XX, inclusive, and ROE
CORPORATIONS I-XX, inclusive,
Defendants.

OPPOSITION TO MOTION TO DISMISS COMPLAINT

COMES NOW, Plaintiff, and files this Opposition to Motion to Dismiss, indicating as follows:

1. That Defendant take nothing by way of its motion.
2. That the court acknowledge Defendant SPRING MOUNTAIN TREATMENT CENTER was found to be in violation of its own policies as well as laws and codes, as set forth in the Complaint; and set forth herein.
3. That the court acknowledge the Complaint addresses negligence on the part of defendants, and each of them.
4. That the court acknowledge Plaintiff's claim of "Malpractice, Gross Negligence, Negligence Per Se" is not medical malpractice, but malpractice that occurs after the discharge of a patient, but other employees of Spring Mountain Treatment Center, as detailed herein.

1 This Opposition and Countermotion is made and based upon the pleadings and files herein,
2 the affidavit of Plaintiff, and any oral argument that may be adduced at the time of trial.

3 Dated this 13 day of June 2014

4
5 LEE E. SZYMBOJSKI
6 Plaintiff in Proper Person

7 **I. INTRODUCTION**

8 This is an action of NEGLIGENCE on the part of SPRING MOUNTAIN TREATMENT
9 CENTER, FOR PROFIT business that has violated codes and statutes pertaining to the safe release
10 of patients, and NOT medical issues relation to its former patients. Plaintiff does set forth a cause
11 of action for "Malpractice, Gross Negligence, Negligence Per Se." Nothing in Plaintiff's complaint
12 seeks a judgment for MEDICAL malpractice; and the motion to dismiss should be summarily
13 denied.

14 Defendants herein desire this action to be classified as "medical malpractice" solely to find
15 fault with the Complaint. It is clearly negligence and there has been malpractice, but the malpractice
16 is in the area of social work, and the court should acknowledge the same.

17 "Malpractice" in the practice of **social work** means conduct which falls below the standard
18 of care required of a licensee under circumstances which proximately causes damage. In fact, this
19 definition itself is in the Complaint. Thus, Defendant's allegations that this matter should be
20 procedurally dismissed is meritless. In this matter, there is clearly "malpractice" - but it is NOT
21 medical malpractice; not in the process of a surgery or operation, but in the context of the mandatory
22 social work that is required - and EXPECTED of a "for profit" psychological facility that earns in
23 excess of TWO BILLION DOLLARS ANNUALLY.

II. STATEMENT OF FACTS

On or about May 14, 2013, at approximately 3:30 p.m., Defendant SPRING MOUNTAIN TREATMENT CENTER, provided an unauthorized, unsafe discharge of a mentally ill adult patient, to wit: SEAN T. SZYMBORSKI, in violation of NAC 449.332, to the residence of Plaintiff. Exhibits are provided attached to the Complaint.

That the adult patient was provided a taxi ride, released without any money; without appropriate medication, without the ability to care for himself, and being a danger to both himself and other.

SPRING MOUNTAIN TREATMENT CENTER was directed by KATHLEEN BUCHANAN to provide a Guardianship for the patient but failed to do so.

SPRING MOUNTAIN TREATMENT CENTER was directed NOT to release the patient to the residence of Plaintiff, however he was transported by taxi directly to the home of Plaintiff, where he smashed windows, walls, doors, furniture, and completely destroyed the interior of the residence, before going missing for three weeks. (A missing persons report was filed by NLVPD.)

An investigation by the Division of Public and Behavioral Health substantiated that Defendant SPRING MOUNTAIN TREATMENT CENTER was in violation of NAC 449.332, Discharge Planning, based upon evidence by interview of staff, record review and document review.

It was determined, by the Division of Public and Behavioral Health, that the facility failed to assure the patient was discharged to a **safe environment** due to the following issues in this matter:

a. Patient was admitted to the facility on 5/3/13, and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.

b. On 5/13/13 at 1 p.m. the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.

c. On 5/15/13 at 2:00 p.m. the Masters of Art (MA) met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient

1 needed to stop by the father's home to pick up patient's debit card prior to going to the new
2 apartment.

3 d. Review of the Social Services Discharge Note revealed the patient would live in an
4 apartment upon discharge. There was no documented evidence of an address for the apartment.
5 There was no documented evidence the Case Manager confirmed the patient had made arrangements
6 to live in the apartment.

7 e. The Patient Continuing Care Plan, dated 5/14/13 identified the parties was to go to father's
8 home first then on to an address in North Las Vegas, Nevada.

9 f. The Acute Physician Discharge Progress Note on 5/14/13 at 8:50 a.m. documented the
10 patient did not want to return to the patient's father's home due to ongoing conflict. The note
11 documented the patient participated in treatment planning to find housing.

12 g. The Risk Manager investigated a telephone complaint from the patient's father. The
13 Administrative Review documented placement to the apartment was not verified.

14 h. On 7/9/13 at 8:49 a.m. the Risk Manager confirmed the MA did not follow up on
15 verifying the identified apartment.

16 i. On 7/9/13 at 11:20 a.m., Licensed Social Worker (LSW) indicated multiple telephone
17 messages were left by the patient's father. The father would state the patient could return to the
18 home; the next telephone message from the father would demand the patient not be discharged to
19 the father's home. The LSW acknowledged she did not speak directly with the patient's father. The
20 LSW stated due to the large number of patients on the LSW's caseload, the LSW had to delegate
21 telephone calls and discharge planning to the MA.

22 j. The LSW indicated when a patient identified their own placement, the LSW would try to
23 obtain as much information as possible regarding the address and name of the apartment. If unable
24 to verify placement, the physician would be notified prior to discharge from the facility.

25 k. The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 a.m. documented the
26 patient did not want to return to his father's home due to ongoing conflict. The note documented the
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1 patient participated in treatment planning to find housing.

2 An evaluation of the needs of a patient relating to discharge planning must include, without
3 limitation, consideration of:

4 a. The needs of the patient for postoperative services and the availability of those
5 services.

6 b. The capacity of the patient for self-care; and

7 c. The possibility of returning the patient to a previous care setting or making another
8 appropriate placement of the patient after discharge.

9 SPRING MOUNTAIN TREATMENT CENTER violated NAC 449.394, Psychiatric
10 Services, which requires that a hospital shall develop and carry out policies and procedures for the
11 provision of psychiatric treatment and behavioral management services that are consistent with NRS
12 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately
13 used. The hospital shall ensure that the policies and procedures protect the safety and rights of the
14 parties - and the public at large. Defendant SPRING MOUNTAIN TREATMENT CENTER has
15 failed to met these statutes and regulations, and the issue of negligence set forth in the Complaint
16 is appropriate.

17 Due to the failure to meet these responsibilities, the patient, was driven by taxi to the home
18 of Plaintiff, and dropped off ("dumped"), at the expense of the SPRING MOUNTAIN
19 TREATMENT CENTER, where he proceeded to cause significant property damage to Plaintiff's
20 residence, and then, go missing.

21 When the patient was located, he had sustained wounds from a self inflicted injuries with a
22 sharp object, using weapons obtained at the home of his mother, which was not where he was
23 "dumped."

24 The patient care plan, dated 5/14/13 indicated that safety concerns, including weapons, in the
25 patient's home were non-applicable and verified by the patient's father. There was no documented
26 evidence the patient's father was contacted for verification. Furthermore, Defendant SPRING
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1 MOUNTAIN TREATMENT CENTER indicated they assisted in obtaining a home for the patient,
2 therefore, even confirming no weapons in father's home was not reasonable to consider this non-
3 applicable.

4 In violation of the stated statutes, it was determined that the LSW at SPRING MOUNTAIN
5 TREATMENT CENTER did not follow up on identifying what weapons and if the patient had
6 access to weapons prior to discharge. ("8.0 Securing Weapons...Social Services staff initiates
7 attempts to secure the weapons, obtaining permission and contacting any person that may be able
8 to located and secure items... Weapons are not considered secured until verification has been received
9 that the task is completed...")

10 Due to the inactions of Defendant SPRING MOUNTAIN TREATMENT CENTER, and
11 failure to protect its patients, due directed to the patient "dumping". SEAN T. SZYMBORSKI was
12 convicted of criminal charges related to the property destruction at the home of Plaintiff, rather than
13 receiving treatment for his known mental illness.

14 Defendant SPRING MOUNTAIN TREATMENT CENTER acted in reckless disregard of
15 the patient's psychiatric condition in pre-paying for a taxi to dump him at an verified location
16 [Plaintiff's residence], without notice to occupants, without money, and without the ability to
17 provide care for himself due to long standing mental illness.

18 The failures of Defendant SPRING MOUNTAIN TREATMENT CENTER to deliver the
19 statutory mandated care to patients in their custody and control resulted in systematic disregard of
20 the serious psychological and medical conditions and resulted in adverse consequences, which
21 predictably flow from such failures, and caused damages to patients and others, who became victims
22 of such disregard.

23 Defendant SPRING MOUNTAIN TREATMENT CENTER is a for profit corporation, whose
24 estimated annual revenue is in excess of TWO BILLION DOLLARS (\$2,000,000,000). There has
25 undoubtedly been negligence on the part of Defendant. Plaintiff has presented a prima facia case
26 in his Complaint and herein for negligence.

III. LEGAL STANDARD

Defendant seeks to dismiss this matter, allegedly for failure to provide an Affidavit in support of an alleged claim for medical malpractice, or the standard 'failure to state a claim upon which relief can be granted.'.

In fact, as detailed above, this is not an action for medical malpractice, but for malpractice in the area of social work, as stated in the very cause of action in the complaint; and as set forth herein.

If the court feels in any measure, that the facts are not pled with specificity, or that Plaintiff needs to obtain other documents, Plaintiff requests leave of the court to amend the complaint, instead of dismissing the Complaint.

Given that Defendant's motion to dismiss misrepresents this as an action for medical malpractice, which it is not, Plaintiff believes the motion should be summarily denied. As for the allegation of failure to state a claim, Plaintiff believes the motion stands on its own, but if it pleases the court, he will seek leave to amend the complaint, rather than dismissing the complaint. This court has the authority to allow leave to amend rather than dismissal in this matter.

The purpose of summary judgment is to obviate trials when they would serve no useful purpose. Short v. Hotel Rivera, Inc., 79 Nev. 94; 378 P.2d 979 (1963); Corey v. Hom., 87 Nev. 32, 482 P.2d 814 (1971), Olson v. Iacometti, 91 Nev. 241, 533 P.2d 1360 (1975).

Summary judgment is applicable only where it is quite clean that no genuine issues remain for trial. NRCp 56(a) and (c).

Any presence of real and material issue of fact precludes summary judgment. The presence of real and material issues of fact precludes further consideration of motion for summary judgment under N.R.C.P. 56, because it is not sufficient that court may not credit evidence to be offered or that weight of evidence is clearly in favor of one party. Under such circumstances parties are entitled to trial by jury to determine facts. Plaintiff does not expect Defendant to pay on an alleged contract when the contract cannot be produced. Parman v. Petricciani, 70 Nev. 427, 272 P.2d

492 (1954), cited, Bynum v. Frisby, 70 Nev. 535, at 538, 276 P.2d 487 (1954), McColl v. Scherer, 73 Nev. 226, at 231, 315 P.2d 807 (1957), Magill v. Lewis, 74 Nev. 381, at 385, 333 P.2d 717 (1958), Zalk-Josephs Co. v. Wells Cargo, Inc., 77 Nev. 441, at 445, 366 P.2d 339 (1961), Dredge Corp. v. Husite Co., 78 Nev. 69, at 86, 369 P.2d 676 (1962), Short v. Hotel Riviera, Inc., 79 Nev. 94, at 96, 378 P.2d 979 (1963), Dredge Corp. v. Wells Cargo, Inc., 80 Nev. 99, at 103, 389 P.2d 394 (1964), Tomiyasu v. Golden, 81 Nev. 140, at 161, 400 P.2d 415 (1965), dissenting opinion, Shockey v. Harden Ins. Agency, Inc., 98 Nev. 138, at 140, 643 P.2d 849 (1982), Sawyer v. Sugarless Shops, Inc., 106 Nev. 265, at 269, 792 P.2d 14 (1990), see also Plaza v. City of Reno, 111 Nev. 814, 898 P.2d 114 (1995)

The pleadings and proof offered in a motion for summary judgment are construed in the light most favorable to the non-moving party. Hoopes v. Hammargren, 102 Nev. 425, 729, 725, P.2d 238, 241 (1986). "Once the movant has shown the absence of dispute as to material facts, the burden shifts to the non-movant who must 'set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" Garvey v. Clark County, 91 Nev. 127, 532 P.2d 269 (1975).

In this circumstance, the case is a negligence case; not a medical malpractice action. While Defendant was entrusted to provide medical care to patients and a duty to provide adequate medical care, they were also required by duty to provide adequate and appropriate social and legal obligations, such as preparing a guardianship as directed that was not done. The context of these statements in his complaint were to provide the facts and details surrounding the negligence, which is clearly the theme and concern set forth in Plaintiff's complaint.

A Litigant has right to trial where slightest doubt as to facts exists. Clearly, there is a doubt to the facts herein.

IV. ARGUMENT

NRS 41A.009 defines "medical malpractice" as "the failure of a physician, hospital or employee of a hospital, in rendering services to use the reasonable care, skill or knowledge ordinarily used under similar circumstances." Defendant alleges the decision to discharge a patient is a medical decision. Arguably so; however, after that decision is made, the proper procedures for a discharge are out of the doctors scope of duty or authority. He gives the order to release, and it is social workers and staff that are required to provide transportation, assure the patient is being released to a suitable environment, etc. This is not what the doctor does, and patient dumping is not malpractice of the doctor to use the skill he is trained to use. It is the lack of follow through of the doctors discharge which is at issue herein. With annual profits in excess of TWO MILLION DOLLARS, the appropriate staff should be available to comply with laws and regulations to render services after the doctor has authorized the discharge.

Plaintiff agrees that the medical decision to discharge then others are required to provide care to coordinate matters based upon the medical diagnosis and current medical status, but is does not require a doctor to prepare a guardianship, or call and pay for a taxi for the patient. However, those that are involved are required to comply with regulations. In fact, Plaintiff believes there are social workers on staff, and others to coordinate other than medical needs for the patients.

All negligence herein occurred AFTER the release of the patient from the doctors care, and is NOT medical malpractice. Defendant making the allegation this is a medical malpractice case simply does not make it so. Moreover, Defendant completely ignores the issues of negligence in this matter.

As a result it is undisputed that Plaintiff's Complaint is NOT based solely on allegations of medical malpractice, but of negligence without a facility that makes more than TWO MILLION DOLLARS in annual income, to meet the guidelines for release of patients back into society after they are DISCHARGED from the facility.

Plaintiff made a claim for punitive damages due to the significant and overwhelming

1 evidence of negligence on the part of Defendants, and Plaintiff is entitled to punitive damages. If
2 the court does not feel Plaintiff pled this cause with specificity, he requests leave of the court to
3 amend as to this cause of action. He feels the facts herein warrant punitive damages. Under NRS
4 42.001 et. seq., Defendant's clearly had a conscious disregard for the welfare of patients who had
5 been released from their facility - and the general public they were released into. The actions
6 detailed in the claim and herein clearly demonstrate the same, and Plaintiff is entitled to plead this
7 cause at the time of trial.

8 Further, Defendant's and all of them, were required to follow the statutes and guidelines they
9 ignored in releasing a patient. This is enough evidence to provide that Defendant's knew or should
10 have known, that the manner in which the patient at issue herein was release could certainly cause
11 harm.

12 Plaintiff will request leave to amend to name specific employees as this matter progresses
13 and discovery provides more information. However, at this time, there is no cause in dismissing any
14 portion of this Complaint.

15 V. CONCLUSION

16 Based upon the foregoing, Plaintiff respectfully requests this Honorable Court issue and order
17 DENYING in its entirety, Defendant's motion to dismiss Plaintiff's complaint.

18 Dated this 13 day of June, 2014

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21 LEE E. SZYMBORSKI
22 Plaintiff in Proper Person
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Electronically Filed

06/24/2014 05:33:40 AM

JUN 23 2014

DISTRICT COURT ADMIN **EIGHTH JUDICIAL DISTRICT COURT**
CLARK COUNTY, NEVADA
CLERK OF THE COURTLee Szymborski

PLAINTIFF

-VS-

Spring Mountain Treatment Center

DEFENDANT

CASE NO: A-14-700178-CDEPT. NO: 31MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS* Please fax to (702) 671-4548 to ensure that
the request will be processed as quickly as possible.Dennis Neuhausel (name), of KLAS-TV (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. 31, the Honorable Judge Bonaventure Presiding, on the 24th day of
June, 2014.

I hereby certify that I am familiar with, and will comply with Supreme Court Rules 229-246, inclusive. If this request is being submitted less than twenty-four (24) hours before the above-described proceedings commence, the following facts provide good cause for the Court to grant the request on such short notice:

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and must be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 20th day of June, 2014.SIGNATURE: PHONE: 702-792-8870

IT IS HEREBY ORDERED THAT:

☐ The media request is **denied** because it was submitted less than 24 hours before the scheduled proceeding was to commence, and no "good cause" has been shown to justify granting the request on shorter notice.☐ The media request is **denied** for the following reasons: _____☒ The media request is **granted**. The requested media access remains in effect for each and every hearing in the above-entitled case, at the discretion of the Court, and unless otherwise notified. This order is made in accordance with Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to reconsideration upon motion of any party to the action. Media access may be revoked if it is shown that access is distracting the participants, impairing the dignity of the Court, or otherwise materially interfering with the administration of justice.☐ OTHER: _____

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this 23rd day of June, 2014.
DISTRICT COURT JUDGE

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Lee Szymborski

PLAINTIFF

-VS-

Spring Mountain Treatment Center

DEFENDANT

CASE NO: A-14-700178-C

DEPT. NO: 31

**NOTIFICATION OF
MEDIA REQUEST**

TO: COUNSEL OF RECORD IN THE ABOVE-CAPTIONED CASE:

You are hereby notified pursuant to Supreme Court Rules 229-246, inclusive, that media representatives from KLAS have requested to obtain permission to broadcast, televise, record or take photographs of all hearings in this case. Any objection should be filed at least 24 hours prior to the subject hearing.

DATED this 23 day of June, 2014


Eighth Judicial District Court

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION

I hereby certify that on the 23 day of June, 2014, service of the foregoing was made by facsimile transmission only, pursuant to Nevada Supreme Court Rules 229-246, inclusive, this date by faxing a true and correct copy of the same to each Attorney of Record addressed as follows:

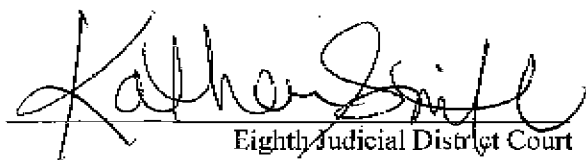
Plaintiff

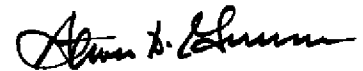
Pro Se

Defendant

Michael Prangle

702-384-6025


Eighth Judicial District Court



CLERK OF THE COURT

1 **COS**

2 Michael Prangle, Esq.
3 Nevada Bar No. 8619
4 Kerry J. Doyle, Esq.
5 Nevada Bar No. 10571
6 HALL PRANGLE & SCHOONVELD, LLC
7 1160 N. Town Center Dr., Ste. 200
8 Las Vegas, NV 89144
9 (702) 889-6400 – Office
10 (702) 384-6025 – Facsimile
11 Email: efile@hpslaw.com
12 *Attorneys for Defendant*
13 *Spring Mountain Treatment Center*
14 *and Darryl Dubroca*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 LEE E. SZYMBORSKI,

13 Plaintiff,

14 vs.

15 SPRING MOUNTAIN TREATMENT
16 CENTER, DARRYL DUBROCA, in his
17 official capacity, DOES I-XX, inclusive, and
18 ROE CORPORATIONS I-XX, inclusive,

19 Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

20 **CERTIFICATE OF SERVICE VIA HAND DELIVERY OF**
21 **DEFENDANT SPRING MOUNTAIN TREATMENT CENTER AND**
22 **DARRYL DUBROCA'S MOTION BAR MEDIA PRESENCE**
23 **DURING PRETRIAL HEARINGS**
24 **ON ORDER SHORTENING TIME**

25 ///

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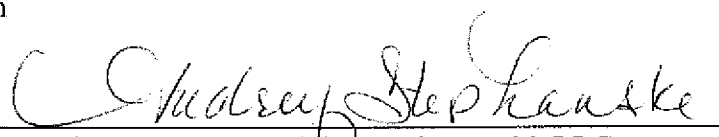
27 ///

28 ///

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

1 I HEREBY CERTIFY that I am an employee of Hall Prangle & Schoonveld, LLC; that
2 on the 23rd day of June, 2014, I served a true and correct copy of DEFENDANT SPRING
3 MOUNTAIN TREATMENT CENTER AND DARRYL DUBROCA'S MOTION BAR MEDIA
4 PRESENCE DURING PRETRIAL HEARINGS ON ORDER SHORTENING TIME in a sealed
5 envelope, by hand delivery via runner service, to the following parties at their last known
6 address:
7

8 Lee E. Szymborski
9 4605 Black Stallion Avenue
10 Las Vegas, Nevada 89031
11 Plaintiff in Proper Person

12 
13 _____
14 An employee of Hall Prangle & Schoonveld, LLC
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4820-0705-3595, v. 1

1 AFFT
Michael Prangle, Esq.
2 Nevada Bar No. 8619
Kerry J. Doyle, Esq.
3 Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
4 1160 N. Town Center Dr., Ste 200
Las Vegas, NV 89144
5 702-889-6400 office
702-384-6025 fax
6 Email: efile@hpslaw.com
Attorneys for Defendant
7 Spring Mountain Treatment Center
and Darryl Dubroca
8

9 DISTRICT COURT
CLARK COUNTY, NEVADA

11	LEE E. SYMBORSKI,)	CASE NO.: A-14-700178-C
)	DEPT. NO.: XXXI
12	Plaintiff,)	
)	
13	vs.)	
)	
14	SPRING MOUNTAIN TREATMENT)	
	CENTER, DARRYL DUBROCA, in his)	
15	official capacity, DOES I-XX, inclusive)	
	and ROE CORPORATIONS I-XX, inclusive,)	
16	Defendants.)	

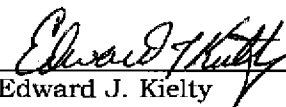
18 AFFIDAVIT OF EDWARD J. KIELTY RE: LEE E. SZYMBORSKI

19 STATE OF NEVADA)
20) ss.
COUNTY OF CLARK)

21 Edward J. Kielty, being duly sworn deposes and says: that at all times herein affiant was
22 and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the
23 state of Nevada under license #389, and not a party to or interested in the proceeding in which
this affidavit is made.

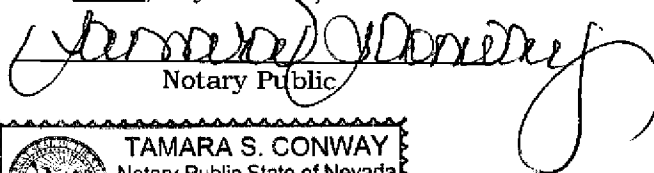
24
25 That affiant received a copy of the RECEIPT OF COPY OF DEFENDANT SPRING
26 MOUNTAIN TREATMENT CENTER AND DARRYL DUBROCA'S MOTION BAR MEDIA PRESENCE
27 DURING PRETRIAL HEARINGS ON ORDER SHORTENING TIME on June 23, 2014.
28

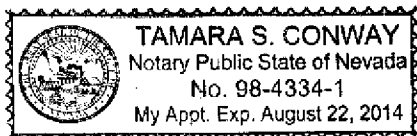
1 That affiant attempted to deliver a copy of said documents to the Plaintiff, Lee E.
2 Szymborski at 4605 Black Stallion Ave., Las Vegas, Nevada 89031, on June 23, 2014 and
3 received no answer. Affiant posted a copy of said documents to the door.

4 

5 Edward J. Kielty
6 Licensee# 389
7 Legal Wings, Inc.
8 1118 Fremont St.
9 Las Vegas, NV 89101

10 Subscribed and Sworn to Before me
11 this 23rd day of June, 2014

12 
13 Notary Public



15 LEGAL WINGS, INC.
16 PROCESS LICENSE #389
17 LAS VEGAS, NV
18 (702)384-0305

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OMM

Alvin D. Elin
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Lee Szymborski, Plaintiff(s)
vs.
Spring Mountain Treatment
Center, Defendant(s)**

CASE NO.: A-14-700178-C

TO BE HELD AT CLC

**DATE OF HEARING: August 12, 2014
TIME OF HEARING: 1:00 pm**

**ORDER SETTING MEDICAL/DENTAL MALPRACTICE STATUS CHECK
AND TRIAL SETTING CONFERENCE**

YOU ARE HEREBY ORDERED TO APPEAR at the Complex Litigation Center, 333 South Sixth Street, on **August 12, 2014 at 1:00 pm** to provide a status of the procedural posture and discovery status of this matter and for setting confirmation of a firm trial date. Trial counsel is required to be present at the conference. Failure of the designated trial attorney or any party appearing in proper person to attend may result in sanctions and/or dismissal.

DATED this 24th day of June, 2014

Jennifer P. Togliatti
JENNIFER TOGLIATTI, CHIEF JUDGE

Certificate of Service

I hereby certify that on the date filed I placed the Order in the attorney folders in the Clerk's Office and/or mailed the order by first-class mail to any addressee listed below:

**Lee E Szymborski, Pro Se
4605 black Stallion Ave.
N. Las Vegas, NV 89031**

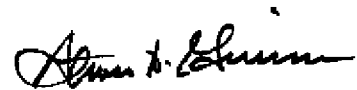
Michael E. Prangle

Rose Najera
Rose Najera, Judicial Executive Assistant

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JUN 27 2014

CLERK OF THE COURT



CLERK OF THE COURT

OSCH

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE SZYMBORSKI; ET AL.,

PLAINTIFF(S),

VS.

SPRING MOUNTAIN TREATMENT
CENTER; ET AL.,

DEFENDANT(S).

Case No.: A-14-700178-C

Dept. No.: XXXI


ORDER SCHEDULING STATUS CHECK

TO: All Parties:

YOU ARE HEREBY ORDERED TO APPEAR, **in person**, in District Court,
Department XXXI, located at 200 Lewis Avenue, on **JULY 29, 2014**, at **9:00**
a.m., Courtroom 12B, for a Status Check regarding the non-compliance of
EDCR 7.21 by timely submitting the Order regarding: Motion for NRCP 54(b)
Certification heard June 24, 2014.

Failure to appear may result sanctions up to, and including, dismissal of
this action.

DATED this 15TH day of July, 2014



JOANNA S. KISHNER
DISTRICT COURT JUDGE

RECEIVED

JUL 17 2014

CLERK OF THE COURT


JOANNA KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on or about the date filed, a copy of this Order was provided
5 to all counsel, and/or parties listed below via one, or more, of the following
6 manners: via email, via facsimile, via US mail, via Electronic Service if the
7 Attorney/Party has signed up for Electronic Service, and/or a copy of this Order
8 was placed in the attorney's file located at the Regional Justice Center:

9 **LEE E. SZYMBORSKI**
10 **4605 BLACK STALLION AVENUE**
11 **LAS VEGAS, NV 89031**

12 **MICHAEL PRANGLE, ESQ.**
13 **KERRY J. DOYLE, ESQ.**
14 **HALL, PRANGLE & SCHOONVELD, LLC**
15 **FAX: 702-384-6025**

16
17 
18 **TRACY L. CORDOBA**
19 **JUDICIAL EXECUTIVE ASSISTANT**
20
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TRANSMISSION VERIFICATION REPORT

TIME : 07/16/2014 11:33
NAME : DEPT 31
FAX : 7023661412
TEL : 7025713634
SER. # : 000K0N596534

DATE, TIME
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OSCH

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE SZYMBORSKI; ET AL.,

PLAINTIFF(S),

VS.

SPRING MOUNTAIN TREATMENT
CENTER; ET AL.,

DEFENDANT(S).

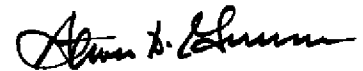
Case No.: A-14-700178-C

Dept. No.: XXXI

ORDER SCHEDULING STATUS CHECK

TO: All Parties:

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Department XXXI, located at 200 Lewis Avenue, on JULY 29, 2014, at 9:00
a.m., Courtroom 12B, for a Status Check regarding the non-compliance of
EDCR 7.21 by timely submitting the Order regarding: Motion for NRCP 54(b)



CLERK OF THE COURT

ORDR

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: cfile@hpslaw.com
Attorneys for Defendant
Spring Mountain Treatment Center
and Darryl Dubroca

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C

DEPT. NO.: XXXI

**ORDER ON DEFENDANT SPRING
MOUNTAIN TREATMENT CENTER
AND DARRYL DUBROCA'S MOTION
TO DISMISS**

*before Sr. Judge Joseph Bonaventura,
sitting for*

ORDER

Defendants Spring Mountain Treatment Center and Darryl Dubroca's Motion to Dismiss, having come on regularly for hearing on June 24, 2014, in Department XXXI, the Honorable Joanna S. Kishner presiding; LEE E. SZYMBORSKI appeared pro se, KERRY J. DOYLE, ESQ., appeared on behalf of Defendants, SPRING MOUNTAIN TREATMENT CENTER, and DARRYL DUBROCA; the Court having considered the pleadings on file and having heard oral argument from the parties, good cause appearing therefore, the Court finds and orders as follows:


IT IS ORDERED, ADJUDGED, AND DECREED that, **Defendant Spring Mountain Treatment Center, and Darryl Dubroca's Motion to Dismiss** is GRANTED. Mr.

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

1 Szymborski's claims are based upon allegations of medical malpractice. As a result, the
2 Complaint is required to be supported by a medical expert affidavit pursuant to NRS 41A.071.
3 Mr. Szymborski failed to provide the requisite affidavit and as a result, both Spring Mountain
4 Treatment Center and Mr. Dubroca are hereby dismissed from the instant action.

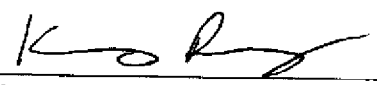
5 **IT IS SO ORDERED.**

6 DATED this 21 day of July, 2014.

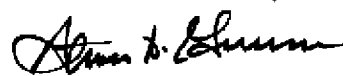
7  JOANNA S. KISHNER

8 DISTRICT COURT JUDGE

9 Submitted By:

10 
11
12 HALL PRANGLE & SCHOONVELD, LLC
13 KENNETH M. WEBSTER, ESQ.
14 Nevada Bar No.: 7205
15 KERRY J. DOYLE, ESQ.
16 Nevada Bar No.: 10571
17 1160 N. Town Center Dr., Ste. 200
18 Las Vegas, NV 89144
19 *Attorneys for Defendants Summerlin Hospital*

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27
28
4844-0011-1900, v. 1



CLERK OF THE COURT

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE SZYMBORSKI, PLAINTIFF(S)
VS.
SPRING MOUNTAIN TREATMENT
CENTER, DEFENDANT(S)

CASE NO.: A-14-700178-C

DEPARTMENT 31

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

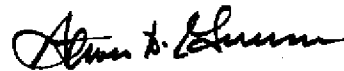
- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☒ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 22nd day of July, 2014.



JOANNA S. KISHNER
DISTRICT COURT JUDGE

RECEIVED
JUL 23 2014
CLERK OF THE COURT



CLERK OF THE COURT

1 **NEOJ**

2 Michael Prangle, Esq.
3 Nevada Bar No. 8619
4 Kerry J. Doyle, Esq.
5 Nevada Bar No. 10571
6 HALL PRANGLE & SCHOONVELD, LLC
7 1160 N. Town Center Dr., Ste. 200
8 Las Vegas, NV 89144
9 (702) 889-6400 – Office
10 (702) 384-6025 – Facsimile
11 Email: efile@hpslaw.com
12 *Attorneys for Defendant Spring Mountain*
13 *Treatment Center and Darryl Dubroca*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 LEE E. SZYMBORSKI,

17 Plaintiff,

18 vs.

19 SPRING MOUNTAIN TREATMENT
20 CENTER, DARRYL DUBROCA, in his
21 official capacity, DOES I-XX, inclusive, and
22 ROE CORPORATIONS I-XX, inclusive,

23 Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**NOTICE OF ENTRY OF ORDER ON
DEFENDANT SPRING MOUNTAIN
TREATMENT CENTER AND DARRYL
DUBROCA'S MOTION TO DISMISS**

24 Please take notice that an Order granting Defendants Spring Mountain Treatment Center
25 and Darryl Dubroca's Motion to Dismiss was entered in the above entitled Court on the 23rd day
26 of July, 2014, a copy of which is attached hereto.

27 DATED this 30th day of July, 2014.

28 HALL PRANGLE & SCHOONVELD, LLC

/s/: Kerry J. Doyle, Esq.

KERRY J. DOYLE, ESQ.

Nevada Bar No.: 10571

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendants Summerlin Hospital

///

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 MAILING

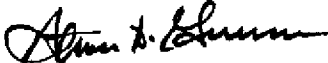
I HEREBY CERTIFY that I am an employee of Hall Prangle & Schoonveld, LLC; that on the 30th day of July, 2014, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER ON DEFENDANT SPRING MOUNTAIN TREATMENT CENTER AND DARRYL DUBROCA'S MOTION TO DISMISS** in a sealed envelope, via US Mail, first class postage pre-paid to the following parties at their last known address as an email for electronic service as not been provided by Plaintiff:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person

/s/ Audrey Ann Stephanski

An employee of Hall Prangle & Schoonveld, LLC

4851-0812-9564, v. 1



CLERK OF THE COURT

ORDR

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
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Email: efile@hpslaw.com
Attorneys for Defendant
Spring Mountain Treatment Center
and Darryl Dubroca

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**ORDER ON DEFENDANT SPRING
MOUNTAIN TREATMENT CENTER
AND DARRYL DUBROCA'S MOTION
TO DISMISS**

*before Sr. Judge Joseph Bonaventura,
sitting for*

ORDER

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IT IS ORDERED, ADJUDGED, AND DECREED that, Defendant Spring Mountain Treatment Center, and Darryl Dubroca's Motion to Dismiss is GRANTED. Mr.

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


1 Szymborski's claims are based upon allegations of medical malpractice. As a result, the
2 Complaint is required to be supported by a medical expert affidavit pursuant to NRS 41A.071.
3 Mr. Szymborski failed to provide the requisite affidavit and as a result, both Spring Mountain
4 Treatment Center and Mr. Dubroca are hereby dismissed from the instant action.

5 **IT IS SO ORDERED.**

6 DATED this 21 day of July, 2014.

7  JOANNA S. KISHNER
8  DISTRICT COURT JUDGE

9 Submitted By:

10 
11
12 HALL PRANGLE & SCHOONVELD, LLC
13 KENNETH M. WEBSTER, ESQ.
14 Nevada Bar No.: 7205
15 KERRY J. DOYLE, ESQ.
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18 Las Vegas, NV 89144
19 *Attorneys for Defendants Summerlin Hospital*

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4844-0011-1900, v. 1

1 **CODE**
2 LEE E SZYMBORSKI
3 4605 Black Stallion Avenue
4 North Las Vegas, Nevada 89031
5 702-609-6762
6 PLAINTIFF IN PROPER PERSON

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DISTRICT COURT
CLARK COUNTY, NEVADA

LEE E SZYMBORSKI

Plaintiff,

-vs-

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his official
capacity, DOES 1-XX, inclusive, and ROE
CORPORATIONS 1-XX, inclusive,
Defendant(s).

CASE NO. A-14-700178-C

DEPT. NO. XXX1

A-14-700178-C
MRCM
Motion to Reconsider
4110908



MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, MOTION TO SET ASIDE

HEARING DATE:

HEARING TIME:

COMES NOW, Plaintiff LEE E. SZYMBORSKI in the above entitled action
and hereby files the instant Motion For Reconsideration, or in the Alternative,
Motion to Set Aside, Pursuant to E.D.C.R.2.24 and N.R.C.P.60, of this Courts Order
of June 24, 2014.

ARGUMENT

A. LEGAL STANDARD FOR A MOTION FOR RECONSIDERATION AND

MOTION TO SET ASIDE

Plaintiff Lee E. Szymborski respectfully requests that this Court reconsider its June
24, 2014 Order. Plaintiff makes this request, pursuant to EDCR 2.24, which allows

FILED

AUG 7 2 28 PM '14

Anna L. Johnson
CLERK OF THE COURT

CLERK OF THE COURT

RECEIVED

AUG 07 2014

32

1 this Court to set a matter for re argument or resubmission and hence ,render a new
2 or amended order. A motion for reconsideration should concisely ,and without
3 argument, **direct the courts attention to a controlling matter that was**
4 **overlooked misapprehended specifically that the correct document was**
5 **submitted in the Complaint under "EXHIBIT1" .because under NRS 41A.100**
6 **Required evidence; exceptions Rebuttable presumption of negligence. "the**
7 **regulations of the licensed medical facility wherein the alleged negligence**
8 **occurred is presented to demonstrate the alleged deviation from the accepted**
9 **standard of care in the specific circumstances of the case and to prove**
10 **causation of the alleged personal injury"**In (EXHIBIT 1) are the 9 pages of
11 substantiated charges by The State Of Nevada Department Of Health And Human
12 Services .This is the regulating body and experts in determining what an unsafe
13 discharge is and this is **The Controlling Matter in The Complaint.** There is no
14 better expert and that the results of "The Bureau Of Health Care Quality Control And
15 Compliance investigation is the best certification you can get in determining a safe or
16 an unsafe discharge. see (EXHIBIT A) **RULE 1.SCOPE AND APPLICATION OF**
17 **RULES** Spring Mountain Treatment Center Is A Licensed Hospital with The State
18 Of Nevada and since they are guilty of breaking Nevada Laws Rules and
19 Procedures and their unsafe discharge perpetrated a Felony Crime against The
20 State Of Nevada of which I (The Public) am a victim and therefore the Defendants
21 are held to "Strict Liability" and that I as a permanently disabled victim am being put
22 under duress and am forced to sue for damages because they "think they are above
23 the law and show an "evil mind" and refuse to accept their obvious Liability to The
24 Public. Since this case also involves **PUBLIC SAFETY,THE COURT SHALL MAKE**
25 **SUCH ORDER AS THE INTERESTS OF JUSTICE REQUIRE.**
26
27
28

1 **Additionally, Under Nevada Rule of Civil Procedure 60(b) Mistakes;**
2 **Inadvertence; Excusable Neglect, I Hereby Motion that my "Opposition" be**
3 **heard** because although it was timely filed by "All States Paralegal Services" the
4 Paralegal I hired to type the "Opposition" I did not discover t my "Opposition" wasn't
5 served until it was revealed by The Judge at the June 24 2014 hearing, or else "I
6 would have served it" ; therefore; "mistakes; inadvertence; surprise or excusable
7 neglect; applies (see EXHIBIT B") **Under RULE 60 (2) NEWLY DISCOVERED**
8 **EVIDENCE;** Governor Sandovals Office has notified me on August 5, 2014 that
9 Mike Wilden Chief Of Staff is aware of my "Request for Prosecution " as instructed
10 by Chief Deputy Attorney General Linda C. Anderson .see(EXHIBIT C) and is
11 actively seeking a resolution .Therefore, I Pray for Just and Honorable Relief from
12 this Court
13

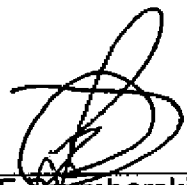
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18 Lee E. Szymborski
19 4605 Black Stallion Avenue
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21 89031
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EXHIBIT A

EXHIBIT 1

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

STATE OF NEVADA
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

Health Facilities/Lab Services
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 884-1030
Fax: (775) 884-1073

☒ Health Facilities/Lab Services
4220 S. Maryland Parkway
Suite 810, Building D
Las Vegas, NV 89119
(702) 488-6516
Fax: (702) 488-6501

☐ Radiation Control
4150 Technology Way
Suite 300
Carson City, Nevada 89708
(775) 687-7550
Fax: (775) 687-7552

☐ Radiation Control
2080 E. Flamingo
Suite 319
Las Vegas, Nevada 89119
(702) 488-5280
Fax: (702) 488-5024

☐ Child Care Licensing
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 884-4463
Fax: (775) 884-4464

☐ Child Care Licensing
4180 S. Pecos, Ste 120
Las Vegas, Nevada 89121
(702) 488-7918
Fax: (702) 488-6860

☐ Child Care Licensing
1010 Ruby Vista, Ste 101
Elko, Nevada 89801
(775) 753-1237
Fax: (775) 753-1336

August 19, 2013

Lee Szymborski
4605 Black Stallion Avenue
North Las Vegas, NV 89032

Re: Complaint Number NV00035655

Dear Mr. Szymborski,

With reference to your complaint against Spring Mountain Treatment Center, an unannounced inspection was completed on 07/09/2013 to investigate your concerns about admission, transfer and discharge, quality of care responsible party not notified of resident's change in condition and resident safety.

During the investigation, the State Inspector interviewed patients/residents, reviewed their records, interviewed staff, and made observations while the facility or agency was in operation. The facility's or agency's actions were evaluated using applicable state and/or federal rules and regulations to determine if they were in compliance.

Based on the completed investigation, it was concluded that the facility or agency was not in compliance with rules and/or regulations. The Bureau will take appropriate measures to ensure the facility/agency is well-informed of the specifics of non-compliance, and that they will exercise their due diligence in preventing similar incidents in the future.

You may access the investigation results on our website following these steps:

- Go to <http://health.nv.gov/HCCQ.htm>
- On the right bar under Facility Services,
- Select Individual Health Facilities Inspection and Survey Results
- Select the facility type from the five categories
- Enter the facility name, provider type and click Start Search
- Select the facility; then select the survey date you want to review

Thank you for reporting your concerns. Please know that your voice will help improve the services of health facilities and agencies. If we can be of further assistance, please contact the investigator, Debra Seeger, at 702-486-6515.

Sincerely,

For: Julie Bell, Health Facilities Manager

Public Health Working for a Safer and Healthier Nevada

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	---	--	--

NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
---	--

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of a complaint investigation initiated on 6/25/13, and finalized in your facility on 7/9/13, in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the investigation was 63. Five discharged medical records were reviewed.</p> <p>Complaint #NV00035655 was substantiated with deficiencies cited. (See Tags S0146, S0153 and S0602)</p> <p>The findings and conclusions of any investigation by the Health Division shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.</p>	S 000		
S 146 SS=D	<p>NAC 449.332 Discharge Planning</p> <p>4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of:</p> <ul style="list-style-type: none"> (a) The needs of the patient for postoperative services and the availability of those services; (b) The capacity of the patient for self-care; and (c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge. <p>This Regulation <u>is not met</u> as evidenced by: Based on interview, record review and document review, the facility failed to assure the patient was discharged to a safe environment for 1 of 5 sampled patients (Patient #1).</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE _____ TITLE _____

(X6) DATE

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	---	--	--

NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 1</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/13/13 at 1:00 PM, the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.</p> <p>On 5/14/13 at 2:30 PM, the Masters of Art (MA) documented the MA met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up the patient's debit card prior to going to the new apartment.</p> <p>Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was <u>no documented evidence of an address for the apartment</u>. There was <u>no documented evidence</u> the Case Manager confirmed the patient had made arrangements to live in the apartment.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified the patient was to go to the father's home first then on to an address in North Las Vegas.</p> <p>The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 AM, documented the patient did not want to return to the patient's fathers home due to on-going conflict. The note</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

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If continuation sheet 2 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	---	--	--

NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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S 146	<p>Continued From page 2</p> <p>documented the patient participated in treatment planning to find housing.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.</p> <p>On 7/9/13 at 11:20 AM, Licensed Social Worker (LSW) #2 explained multiple telephone messages were left by the patient's father. The father would state the patient could return to the father's home. The next telephone message from the father would demand <u>the patient not be discharged</u> to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW explained during the first meeting with the patient, the patient expressed a willingness to return to the father's home and would work on finding an apartment from the father's home. The LSW explained due to the large number of patient's on the LSW's case load, the LSW had to delegate telephone calls and discharge planning to the MA.</p> <p>The LSW explained when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If the LSW was unable to verify placement, the physician would be notified prior to discharge from the facility.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	Continued From page 3 Procedure: "...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager:... 4.4 Housing needs and/or placement issues;...4.8 Personal support systems..." "...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate, and documented in the medical record...5.2 Where and with whom the patient will live following discharge..." "...6.0 The Social Services Discharge Note is completed for every patient at the time of discharge. This note includes, but is not limited to: 6.1 Living arrangements..." Severity: 2 Scope: 1 Complaint #NV00035655	S 146		
S 153 SS=D	NAC 449.332 Discharge Planning 11. The patient, <u>members of the family</u> of the patient and any other person involved in caring for the patient must be <u>provided with</u> such information as is necessary to prepare them for the post-hospital care of the patient. <u>This Regulation is not met as evidenced by:</u> Based on interview, record review and document review, the facility failed to notify 2 of 5 sampled patients families prior to discharge (Patient #1 and #5).	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

00KP11

If continuation sheet 4 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 4</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/10/13 at 9:00 AM, the LSW #2 documented the case manager received a voice mail from the patient's father saying the patient was not to return to his home. The LSW documented the case manager would assist the patient with alternative placement.</p> <p>On 5/10/13 at 11:15 AM, the MA documented the patient's father wanted the patient to return to his home, but not to be discharged "today".</p> <p>There was no further documented evidence the patient's father was contacted to confirm discharge to the patient's father's home.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the MA met with the patient. The patient requested the father's telephone number and told the father of being discharged and a taxi would transport the patient to the father's home.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented the discharge was not coordinated with the family.</p> <p>Documentation with the father on the day of discharge was not documented.</p> <p>On 7/9/13 at 9:50 AM, the Risk Manager acknowledged the facility should have arranged for the taxi driver to wait at the patient's father's</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

00KP11

If continuation sheet 5 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 5</p> <p>house until the patient <u>retrieved the debit card</u>, then drive the patient to the new apartment.</p> <p>On 7/9/13 at 11:34 AM, LSW #2 explained the family member <u>should be contacted prior to the patient's discharge</u> to assure the family was <u>alright with the patient returning home</u>. The LSW acknowledged the patient's father should have been contacted by the facility staff prior to the patient being discharged.</p> <p>Four additional discharged medical records were reviewed.</p> <p>Patient #5</p> <p>Patient #5 was admitted to the facility on 6/4/13 and discharged on 6/18/13, with a diagnosis of major depressive disorder.</p> <p>There was no documented evidence the social worker/Case Manager notified the family of the patient's discharge. There was no documented evidence the family was educated on the patient's medications and follow up care needed. There was no family contact from the social worker/Case Manager after 6/6/13.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate.</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

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If continuation sheet 6 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	Continued From page 6 and documented in the medical record..." Severity: 2 Scope: 1 Complaint #NV00035655	S 153		
S 602 SS=D	NAC 449.394 Psychiatric Services 3. A hospital shall develop and carry out policies and procedures for the provision of psychiatric treatment and behavioral management services that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately used. The hospital shall ensure that the policies and procedures protect the safety and rights of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to identify what weapons were at Patient #1's mother's home and if the patient would have access to the weapons. Findings include: Patient #1 Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse. On 5/3/13 at 12:00 PM, the Comprehensive Assessment Tool documented patient had multiple scab areas on his legs. The Comprehensive Assessment Tool documented the patient's father stated the patient's wounds were self inflicted with a sharp object.	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

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If continuation sheet 7 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 602	<p>Continued From page 7</p> <p>On 5/6/13 at 2:42 PM, LSW #1 documented weapons were at the patient's mothers home, but not at the patient's fathers home. The LSW did not identify what weapons were at the patient's mothers home. There was no documented evidence the patient's mother was contacted to verify where the weapons were located.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified safety concerns, including weapons in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the patient asked the MA if the taxi would be able to take the patient to the mother's house after the patient went to the father's house. The MA documented the patient would have to pay for any taxi after being dropped off at the father's house.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the LSW did not follow up on identifying what weapons and if the patient had access to the weapons prior to discharge.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>"8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to locate and secure the items...Weapons are not considered secured until verification has been received that the task is completed..."</p>	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 8 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

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S 602	Continued From page 8 Severity: 2 Scope: 1 Complaint #NV00035655	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

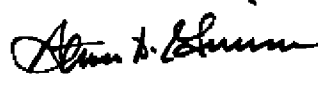
5899

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If continuation sheet 9 of 9

EXHIBIT B

LEE E. SZYMBORSKI
4605 Black Stallion Ave
N. Las Vegas, NV 89031
(702) 609-6762
Plaintiff in Proper Person



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE E. SZYMBORSKI,
Plaintiff,

Case No. A-14-700178-C
Dept No. XXXI

vs.

SPRING MOUNTAIN TREATMENT CENTER,
DARRYL DUBROCA, in his official capacity,
DOES I-XX, inclusive, and ROE
CORPORATIONS I-XX, inclusive,

Defendants.

OPPOSITION TO MOTION TO DISMISS COMPLAINT

COMES NOW, Plaintiff, and files this Opposition to Motion to Dismiss, indicating as follows:

1. That Defendant take nothing by way of its motion.
2. That the court acknowledge Defendant SPRING MOUNTAIN TREATMENT CENTER was found to be in violation of its own policies as well as laws and codes, as set forth in the Complaint; and set forth herein.
3. That the court acknowledge the Complaint addresses negligence on the part of defendants, and each of them.
4. That the court acknowledge Plaintiff's claim of "Malpractice, Gross Negligence, Negligence Per Se" is not medical malpractice, but malpractice that occurs after the discharge of a patient, but other employees of Spring Mountain Treatment Center, as detailed herein.

1 This Opposition and Countermotion is made and based upon the pleadings and files herein,
2 the affidavit of Plaintiff, and any oral argument that may be adduced at the time of trial.

3 Dated this 13 day of June 2014

4
5 LEE E. SZYMBOŃSKI
6 Plaintiff in Proper Person

7 **I. INTRODUCTION**

8 This is an action of NEGLIGENCE on the part of SPRING MOUNTAIN TREATMENT
9 CENTER, FOR PROFIT business that has violated codes and statutes pertaining to the safe release
10 of patients, and NOT medical issues relation to its former patients. Plaintiff does set forth a cause
11 of action for "Malpractice, Gross Negligence, Negligence Per Se." Nothing in Plaintiff's complaint
12 seeks a judgment for MEDICAL malpractice; and the motion to dismiss should be summarily
13 denied.

14 Defendants herein desire this action to be classified as "medical malpractice" solely to find
15 fault with the Complaint. It is clearly negligence and there has been malpractice, but the malpractice
16 is in the area of social work, and the court should acknowledge the same.

17 "Malpractice" in the practice of **social work** means conduct which falls below the standard
18 of care required of a licensee under circumstances which proximately causes damage. In fact, this
19 definition itself is in the Complaint. Thus, Defendant's allegations that this matter should be
20 procedurally dismissed is meritless. In this matter, there is clearly "malpractice" - but it is NOT
21 medical malpractice; not in the process of a surgery or operation, but in the context of the mandatory
22 social work that is required - and EXPECTED of a "for profit" psychological facility that earns in
23 excess of TWO BILLION DOLLARS ANNUALLY.

II. STATEMENT OF FACTS

On or about May 14, 2013, at approximately 3:30 p.m., Defendant SPRING MOUNTAIN TREATMENT CENTER, provided an unauthorized, unsafe discharge of a mentally ill adult patient, to wit: SEAN T. SZYMBORSKI, in violation of NAC 449.332, to the residence of Plaintiff. Exhibits are provided attached to the Complaint.

That the adult patient was provided a taxi ride, released without any money; without appropriate medication, without the ability to care for himself, and being a danger to both himself and other.

SPRING MOUNTAIN TREATMENT CENTER was directed by KATHLEEN BUCHANAN to provide a Guardianship for the patient but failed to do so.

SPRING MOUNTAIN TREATMENT CENTER was directed NOT to release the patient to the residence of Plaintiff, however he was transported by taxi directly to the home of Plaintiff, where he smashed windows, walls, doors, furniture, and completely destroyed the interior of the residence, before going missing for three weeks. (A missing persons report was filed by NLVPD.)

An investigation by the Division of Public and Behavioral Health substantiated that Defendant SPRING MOUNTAIN TREATMENT CENTER was in violation of NAC 449.332, Discharge Planning, based upon evidence by interview of staff, record review and document review.

It was determined, by the Division of Public and Behavioral Health, that the facility failed to assure the patient was discharged to a **safe environment** due to the following issues in this matter:

a. Patient was admitted to the facility on 5/3/13, and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.

b. On 5/13/13 at 1 p.m. the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.

c. On 5/15/13 at 2:00 p.m. the Masters of Art (MA) met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient

needed to stop by the father's home to pick up patient's debit card prior to going to the new apartment.

d. Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.

e. The Patient Continuing Care Plan, dated 5/14/13 identified the parties was to go to father's home first then on to an address in North Las Vegas, Nevada.

f. The Acute Physician Discharge Progress Note on 5/14/13 at 8:50 a.m. documented the patient did not want to return to the patient's father's home due to ongoing conflict. The note documented the patient participated in treatment planning to find housing.

g. The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.

h. On 7/9/13 at 8:49 a.m. the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.

i. On 7/9/13 at 11:20 a.m., Licensed Social Worker (LSW) indicated multiple telephone messages were left by the patient's father. The father would state the patient could return to the home; the next telephone message from the father would demand the patient not be discharged to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW stated due to the large number of patients on the LSW's caseload, the LSW had to delegate telephone calls and discharge planning to the MA.

j. The LSW indicated when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If unable to verify placement, the physician would be notified prior to discharge from the facility.

k. The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 a.m. documented the patient did not want to return to his father's home due to ongoing conflict. The note documented the

1 patient participated in treatment planning to find housing.

2 An evaluation of the needs of a patient relating to discharge planning must include, without
3 limitation, consideration of:

4 a. The needs of the patient for postoperative services and the availability of those
5 services.

6 b. The capacity of the patient for self-care; and

7 c. The possibility of returning the patient to a previous care setting or making another
8 appropriate placement of the patient after discharge.

9 SPRING MOUNTAIN TREATMENT CENTER violated NAC 449.394, Psychiatric
10 Services, which requires that a hospital shall develop and carry out policies and procedures for the
11 provision of psychiatric treatment and behavioral management services that are consistent with NRS
12 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately
13 used. The hospital shall ensure that the policies and procedures protect the safety and rights of the
14 parties - and the public at large. Defendant SPRING MOUNTAIN TREATMENT CENTER has
15 failed to meet these statutes and regulations, and the issue of negligence set forth in the Complaint
16 is appropriate.

17 Due to the failure to meet these responsibilities, the patient, was driven by taxi to the home
18 of Plaintiff, and dropped off ("dumped"), at the expense of the SPRING MOUNTAIN
19 TREATMENT CENTER, where he proceeded to cause significant property damage to Plaintiff's
20 residence, and then, go missing.

21 When the patient was located, he had sustained wounds from a self inflicted injuries with a
22 sharp object, using weapons obtained at the home of his mother, which was not where he was
23 "dumped."

24 The patient care plan, dated 5/14/13 indicated that safety concerns, including weapons, in the
25 patient's home were non-applicable and verified by the patient's father. There was no documented
26 evidence the patient's father was contacted for verification. Furthermore, Defendant SPRING
27
28

1 MOUNTAIN TREATMENT CENTER indicated they assisted in obtaining a home for the patient,
2 therefore, even confirming no weapons in father's home was not reasonable to consider this non-
3 applicable.

4 In violation of the stated statutes, it was determined that the LSW at SPRING MOUNTAIN
5 TREATMENT CENTER did not follow up on identifying what weapons and if the patient had
6 access to weapons prior to discharge. ("8.0 Securing Weapons...Social Services staff initiates
7 attempts to secure the weapons, obtaining permission and contacting any person that may be able
8 to located and secure items... Weapons are not considered secured until verification has been received
9 that the task is completed...")

10 Due to the inactions of Defendant SPRING MOUNTAIN TREATMENT CENTER, and
11 failure to protect its patients, due directed to the patient "dumping". SEAN T. SZYMBORSKI was
12 convicted of criminal charges related to the property destruction at the home of Plaintiff, rather than
13 receiving treatment for his known mental illness.

14 Defendant SPRING MOUNTAIN TREATMENT CENTER acted in reckless disregard of
15 the patient's psychiatric condition in pre-paying for a taxi to dump him at an verified location
16 [Plaintiff's residence], without notice to occupants, without money, and without the ability to
17 provide care for himself due to long standing mental illness.

18 The failures of Defendant SPRING MOUNTAIN TREATMENT CENTER to deliver the
19 statutory mandated care to patients in their custody and control resulted in systematic disregard of
20 the serious psychological and medical conditions and resulted in adverse consequences, which
21 predictably flow from such failures, and caused damages to patients and others, who became victims
22 of such disregard.

23 Defendant SPRING MOUNTAIN TREATMENT CENTER is a for profit corporation, whose
24 estimated annual revenue is in excess of TWO BILLION DOLLARS (\$2,000,000,000). There has
25 undoubtedly been negligence on the part of Defendant. Plaintiff has presented a prima facia case
26 in his Complaint and herein for negligence.

III. LEGAL STANDARD

Defendant seeks to dismiss this matter, allegedly for failure to provide an Affidavit in support of an alleged claim for medical malpractice, or the standard 'failure to state a claim upon which relief can be granted.'

In fact, as detailed above, this is not an action for medical malpractice, but for malpractice in the area of social work, as stated in the very cause of action in the complaint; and as set forth herein.

If the court feels in any measure, that the facts are not pled with specificity, or that Plaintiff needs to obtain other documents, Plaintiff requests leave of the court to amend the complaint, instead of dismissing the Complaint.

Given that Defendant's motion to dismiss misrepresents this as an action for medical malpractice, which it is not, Plaintiff believes the motion should be summarily denied. As for the allegation of failure to state a claim, Plaintiff believes the motion stands on its own, but if it pleases the court, he will seek leave to amend the complaint, rather than dismissing the complaint. This court has the authority to allow leave to amend rather than dismissal in this matter.

The purpose of summary judgment is to obviate trials when they would serve no useful purpose. Short v. Hotel Rivera, Inc., 79 Nev. 94; 378 P.2d 979 (1963); Corey v. Hom., 87 Nev. 32, 482 P.2d 814 (1971), Olson v. Jacometti, 91 Nev. 241, 533 P.2d 1360 (1975).

Summary judgment is applicable only where it is quite clear that no genuine issues remain for trial. N.R.C.P. 56(a) and (c).

Any presence of real and material issue of fact precludes summary judgment. The presence of real and material issues of fact precludes further consideration of motion for summary judgment under N.R.C.P. 56, because it is not sufficient that court may not credit evidence to be offered or that weight of evidence is clearly in favor of one party. Under such circumstances parties are entitled to trial by jury to determine facts. Plaintiff does not expect Defendant to pay on an alleged contract when the contract cannot be produced. Parman v. Petricciani, 70 Nev. 427, 272 P.2d

492 (1954), cited, *Bynum v. Frisby*, 70 Nev. 535, at 538, 276 P.2d 487 (1954), *McColl v. Scherer*, 73 Nev. 226, at 231, 315 P.2d 807 (1957), *Magill v. Lewis*, 74 Nev. 381, at 385, 333 P.2d 717 (1958), *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 77 Nev. 441, at 445, 366 P.2d 339 (1961), *Dredge Corp. v. Husite Co.*, 78 Nev. 69, at 86, 369 P.2d 676 (1962), *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, at 96, 378 P.2d 979 (1963), *Dredge Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, at 103, 389 P.2d 394 (1964), *Tomiyasu v. Golden*, 81 Nev. 140, at 161, 400 P.2d 415 (1965), dissenting opinion, *Shockey v. Harden Ins. Agency, Inc.*, 98 Nev. 138, at 140, 643 P.2d 849 (1982), *Sawyer v. Sugarless Shops, Inc.*, 106 Nev. 265, at 269, 792 P.2d 14 (1990), see also *Plaza v. City of Reno*, 111 Nev. 814, 898 P.2d 114 (1995)

The pleadings and proof offered in a motion for summary judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 729, 725, P.2d 238, 241 (1986). "Once the movant has shown the absence of dispute as to material facts, the burden shifts to the non-movant who must 'set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" *Garvey v. Clark County*, 91 Nev. 127, 532 P.2d 269 (1975).

In this circumstance, the case is a negligence case, not a medical malpractice action. While Defendant was entrusted to provide medical care to patients and a duty to provide adequate medical care, they were also required by duty to provide adequate and appropriate social and legal obligations, such as preparing a guardianship as directed that was not done. The context of these statements in his complaint were to provide the facts and details surrounding the negligence, which is clearly the theme and concern set forth in Plaintiff's complaint.

A Litigant has right to trial where slightest doubt as to facts exists. Clearly, there is a doubt to the facts herein.

IV. ARGUMENT

NRS 41A.009 defines "medical malpractice" as "the failure of a physician, hospital or employee of a hospital, in rendering services to use the reasonable care, skill or knowledge ordinarily used under similar circumstances." Defendant alleges the decision to discharge a patient is a medical decision. Arguably so; however, after that decision is made, the proper procedures for a discharge are out of the doctors scope of duty or authority. He gives the order to release, and it is social workers and staff that are required to provide transportation, assure the patient is being released to a suitable environment, etc. This is not what the doctor does, and patient dumping is not malpractice of the doctor to use the skill he is trained to use. It is the lack of follow through of the doctors discharge which is at issue herein. With annual profits in excess of TWO MILLION DOLLARS, the appropriate staff should be available to comply with laws and regulations to render services after the doctor has authorized the discharge.

Plaintiff agrees that the medical decision to discharge then others are required to provide care to coordinate matters based upon the medical diagnosis and current medical status, but it does not require a doctor to prepare a guardianship, or call and pay for a taxi for the patient. However, those that are involved are required to comply with regulations. In fact, Plaintiff believes there are social workers on staff, and others to coordinate other than medical needs for the patients.

All negligence herein occurred AFTER the release of the patient from the doctors care, and is NOT medical malpractice. Defendant making the allegation this is a medical malpractice case simply does not make it so. Moreover, Defendant completely ignores the issues of negligence in this matter.

As a result it is undisputed that Plaintiff's Complaint is NOT based solely on allegations of medical malpractice, but of negligence without a facility that makes more than TWO MILLION DOLLARS in annual income, to meet the guidelines for release of patients back into society after they are DISCHARGED from the facility.

Plaintiff made a claim for punitive damages due to the significant and overwhelming

1 evidence of negligence on the part of Defendants, and Plaintiff is entitled to punitive damages. If
2 the court does not feel Plaintiff pled this cause with specificity, he requests leave of the court to
3 amend as to this cause of action. He feels the facts herein warrant punitive damages. Under NRS
4 42.001 et. seq., Defendant's clearly had a conscious disregard for the welfare of patients who had
5 been released from their facility - and the general public they were released into. The actions
6 detailed in the claim and herein clearly demonstrate the same, and Plaintiff is entitled to plead this
7 cause at the time of trial.

8 Further, Defendant's and all of them, were required to follow the statutes and guidelines they
9 ignored in releasing a patient. This is enough evidence to provide that Defendant's knew or should
10 have known, that the manner in which the patient at issue herein was release could certainly cause
11 harm.

12 Plaintiff will request leave to amend to name specific employees as this matter progresses
13 and discovery provides more information. However, at this time, there is no cause in dismissing any
14 portion of this Complaint.

15 V. CONCLUSION

16 Based upon the foregoing, Plaintiff respectfully requests this Honorable Court issue and order
17 DENYING in its entirety, Defendant's motion to dismiss Plaintiff's complaint.

18 Dated this 13 day of June, 2014.

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20 
21 LEE E. SZYMBORSKI
22 Plaintiff in Proper Person
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EXHIBIT C

6/07/14

DEAR CATHERINE CORTEZ MASTO,

Request For Prosecution
"Prison And Authorities"

① NEVADA Chief Deputy Attorney General LINDA C. ANDERSON INSTRUCTED ME TO WRITE THIS LETTER ON 3/24/14 AGREEING THAT MY CASE Warrants PROSECUTION ALTHOUGH SHE SAID IT AN "ISOLATED CASE"

② ON OR ABOUT 11/04/13 I SPOKE AT LENGTH WITH NEVADA Division OF Health AND Human Services Director MIKE WILSON, Spring Mountain Treatment Center licensing authority NEVADA Bureau OF Healthcare Quality Control AND Compliance Legal Counsel JUNE FRIESTAD. SHE URGED ME TO "PRESS THE ISSUE THAT WITH A FACILITY LIKE Spring Mountain Treatment Center 'IT'S ALL ABOUT THE MONEY WHERE IT SHOULD BE ABOUT THE QUALITY OF CARE... NO ONE SHOULD BE TREATED LIKE THIS'".

June said she can sleep at night knowing her own daughter is safe AND AT A psych facility. She was appalled that Spring Mountain failed to follow the ~~checklist~~ INSTRUCTIONS to fill out the "Certificate OF Mental Incapacity" saying "Based on the multiple incidents OF attempted suicide his track record, it's very obvious Sean cannot

manage his life and that "No Doctor or Psych
Facility would Not Fill out the form" This is
Substantiated in my complaint Exhibit A

Lawsuit

3

By the Bureau of Healthcare Quality Control + Compliance
That Spring Mountain Treatment Center
Perpetrated a Felony Crime Against the
State of Nevada where they did willfully, unlawfully

Feloniously or maliciously destroy and are
responsible for public safety and that this
Gross Reckless Act constitutes Criminal Negligence
Exhibit B The reason my son Sean went into

happened as

soon as

Sean walked in
the door

the hospital in the first place is that he had
a psychotic meltdown and was destroying furniture and
was violent toward me and the hospital had
full knowledge of this. This is a Medicare funded

Facility. Linda Anderson referred this case
to the Medicare Unit on 5/30/14

- In a statement by D.G. Mosta she said that
she has an obligation to keep vulnerable citizens safe
from people who are contracted to provide geriatric
services to the elderly" Exhibit C

I am an elderly and vulnerable citizen.

④ I am permanently disabled with severe anxiety/
Depression / mood disorder / OCD / have several
fractures in my skull / am almost legally blind
in my RIGHT eye have bulging disks and a
chronic back pain. This hospital should be

charged with enhanced penalties for crimes against a disabled vulnerable person. IF I was home and Sean attacked me and hit me in the head I would now be deceased. See Exhibit D, E my beloved son Sean went missing for 3 weeks and he's lucky to be alive (there was a police report filed) this facility should be held to "strict liability".

- (5) My complaint led to substantiated charges of which I am very thankful to Julie Bell who led the Rapid Response Unit resulting in 9 pages of deficiencies. This Hospital is responsible for an unsafe discharge and did not stabilize my son where I have lived. A tortured existence since 5/14/13 and had to file suit in District Court because Spring Mountain Treatment Center refuses to acknowledge any wrongdoing, thinks its inflexible and immune to prosecution and shows "Amen! mind". See Exhibit A

My Damages:

(1) Over 20,000 in Property Damage

Insurance Bad Faith

(2) The Insurance Company refused to pay me and I had to "compel" them to pay with a complaint to the Dept of Insurance.

③ Contractor Fraud The Contractor was Fraudulent and was forcing me to replace things that were not needed insisted by ^{stupid} the reasony that I had to "Sign over the whole Ins. Co. Check" never shows me their estimate Put a lien on my home of over 25 years and I had to get the N.Y. State Contractors Board to make them "Cave + Desist" But they still put a lien anyway

④ with the Damage I had to walk on Broken Glass Debris The house became infested with insects Fleas, mites, Bed Bugs, Scabies + The Ins. Co. Doesn't cover it. They came in because the windows were busted. I have seen several specialists emergency Room visits countless bottles of Rescription Insecticide / Rid / Permethrin / Malathion and the Scabies are now in my blood "Nothing Works" and the latest is to sedate me so that I live can co-exist???

⑤ Extreme mental anguish insomnia Paranoia arrived after heart attack symptoms under Doctors care my anxiety "How to the moon without a Rocketship" Scabies Crawling All over me Hair lice My life is a a living hell because of them and "No One Should Be treated like this See Damages Exhibit F

② Civil Rights Violations

The same violations in BROWN VS RAWSON-Neal
that Judge Mahon dismissed as "NONSENSE!"
In my case these are SUBSTANTIATED CHARGES BY
THE STATE OF NEVADA

① Excessive Unusual Punishment
Eighth Amendment

② Fourth + 14th Amendment
UNREASONABLE SEIZURE Denial to Equal Protection
Denial of Due Process

③ my SON DID NOT want to come to my home
I DID NOT want him here AND WAS ADAMANT
giving very clear orders. They FORCED
Compelled my son to my home AND Compelled

me to suffer Damages against my will

(See Exhibit G (For reference purposes) forcing me
to be "A PRISONER in my own home"

Please Respond Quickly As my Court Appearance is
JUNE 24th 1st 9:30 AM AND NEED TO GO TO

"Stand in my shoes"
Respectfully Submitted

Thank you!

LEE E. SZYMBORSKI

4605 Black Stallion Avenue
North Las Vegas, Nevada 89031

Name Lee E. Szymborski
Address 4605 Black Stallion Avenue
City Las Vegas State NV Zip 89031
Email lee.szymborski@outlook.com
Telephone 702-609-6762

FILED

AUG 7 2 31 PM '14

Ann L. Schum
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No: A-14-700178-C

Dept No: XXXI

Lee E. Szymborski
Plaintiff,

NOTICE OF MOTION

vs.

Spring Mountain Treatment
Center/Darryl DUBRA
Defendant
in his OFFICIAL CAPACITY DOES
1-XX, INCLUSIVE, AND ROE
CORPORATIONS 1-XX, INCLUSIVE.

MOTION For Reconsideration
ON THE ALTERNATIVE
MOTION To Set Aside

Please take notice that the hearing on _____

Will be heard on 9-12-14 in Department XXXI Floor _____ Courtroom _____
at the hour of CHAMBERS AM/PM.

Dated this 7 day of August, 2014

By: _____

A-14-700178-C
NOTM
Notice of Motion
4110817



Summary of Pleading - 1

RECEIVED
AUG 07 2014
CLERK OF THE COURT

28

Lee E. Szymborski
 4505 Black Stallion Avenue
 NV. NV. 89031
 (702) 609-6762

☒ Plaintiff/ ☐ Defendant, Pro Se

FILED

AUG 25 12 52 PM '14

Anna L. Johnson
 CLERK OF THE COURT

A-14-700178-C
 CERT
 Certificate of Mailing
 4172567



**EIGHTH JUDICIAL DISTRICT COURT
 CLARK COUNTY, NEVADA**

Lee E. Szymborski
 Plaintiff(s),
 Springfield TREATMENT CENTER
 Darryl DUBROCA in his official
 CAPACITY, DOES 1-XX, INCLUSIVE
 Defendant(s).

Case No.: A-14-700178-C
 Dept. No.: XXXI

Date of Hearing: 9-12-14
 Time of Hearing: CHAMBERS

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11 day of August, 2014, I placed a true
 and correct copy of the following document: MOTION FOR RECONSIDERATION
OR IN THE ALTERNATIVE MOTION TO SET ASIDE
 in the United States Mail, with Certified return receipt requested
first-class postage prepaid, addressed to the following:
Hall Peanab AND Schoonveld LLC
1150 North TOWN CENTER DRIVE SUITE 200
LAS VEGAS, NEVADA
89144

Per NRS 53.045, I declare under penalty of perjury
 that the foregoing is true and correct.

Lee E. Szymborski
 LEE E. SZYMBORSKI
☒ Plaintiff/ ☐ Defendant, Pro Se

RECEIVED
 AUG 25 2014
 CLERK OF THE COURT

7014 0150 0000 9494 5496

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

8-11-14

The UPS Store #1832

Sent To	Hall Prangle + Amo Schoenwald
Street, Apt. No., or PO Box No.	1160 N. TOWN CENTER DRIVE
City, State, ZIP+4	SUITE 200 LV, NV 89144

PS Form 3800, August 2006

See Reverse for Instructions

The UPS Store - #1832
5840 W Craig Road
Suite 120
Las Vegas, NV 89130-2730
(702) 396-8400

08/11/14 01:45 PM

We are the one stop for all your
shipping, postal and business needs.

We offer all the services you need
to keep your business going.



001 500069 (022) TO \$ 10.30
Cert/Ret Receipt

SubTotal \$ 10.30
Total \$ 10.30

Cash \$ 11.00
Change \$ 0.70-

Receipt ID 83369202292920883336 001 Items
CSH: Chris Tran: 2324 Reg: 001

1 Name Lee E. Szymborski
2 Address 4605 Black Stallion Avenue.
3 City Las Vegas State NV ZIP 89031
4 Email lee.szymborski@outlook.com
5 Telephone 702-609-6762

FILED

AUG 7 2 31 PM '14

Ann L. Johnson
CLERK OF THE COURT

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

9 Case No.: A-14-705178-C
10 Dept No: XXXI

11 Lee E. Szymborski
12 Plaintiff

NOTICE OF MOTION

13 vs.

14 Spring Mountain Treatment
15 Center/Darryl Dubois
16 in his official capacity Does
17 1-XX, inclusive, and ROE
18 corporations 1-XX, inclusive.

MOTION For Reconsideration,
OR in the ALTERNATIVE
MOTION To Set Aside

19 Please take notice that the hearing on _____

20 Will be heard on 9-12-14 in Department XXXI Floor _____ Courtroom _____
21 at the hour of _____ AM/PM.
22 **CHAMBERS**

Dated this 7 day of August 2014

23 By: 

28

ORIGINAL

FILED

AUG 25 3 17 PM '14

LEE E SZYMBORSKI
4605 Black Stallion Avenue
North Las Vegas, Nevada 89031
702-609-6762
PLAINTIFF IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

Arthur J. Schuman
CLERK OF THE COURT

LEE E. SZYMBORSKI,
PLAINTIFF IN PROPER PERSON

-vs-

CASE NO. A-14-700178-C

DEPT. NO. XXX1

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his official
capacity, DOES 1-XX, inclusive, and ROE
CORPORATIONS 1-XX, inclusive,
Defendant(s).

A-14-700178-C
NOAS
Notice of Appeal
4174120



NOTICE OF APPEAL

Notice is hereby given that LEE E SZYMBORSKI., PLAINTIFF IN PROPER PERSON,
hereby appeals to the Supreme Court of Nevada from NOTICE OF ENTRY OF ORDER
ON DEFENDANT SPRING MOUNTAIN TREATMENT CENTER AND DARRYL
DUBROCA'S MOTION TO DISMISS ENTERED ON The 23rd Day of July, 2014

Lee E. Szymborski
SIGNATURE
Lee E. Szymborski
4605 Black Stallion Avenue
North Las Vegas, Nevada
89031

3

FILED

MAY 20 2014

Alfonso J. Hernandez
CLERK OF COURT

1
2 ORDR

3 EIGHTH JUDICIAL DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 LEE SZYMBORSKI

6 Plaintiff,

7 vs.

Case No. A-14-700178

8 SPRING MOUNTAIN TREATMENT CENTER

Dep't No. XXXI

9 Defendant.

10 **ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S APPLICATION TO PROCEED IN**

11 **FORMA PAUPERIS**

12 The Court, having reviewed Petitioner Lee Szymborski's Application to Proceed *In Forma*
13 *Pauperis* and all information therein submitted to this Court,

14 ORDERS the Application GRANTED IN PART AND DENIED IN PART.

15 In addition to the instant Application, Petitioner contacted Department IX chambers to
16 request a refund of the civil filing fee in the amount of \$270.00 that Petitioner paid on May 2, 2014.¹
17 Unfortunately, this Court is unable to issue refunds of filing fees paid, and this Court cannot issue a
18 *nunc pro tunc* order in this situation. The \$270.00 fee therefore stands paid, and Petitioner's request
19 for a refund is DENIED. However, in light of Petitioner's income amount, and after taking into
20 consideration the expensive nature of protracted litigation, this Court GRANTS the Application as to
21 all future fees.

22 /

23 /

24 /

25 /

26
27 ¹ This Court notes that Department IX staff attempted to communicate the contents of this order to Petitioner on May
28 9th, 12th, and 13th via the phone number provided on Petitioner's application. Despite several attempts, no phone contact
could be made with Petitioner.

RECEIVED

JENNIFER TOGLIATTI

DISTRICT JUDGE MAY 20 2014

DEPARTMENT IX

CLERK OF THE COURT

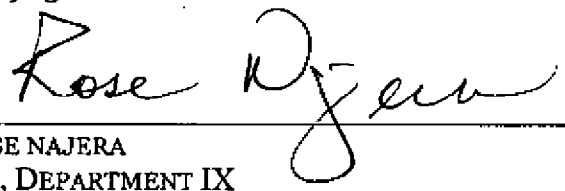
JENNIFER TOGLIATTI
DISTRICT JUDGE
DEPARTMENT IX

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed, she served the foregoing Order Denying In Part Granting in Part the Application to Proceed in Forma Pauperis by mailing a copy to Defendant as listed below:

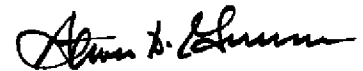
LEE E. SZYMBORSKI
4605 BLACK STALLION AVE
NORTH LAS VEGAS NV 89031


ROSE NAJERA
JEA, DEPARTMENT IX

AFFIRMATION

Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A-14-700178-C DOES NOT contain the social security number of any person.

/s/ ROSE NAJERA Date 5/20/14
Judicial Executive Assistant



CLERK OF THE COURT

OPPS

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
cfile@hpslaw.com
*Attorneys for Defendant Spring Mountain Treatment Center
and Darryl Dubroca*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**DEFENDANT SPRING MOUNTAIN TREATMENT CENTER AND DARRYL
DUBROCA'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION
OR IN THE ALTERNATIVE MOTION TO SET ASIDE**

Hearing Date: September 12, 2014

Hearing Time: In Chambers

COMES NOW, Defendant Spring Mountain Treatment Center (hereinafter referred to as
"Spring Mountain") and Darryl Dubroca, by and through their attorneys, Hall Prangle &
Schoonveld, LLC, and respectfully submits this Opposition to Plaintiff's Motion for
Reconsideration or in the Alternative Motion to Set Aside.

This Opposition is made and based on the following Points and Authorities, pleadings and papers on file herein and any arguments of counsel at the time of hearing of this matter.

Dated this 25th day of August, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Kerry J. Doyle, Esq.

Michael Prangle, Esq.

Nevada Bar No. 8619

Kerry J. Doyle, Esq.

Nevada Bar No. 10571

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Spring Mountain Treatment Center and

Darryl Dubroca

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff filed his Complaint against Defendant, Spring Mountain and Daryl Dubroca on May 2, 2014. Defendants filed a Motion to Dismiss which was heard in Department XXXI with the Honorable Senior Judge Joseph Bonaventure presiding on June 24, 2014. Prior to the hearing, Plaintiff apparently filed an Opposition to Defendants' Motion to Dismiss and it was served only on the Court. Defendants' counsel received the Opposition the evening before the hearing and when asked by the Court if Defendants would like to move the hearing, Defendants declined. Thus, Plaintiff's Opposition was received and considered by the Court in making its decision to grant Defendants' Motion. The Notice of Entry of Order was filed on July 30, 2014, and served the same day. Plaintiff now seeks to have the Court reconsider its decision. However, Plaintiff has not set forth a proper basis to support his Motion as required under NRCP 60(b). Therefore, Defendants respectfully requests that the Plaintiff's Motion be Denied.

II.

STATEMENT OF FACTS

This is a medical malpractice action arising out of the care and treatment rendered to Sean Szymborski at Spring Mountain. According to Plaintiff's complaint, Sean Szymborski, a mentally ill patient, was improperly discharged from Spring Mountain to Lee Szymborski's (Plaintiff) home in violation of NAC 449.332. See Plaintiff's Complaint, hereinafter **Exhibit A**. Further, as a result of this improper discharge, Sean Szymborski smashed the windows, walls, doors, furniture, and completely destroyed the interior of the residence before going missing for three weeks. *Id.* As a result of the alleged improper discharge, Plaintiff has filed suit against Spring Mountain for the damages to his residence as well as emotional distress suffered by Plaintiff. However, no expert affidavit supporting his claims was attached. Accordingly, Defendants filed a Motion to Dismiss Plaintiff's Complaint which was granted and the order was entered on July 30, 2014. See Notice of Entry of Order, hereinafter **Exhibit B**, and Motion to Dismiss hereinafter **Exhibit C**.

Plaintiff has now filed a Motion for Reconsideration on the grounds that (1) this case does not require an expert affidavit under NRS 41A.100. Plaintiff also appears to be arguing that the investigation by the Division of Public and Behavioral Health is sufficient to meet the expert affidavit requirement. In the alternative, Plaintiff also argues that (2) he inadvertently failed to serve Defendants with his Opposition and as a result, the Order Dismissing his Complaint should be reconsidered. As fully set forth below, Plaintiff's arguments are not sufficient to support a Motion for Reconsideration and are otherwise insufficient to overcome Defendants' underlying Motion to Dismiss. As a result, Plaintiff's Motion for Reconsideration should be Denied.

///

III.

LEGAL STANDARD

Motions for Reconsideration are authorized under EDCR 2.24 and NRCP 60(b). Motions for reconsideration are granted at the discretion of the Court. *Gellar v. McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947). EDCR 2.24 states:

(a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

(b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.

(c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Further, NRCP 60(b) states, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party...from a[n] order, ... for the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) Fraud ..., misrepresentation or other misconduct of an adverse party[.]

As set forth below, Plaintiff has failed to meet the requirements to support granting Plaintiff's Motion for Reconsideration.

IV.

ARGUMENT**A. Plaintiff's Motion for Reconsideration Must Be Denied Because He Does Not Meet the Requirements Under NRCP 60(b).**

Motions for reconsideration under Rule 60 are appropriate in three instances (1) when there has been an intervening change of controlling law, (2) new evidence has come to light, or (3) when necessary to correct a clear error or prevent manifest injustice. *San Luis & Delta-Mendota Water Authority v. United States Dept. of the Interior*, 624 F. Supp.2d 1197, 1207 (E.D. Cal., 2009). See also, *Branam v. Crowder*, 226 B.R. 45, 2 Cal. Bankr. Ct. Rep. 36 (1998) (Motions for reconsideration which merely revisit same issues already ruled upon...or advance supporting facts that were otherwise available when issues were originally briefed, generally will not be granted).

The Nevada State Court has ruled consistently with the reasoning behind the Federal Court decisions in *Moore v. City of Las Vegas*, 92 Nev. 402 (1976). In *Moore*, the Court held that it was appropriate to deny a motion for reconsideration where no new issues of fact or law were raised. *Id.* Further, the District Court may reconsider a previously decided issue "if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry 7 Tile Contractors v. Jolley, Urga, & Wirth*, 113 Nev. 737 (1997).

In the present matter Plaintiff has not presented any new evidence or any change in controlling law which would support his request that this Court hear a Motion for Reconsideration. Plaintiff is attempting to have the Order Dismissing his Complaint overturned arguing that this case does not require an expert affidavit under NRS 41A.100. Plaintiff also appears to be arguing that the investigation by the Division of Public and Behavioral Health is sufficient to meet the expert affidavit requirement. In doing so, it can only be presumed that he

1 is arguing that the basis of the Motion for Reconsideration is mistake or inadvertence, or newly
2 discovered evidence or law under NRCP 60(b)(1) or (2) respectively, since Plaintiff does not
3 specifically state what he is basing his motion on. Despite having the investigative report in his
4 possession and attaching it to his Complaint prior to the filing of the Motion to Dismiss, he did
5 not make these arguments in his opposition. See Investigative Report contained in Exhibit A and
6 Plaintiff's Motion for Reconsideration. Moreover, Plaintiff fails to even cite any controlling case
7 law and even if he did, this is not new law or evidence to support a ruling in his favor. As a
8 result, he has not set forth a sufficient basis to justify an order granting his motion and it must be
9 denied.
10

11 **B. Plaintiff's Complaint was Properly Dismissed for Failure to Provide a Supporting**
12 **Affidavit**

13 **1. Plaintiff's claims do not meet the narrow exceptions to the affidavit**
14 **requirement set forth under NRS 41A.100**

15 If the Court is inclined to review the ruling for clear error, Plaintiff still has not provided
16 any argument that would overcome Defendants' Motion to Dismiss. Exhibit C. In granting
17 Defendants' Motion to Dismiss, the Court determined that Plaintiff's claims were based in
18 medical malpractice and required an expert affidavit. Exhibit B. Plaintiff is not challenging the
19 Court's ruling that this is a medical malpractice case, but is attempting to argue that an expert
20 affidavit is not required under NRS 41A.100, because there is a reasonable presumption of
21 negligence. See Plaintiff's Motion for reconsideration. However, what Plaintiff fails to
22 acknowledge is that NRS 41A.100 sets forth narrow exceptions to the affidavit requirement
23 which do not apply to his case.
24

25
26 NRS 41A.100 sets forth a narrow exception to the expert affidavit requirement and provides
27 in pertinent part:
28

1. Liability for personal injury or death is not imposed upon any provider of medical care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the personal injury or death occurred in any one or more of the following circumstances:

- (a) A foreign substance other than medication or a prosthetic device was unintentionally left within the body of a patient following surgery;
- (b) An explosion or fire originating in a substance used in treatment occurred in the course of treatment;
- (c) An unintended burn caused by heat, radiation or chemicals was suffered in the course of medical care;
- (d) An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto; or
- (e) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient's body.

2. Expert medical testimony provided pursuant to subsection 1 may only be given by a provider of medical care who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged negligence.

In interpreting this statute, the Nevada Supreme Court has held that:

"... the plaintiff must present facts and evidence that show the existence of one or more of the situations enumerated in NRS 41A.100(1)(a)-(e). While the dissent disapproves this procedure because it is not specifically set forth in the statute, we believe it is only fair that a plaintiff filing a res ipsa loquitur case be required to show early in the litigation process that his or her action actually meets **the narrow res ipsa requirements.**"

Szydel v. Markman 121 Nev. 453, 460-461, 117 P.3d 200, 205 (2005) (emphasis added). As indicated by the Nevada Supreme Court, the res ipsa exceptions are intended to be narrowly construed. In the instant matter, Plaintiff wishes this Court to exponentially expand the realm of the NRS 41A.100 exceptions.

1 There are no set of facts set forth in Plaintiff's complaint that can be construed to meet
2 any of the narrow exceptions under NRS 41A.100. Moreover, Plaintiff provides no argument in
3 his Motion for Reconsideration as to what exception he feels his case falls under. Even if the
4 Court feels that Plaintiff has met the burden to justify granting his Motion for Reconsideration,
5 its initial Order Granting Defendants' Motion to Dismiss was proper.
6

7
8 **2. The investigative report authored by the Nevada Department of Health does
not meet the expert affidavit requirement.**

9 Alternatively, Plaintiff appears to be arguing that the investigative report generated by the
10 Nevada Department of Health that he attached to the Complaint in this case is sufficient to meet
11 the expert affidavit requirement set forth under NRS 41A.071.
12

13 NRS 41A.071 states:

14 [i]f an action for medical malpractice or dental malpractice is filed in the district
15 court, the district court shall dismiss the action, without prejudice, if the action is
16 filed without an affidavit, supporting the allegations contained in the action,
17 submitted by a medical expert who practices or has practiced in an area that is
18 substantially similar to the type of practice engaged in at the time of the alleged
19 malpractice.

20 The Nevada Supreme Court has held that "under NRS 41A.071, a complaint filed without
21 a supporting expert affidavit is void ab initio and must be dismissed." *Washoe Med. Ctr. v.*
22 *Second Judicial Dist. Court*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006). And since "a void
23 complaint does not legally exist, it cannot be amended." *Id.* In *Washoe*, the Court reasoned that:

24 "shall" is mandatory and does not denote judicial discretion. The Legislature's
25 choice of the words "shall dismiss" instead of "subject to dismissal" indicates that
26 the legislature intended that the court have no discretion with respect to dismissal
27 and that a complaint filed without an expert affidavit would be void and must be
28 automatically dismissed.

Id. at 1303, 148 P.3d at 793-94.

1 Therefore, in *Washoe Medical Center* the Nevada Supreme Court made it clear that a
2 medical malpractice complaint filed without the required affidavit under NRS 41A.071 is "void
3 ab initio" and "must be dismissed."

4 The Nevada Supreme Court has also recently issued an opinion stating that a declaration
5 signed under penalty of perjury is sufficient to satisfy the affidavit requirement of NRS 41A.071.
6
7 *Buckwalter v. Eighth Judicial District Court*, 126 Nev. Adv. Op. No. 21 (2010). In doing so, the Nevada
8 Supreme Court indicated that there are two methods of satisfying the affidavit requirement of
9 NRS 41A.071: 1) attaching an actual affidavit, or 2) attaching a sworn declaration which
10 complies with NRS 53.045. *Id.* Neither of which was done in the instant case.

11 Nevada's definition of what constitutes an affidavit has not changed in over 100 years.
12
13 "An **affidavit** is a voluntary, *ex parte* statement formally reduced to writing and sworn to or
14 affirmed before some officer authorized to take it." *Lutz v. Kinney*, 23 Nev. 279, 281, 46 P. 257,
15 258 (1875), citing 1 *Ency. Of Pleading and Practice*, 309. (emphasis added) "The signature of
16 an affiant can in no case add to or give force to what is sworn, and what is sworn is made to
17 appear authoritatively by the certificate of the officer." *Id.* Further, the certificate, usually called
18 the 'jurat,' is essential, not as part of the affidavit, but **as official evidence that the oath was**
19 **taken before the proper officer.** *Id.* (emphasis added). In the instant matter, investigative
20 report does not set forth any opinions that Defendants fell below the standard of care, or that the
21 opinions are sworn. Nor is there a jurat that would evidence that an oath was actually taken by
22 the author of the report. The investigative report is simply a document that does not comply with
23 NRS 41A.071.
24
25
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Moreover, the Nevada Legislature has provided their requirements for an affidavit in NRS 15.010. When mandating that certain pleadings be verified, the Nevada Legislature has provided the following form for affidavits:

Under penalties of perjury, the undersigned declares that he or she is the (plaintiff, defendant) named in the foregoing (complaint, answer) and knows the contents thereof; that the pleading is true of his or her own knowledge, except as to those matters stated on information and belief, and that as to such matters he or she believes it to be true. (NRS 15.010)

Most noticeably, the Nevada Legislature requires that the affidavit to verify pleadings specifically state that the statement is made under the penalties of perjury. When comparing this to the investigative report, there is no corresponding statement that the report is drafted under the penalty of perjury or is sworn. As such, it cannot be considered an affidavit.

Notwithstanding the requirement of sworn testimony, the affidavit must also be made "by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged malpractice" and it must support the allegations in Plaintiff's complaint. NRS 41A.071. There is no indication that the person who authored the investigative report is a medical expert or practices in an area substantially similar to Defendants. Moreover, there are no findings that Defendants fell below the standard of care in any respect or that any deviations from the standard of care caused Plaintiff's damages in this case.

It is abundantly clear that the investigative report fails to meet any test to consider it an affidavit. It never states that it was made under oath, and never states that it is signed under the penalty of perjury. Moreover, it was not made by a medical expert that practices in an area substantially similar to Defendants nor does it make any findings of deviations from the standard of care to support Plaintiff's allegations. As such, the investigative report fails to meet the

1 statutory requirements of NRS 41A.071. Thus, the Court's order granting Defendants' Motion to
2 Dismiss was proper.

3 As a result, Plaintiff has failed to meet his burden to show that his Motion for
4 Reconsideration is proper under NRCP 60(b) or that the Court's Order Granting Defendants'
5 Motion to Dismiss was improper.

6
7 **C. Plaintiff's Opposition was Considered by the Court and is not a Proper Basis for**
8 **Reconsideration**

9 Although Plaintiff did fail to serve his Opposition on Defendants, he properly served it
10 upon the Court. The evening prior to the hearing, Defendants' counsel found the Opposition on
11 the Court's online service. At the hearing, the Court acknowledged their receipt of the
12 Opposition and asked Defendants' counsel if the hearing should be moved in order for
13 Defendants to provide a response. Defendants' counsel decided to go forward despite the short
14 notice. Therefore, if anyone was prejudiced by the failure to properly serve the Opposition, it
15 was Defendants. Since the Court still entertained both Plaintiff's Opposition and the oral
16 argument he presented at the hearing, it cannot be a basis to grant his Motion for
17 Reconsideration. As a result, this Motion must be Denied.
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V.

CONCLUSION

Plaintiff has not met his burden to substantiate a Motion for Reconsideration. Moreover, the Court's ruling Granting Defendants' Motion to Dismiss was proper. Based upon the foregoing, Defendants respectfully requests this Honorable Court issue an Order Denying Plaintiff's Motion for Reconsideration.

Dated this 25th day of August, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/: Kerry J. Doyle, Esq.

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
*Attorneys for Defendant
Spring Mountain Treatment Center
and Darryl Dubroca*

///

///

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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 25th day of August, 2014, I served a true and correct copy of the foregoing **DEFENDANTS SPRING MOUNTAIN TREATMENT CENTER and DARYL DUBROCA'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE MOTION TO SET ASIDE** attached hereto in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person

/s/: Audrey Ann Stephanski
An employee of HALL PRANGLE & SCHOONVELD, LLC

4824-1838-3133, v. 1

4810-8686-6440, v. 1

EXHIBIT A

FILED

MAY 02 2014

Alvin L. Williams
CLERK OF COURT

1 LEE E. SZYMBORSKI
2 4605 Black Stallion Ave
3 N. Las Vegas, NV 89031
4 (702) 609-6762
5 Plaintiff in Proper Person

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 LEE E. SZYMBORSKI,
9 Plaintiff,

Case No.
Dept No.

10 vs.

11 SPRING MOUNTAIN TREATMENT CENTER,
12 DARRYL DUBROCA, in his official capacity,
13 DOES I-XX, inclusive, and ROE
14 CORPORATIONS I-XX, inclusive,
15 Defendants.

EXEMPT FROM ARBITRATION
SUMS IN EXCESS OF \$50,000

16 COMPLAINT

17 COMES NOW, Plaintiff, named above, and for cause of action, alleges as follows:

18 GENERAL ALLEGATIONS

19 1. Plaintiff, at all times relevant hereto has been and is now, a resident of the State of
20 Nevada, County of Clark. Jurisdiction and Venue are appropriate in Clark County, Nevada.

21 2. Defendant DARRYL DUBROCA is the CEO/Managing Director of SPRING
22 MOUNTAIN TREATMENT CENTER.

23 3. Plaintiff is informed and believes, and on that basis alleges, that Defendants
24 SPRING MOUNTAIN TREATMENT CENTER is a mental treatment hospital, who admitted
25 SEAN T. SZYMBORSKI for treatment and discharged him in violation of Nevada Law.

26 4. The true names and capacities, whether individual, corporate, associate or
27 otherwise, of the Defendant sued herein as DOES I through XX, inclusive, and ROES I through
28 XX, inclusive, are unknown to Plaintiff, who is informed, believes and alleges that each of these

1 fictitiously named Defendants is in some way liable to Plaintiff on the causes of action below and
2 therefore sues these defendants by such fictitious names. Plaintiff believes said fictitious
3 Defendants assisted, devised, schemed, planned or took part in the actions set forth hereinbelow.
4 Plaintiff will move to amend this Complaint and insert the true names and capacities of
5 fictitiously named Defendants when the same have been ascertained.

6 5. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, each actually and fictitiously named Defendant was the principal, agent, co-venturer,
8 partner, surety, guarantor, officer, director and/or employee of each co-defendant and in doing the
9 things herein alleged, was acting within the scope of authority and with the permission of each
10 co-defendant or took some part in the acts and omissions hereinafter set forth, and by reason
11 thereof, each of said Defendants is liable to Plaintiff for the relief prayed.

12 6. That on or about May 14, 2013, at approximately 3:30 p.m., Defendant SPRING
13 MOUNTAIN TREATMENT CENTER, 7000 W. Spring Mountain Road, Las Vegas, Nevada
14 89117, due an "UNAUTHORIZED UNSAFE DISCHARGE" of a mentally ill adult patient, to
15 wit: SEAN T. SZYMBORSKI, in violation of NAC 449.332, to the residence of Plaintiff. See
16 Exhibit "1".

17 7. That said SEAN T. SZYMBORSKI was provided a taxi ride, released without any
18 money; without appropriate medication, without the ability to care for himself, and being a
19 danger to both himself and other.

20 8. Defendant SPRING MOUNTAIN TREATMENT CENTER was directed by
21 KATHLEEN BUCHANAN to provide a Guardianship for Defendant SEAN T. SZYMBORSKI,
22 and failed to do so.

23 9. Defendant SPRING MOUNTAIN TREATMENT CENTER Caseworker
24 "REBECCA" was directed NOT to release SEAN T. SZYMBORSKI to the residence of
25 Plaintiff, however he was transported by taxi directly to the home of Plaintiff, where he smashed
26 windows, walls, doors, furniture, and completely destroyed the interior of the residence, before
27 going missing for three weeks. (A missing persons report was filed by NLVPD.)
28

10. An investigation by the Division of Public and Behavioral Health substantiated that Defendant SPRING MOUNTAIN TREATMENT CENTER was in violation of NAC 449.332, Discharge Planning, based upon evidence by interview of staff, record review and document review.

11. It was determined that the facility failed to assure the patient was discharged to a **safe environment** due to the following issues in this matter:

a. Patient was admitted to the facility on 5/3/13, and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.

b. On 5/13/13 at 1 p.m. the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.

c. On 5/15/13 at 2:0 p.m. the Masters of Art (MA) met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up patient's debit card prior to going to the new apartment.

d. Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.

c. The Patient Continuing Care Plan, dated 5/14/13 identified the parties was to go to father's home first then on to an address in North Las Vegas, Nevada.

f. The Acute Physician Discharge Progress Note on 5/14/13 at 8:50 a.m. documented the patient did not want to return to the patient's father's home due to ongoing conflict. The note documented the patient participated in treatment planning to find housing.

g. The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.

1 h. On 7/9/13 at 8:49 a.m. the Risk Manager confirmed the MA did not follow up on
2 verifying the identified apartment.

3 i. On 7/9/13 at 11:20 a.m., Licensed Social Worker (LSW) indicated multiple telephone
4 messages were left by the patient's father. The father would state the patient could return to the
5 home; the next telephone message from the father would demand the patient not be discharged to
6 the father's home. The LSW acknowledged she did not speak directly with the patient's father.
7 The LSW stated due to the large number of patients on the LSW's caseload, the LSW had to
8 delegate telephone calls and discharge planning to the MA.

9 j. The LSW indicated when a patient identified their own placement, the LSW would try
10 to obtain as much information as possible regarding the address and name of the apartment. If
11 unable to verify placement, the physician would be notified prior to discharge from the facility.

12 k. The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 a.m. documented
13 the patient did not want to return to his father's home due to ongoing conflict. The note
14 documented the patient participated in treatment planning to find housing.

15 12. An evaluation of the needs of a patient relating to discharge planning must include,
16 without limitation, consideration of:

17 a. The needs of the patient for postoperative services and the availability of those
18 services.

19 b. The capacity of the patient for self-care; and

20 c. The possibility of returning the patient to a previous care setting or making
21 another appropriate placement of the patient after discharge.

22 13. Defendant SPRING MOUNTAIN TREATMENT CENTER is in **violation of NAC**
23 **449.394**, Psychiatric Services, which requires that a hospital shall develop and carry out policies
24 and procedures for the provision of psychiatric treatment and behavioral management services
25 that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and
26 services are safely and appropriately used. The hospital shall ensure that the policies and
27 procedures protect the safety and rights of the parties - and the public at large.

14. That Defendant SPRING MOUNTAIN TREATMENT CENTER has failed to met these statutes and regulations, for the reasons set forth above.

15. That due to the failure to meet these responsibilities, SEAN T. SZYMBORSKI, was driven by taxi to the home of Plaintiff, and dropped off, at the expense of the Defendant SPRING MOUNTAIN TREATMENT CENTER, where he proceeded to cause significant property damage to Plaintiff's residence, and go missing.

16. That when SEAN T. SZYMBORSKI was located, he had sustained wounds from a self inflicted injuries with a sharp object, using weapons obtained at the home of his mother; and not at the home of his father.

17. The patient care plan, dated 5/14/13 indicated that safety concerns, including weapons, in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification. Furthermore, Defendant SPRING MOUNTAIN TREATMENT CENTER indicated they assisted in obtaining a home for SEAN T. SZYMBORSKI, therefore, even confirming no weapons in father's home was not reasonable to consider this non-applicable.

18. In violation of the stated statutes, it was determined that the LSW did not follow up on identifying what weapons and if the patient had access to weapons prior to discharge. (8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to located and secure items... Weapons are not considered secured until verification has been received that the task is completed...")

19. Due to the inactions of Defendant SPRING MOUNTAIN TREATMENT CENTER, SEAN T. SZYMBORSKI was convicted of criminal charges related to the property destruction at the home of Plaintiff, rather than receiving treatment for his known mental illness.

20. Defendant SPRING MOUNTAIN TREATMENT CENTER acted in reckless disregard of SEAN T. SZYMBORSKI's psychiatric condition in pre-paying for a taxi to dump him at an verified location [Plaintiff's residence], without notice to occupants, without money, and without the ability to provide care for himself due to long standing mental illness.

21. The failures of Defendant SPRING MOUNTAIN TREATMENT CENTER to deliver the statutory mandated care to patients in their custody and control resulted in systematic disregard of the serious psychological and medical conditions and resulted in adverse consequences, which predictably flow from such failures, and caused damages to patients and others, who became victims of such disregard.

22. Defendant SPRING MOUNTAIN TREATMENT CENTER is a for profit corporation, whose estimated annual revenue is in excess of TWO BILLION DOLLARS (\$2,000,000,000).

FIRST CLAIM FOR RELIEF

(NEGLIGENCE)

23. Plaintiff realleges and incorporates by reference all of the previous allegations of this Complaint at this point as if set forth fully herein.

24. Nevada recognizes negligence claims, where a Plaintiff establishes: (1) the existence of a duty of care (2) breach of that duty; (3) legal causation; and (4) damages.

25. Defendants, in the exercise of reasonable care had a duty to know, or should have known, that they are required to comply with NAC 449.332, regarding DISCHARGE PLAN of Patients; and with NRS 449.765 to 449.786.

26. Defendants breached their duty by failing to carefully investigate, monitor and/or oversee discharge activities at SPRING MOUNTAIN TREATMENT CENTER, including but not limited to, the development, implementation, and supervision of discharge policies and practices.

27. That Defendants negligently and/or carelessly, permitted the dumping of SEAN T. SZYMBORSKI, by taxi to the home of Plaintiff, without notice to Plaintiff, in violation of their own internal policies; NAC 449.332; and NRS 449.865 to 449.786.

28. Defendants knew or should have known that patients, including SEAN T. SZYMBORSKI are members of the class of patients that could foreseeably suffer injury to themselves, and/or inflict injury on others, as a result of Defendants' failure to exercise

1 reasonable care in the discharge of their statutorily imposed duties, and/or common-law duties of
2 care.

3 29. As a direct and proximate result of the negligence and carelessness of Defendants,
4 Plaintiff has suffered extreme emotional and mental distress, further issues and conflict in the
5 family unit, in addition to approximately \$20,000 in physical damage to the residence, including
6 smashed windows, which required immediate action to secure assets in the residence, and other
7 damages the full extent of which shall be provided through discovery.

8 30. As a direct and proximate result of Defendants' acts or omissions, Plaintiff has
9 suffered punitive, general and special damages.

10 **SECOND CLAIM FOR RELIEF**

11 (Professional Negligence)

12 (Negligent act or omission to act by a provider of health care in rendering of professional
13 services, which act or omission is the proximate cause of a personal injury or wrongful death,
NRS 41A.015)

14 31. Plaintiff realleges and incorporates by reference all of the previous allegations of
15 this Complaint at this point as if set forth fully herein.

16 32. Defendants in the capacity of a for profit hospital providing medical care to the
17 public, government agencies overseeing the hospital's operations, licensed social workers,
18 registered nurses, psychiatrists, and the hospital administrator owed Plaintiff a duty to employ
19 medical staff adequately trained in the care and treatment of patients consistent with the degree
20 of skill and learning possessed by competent medical personnel practicing in the United States of
21 America under the same or similar circumstances; and a duty to comply with Nevada statutes,
22 including NRS 41A.015.

23 33. Defendants breached its duty of care by failing to function as a patient advocate by
24 providing proper care to the patients at the time of discharge, and specifically causing physical,
25 mental and emotional pain and suffering to the patient; as well as physical, mental and emotional
26 pain and suffering to the public at large, and specifically in this matter, to the Plaintiff.

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34. Plaintiff realleges and incorporates by reference all of the previous allegations of this Complaint at this point as if set forth fully herein.

36. That Defendants including JOHN DOE 1 in the capacity of Licensed Social Worker (LSW) is entrusted to provide medical care owed to patients and a duty to provide adequate medical treatment, to protect the patient and the public at large. Said Defendant breached the duty of care by discharging the patient, paying for a taxi only to Plaintiff's address (although the patient asked to pick up a debit card, then be transported to another residence), in violation of discharge policies and procedures, pursuant to NAC 449.332. As a proximate result of the negligence of Defendants, the patient and public at large are subject to physical, mental and emotional pain, in addition to financial loss, such as Plaintiff has sustained.

Page 8

1 **FOURTH CLAIM FOR RELIEF**

2 (Negligent Hiring, Supervision and Training)

3 38. Plaintiff realleges and incorporates by reference all of the previous allegations of
4 this Complaint at this point as if set forth fully herein.

5 39. At the times mentioned herein, Defendants knew, or in the exercise of reasonable
6 care should have known, that the provisions of medical care and treatment was of such a nature
7 that, if it was ot properly given, it was likely to injure the persons to whom it was given.
8 Defendants owed a duty to its patients, and the community at large, to hire, train, and/or
9 supervise competent medical and staff personnel, including supervisors, and LSW, to provide
10 care and treatment to its patients.

11 40. Defendants breached that duty of care by failing to adequately provide competent
12 employees, in the performance of the job, as it appears dumping patients is an ongoing problem.

13 41. At all times herein mentioned, Defendants established and/or followed, unsafe
14 medical practices, including "dumping" patients without complying with discharge instructions.

15 42. As a result of the lack of medical care and treatment provided by Defendant,
16 Defendants breached their duty to Plaintiff and the members of the class by failing to protect
17 them from foreseeable harm, resulting in a lack of mental health treatment for Plaintiff and the
18 public at large.

19 43. As a direct and proximate result of the negligence and carelessness of Defendants,
20 Plaintiff has been injured financially, as well as mentally and emotionally in this matter.

21 44. Defendants conduct demonstrated a conscious disregard of known accepted
22 procedures, protocols, care and treatment, all with the knowledge or utter disregard that such
23 conduct could or would expose Plaintiff to harm as set forth herein.

24 45. Defendants conduct was willful, reckless, malicious, and in total disregard to the
25 health and safety of not only the patient, but the public at large, thereby justifying an award of
26 punitive damages.

1 46. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
2 mental and emotional pain and suffering, in addition to financial loss.

3 WHEREFORE, Plaintiff prays judgement as follows:

4 1. For a temporary restraining order and/or preliminary injunction and permanent
5 injunction enjoining and restraining Defendants from continuing or repeating the unlawful
6 policies, practices and conduct complained of herein;

7 2. For declaratory judgment against Defendants' policies, practices and conduct as
8 alleged herein in violation of patient rights, and the safety of the public at large;

9 3. For compensatory damages according to proof;

10 4. For punitive damages in consideration of the annual income in excess of
11 \$2,000,000,000.

12 5. For emotional distress caused by the violations herein.

13 6. For costs of suit, including attorney fees, and other costs.

14 7. For such other and further relief as the Court may deem appropriate.

15 DATED this ____ day of ____, 2014.

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17 LEE E. SZYMBORSKI
18 Plaintiff in Proper Person
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EXHIBIT 1

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

STATE OF NEVADA
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

August 19, 2013

Lee Szymborski
4605 Black Stallion Avenue
North Las Vegas, NV 89032

Re: Complaint Number NV00035655

Dear Mr. Szymborski,

With reference to your complaint against Spring Mountain Treatment Center, an unannounced inspection was completed on 07/09/2013 to investigate your concerns about admission, transfer and discharge, quality of care responsible party not notified of resident's change in condition and resident safety.

During the investigation, the State Inspector interviewed patients/residents, reviewed their records, interviewed staff, and made observations while the facility or agency was in operation. The facility's or agency's actions were evaluated using applicable state and/or federal rules and regulations to determine if they were in compliance.

Based on the completed investigation, it was concluded that the facility or agency was not in compliance with rules and/or regulations. The Bureau will take appropriate measures to ensure the facility/agency is well-informed of the specifics of non-compliance, and that they will exercise their due diligence in preventing similar incidents in the future.

You may access the investigation results on our website following these steps:

- Go to <http://health.nv.gov/HCCQ.htm>
- On the right bar under Facility Services,
- Select Individual Health Facilities Inspection and Survey Results
- Select the facility type from the five categories
- Enter the facility name, provider type and click Start Search
- Select the facility; then select the survey date you want to review

Thank you for reporting your concerns. Please know that your voice will help improve the services of health facilities and agencies. If we can be of further assistance, please contact the investigator, Debra Seeger, at 702-486-6515.

Sincerely,

For: Julie Bell, Health Facilities Manager

Health Facilities/Lab Services
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-1030
Fax: (775) 684-1073

☒ Health Facilities/Lab Services
4220 S. Maryland Parkway
Suite 810, Building D
Las Vegas, NV 89119
(702) 486-5315
Fax: (702) 486-5350

☐ Radiation Control
4150 Technology Way
Suite 300
Carson City, Nevada 89706
(775) 687-7550
Fax: (775) 687-7552

☐ Radiation Control
2080 E. Flamingo
Suite 319
Las Vegas, Nevada 89119
(702) 486-5280
Fax: (702) 486-5024

☐ Child Care Licensing
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-4483
Fax: (775) 684-4484

☐ Child Care Licensing
4180 S. Pecos, Ste 150
Las Vegas, Nevada 89121
(702) 486-7918
Fax: (702) 486-6660

☐ Child Care Licensing
1010 Ruby Vista, Ste 101
Elko, Nevada 89801
(775) 753-1237
Fax: (775) 753-1336

Public Health Working for a Safer and Healthier Nevada

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	--	--	---

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	Initial Comments This Statement of Deficiencies was generated as a result of a complaint investigation initiated on 6/25/13, and finalized in your facility on 7/9/13, in accordance with Nevada Administrative Code, Chapter 449, Hospital. The census at the time of the investigation was 63. Five discharged medical records were reviewed. Complaint #NV00035655 was substantiated with deficiencies cited. (See Tags S0146, S0153 and S0602) The findings and conclusions of any investigation by the Health Division shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.	S 000		
S 146 SS=D	NAC 449.332 Discharge Planning 4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of: (a) The needs of the patient for postoperative services and the availability of those services; (b) The capacity of the patient for self-care; and (c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge. This Regulation is not met as evidenced by: Based on Interview, record review and document review, the facility failed to assure the patient was discharged to a safe environment for 1 of 5 sampled patients (Patient #1).	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 1</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/13/13 at 1:00 PM, the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.</p> <p>On 5/14/13 at 2:30 PM, the Masters of Art (MA) documented the MA met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up the patient's debit card prior to going to the new apartment.</p> <p>Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified the patient was to go to the father's home first then on to an address in North Las Vegas.</p> <p>The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 AM, documented the patient did not want to return to the patient's fathers home due to on-going conflict. The note</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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00KP11

If continuation sheet 2 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 146	<p>Continued From page 2</p> <p>documented the patient participated in treatment planning to find housing.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.</p> <p>On 7/9/13 at 11:20 AM, Licensed Social Worker (LSW) #2 explained multiple telephone messages were left by the patient's father. The father would state the patient could return to the father's home. The next telephone message from the father would demand the patient not be discharged to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW explained during the first meeting with the patient, the patient expressed a willingness to return to the father's home and would work on finding an apartment from the father's home. The LSW explained due to the large number of patient's on the LSW's case load, the LSW had to delegate telephone calls and discharge planning to the MA.</p> <p>The LSW explained when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If the LSW was unable to verify placement, the physician would be notified prior to discharge from the facility.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p>	S 146			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	Continued From page 3 Procedure: "...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager... 4.4 Housing needs and/or placement issues;...4.8 Personal support systems..." "...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate, and documented in the medical record...5.2 Where and with whom the patient will live following discharge..." "...6.0 The Social Services Discharge Note is completed for every patient at the time of discharge. This note includes, but is not limited to: 6.1 Living arrangements..." Severity: 2 Scope: 1 Complaint #NV00035655	S 146		
S 153 SS=D	NAC 449.332 Discharge Planning 11. The patient, members of the family of the patient and any other person involved in caring for the patient must be provided with such information as is necessary to prepare them for the post-hospital care of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to notify 2 of 5 sampled patients families prior to discharge (Patient #1 and #5).	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 4 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3266HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 4</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/10/13 at 9:00 AM, the LSW #2 documented the case manager received a voice mail from the patient's father saying the patient was not to return to his home. The LSW documented the case manager would assist the patient with alternative placement.</p> <p>On 5/10/13 at 11:15 AM, the MA documented the patient's father wanted the patient to return to his home, but not to be discharged "today".</p> <p>There was no further documented evidence the patient's father was contacted to confirm discharge to the patient's father's home.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the MA met with the patient. The patient requested the father's telephone number and told the father of being discharged and a taxi would transport the patient to the father's home.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented the discharge was not coordinated with the family. Documentation with the father on the day of discharge was not documented.</p> <p>On 7/9/13 at 9:50 AM, the Risk Manager acknowledged the facility should have arranged for the taxi driver to wait at the patient's father's</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 5 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HQS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 5</p> <p>house until the patient retrieved the debit card, then drive the patient to the new apartment.</p> <p>On 7/9/13 at 11:34 AM, LSW #2 explained the family member should be contacted prior to the patient's discharge to assure the family was alright with the patient returning home. The LSW acknowledged the patient's father should have been contacted by the facility staff prior to the patient being discharged.</p> <p>Four additional discharged medical records were reviewed.</p> <p>Patient #5</p> <p>Patient #5 was admitted to the facility on 6/4/13 and discharged on 6/18/13, with a diagnosis of major depressive disorder.</p> <p>There was no documented evidence the social worker/Case Manager notified the family of the patient's discharge. There was no documented evidence the family was educated on the patient's medications and follow up care needed. There was no family contact from the social worker/Case Manager after 6/6/13.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate,</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.
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If continuation sheet 6 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	Continued From page 6 and documented in the medical record..." Severity: 2 Scope: 1 Complaint #NV00035655	S 153		
S 602 SS=D	NAC 449.394 Psychiatric Services 3. A hospital shall develop and carry out policies and procedures for the provision of psychiatric treatment and behavioral management services that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately used. The hospital shall ensure that the policies and procedures protect the safety and rights of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to identify what weapons were at Patient #1's mother's home and if the patient would have access to the weapons. Findings include: Patient #1 Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse. On 5/3/13 at 12:00 PM, the Comprehensive Assessment Tool documented patient had multiple scab areas on his legs. The Comprehensive Assessment Tool documented the patient's father stated the patient's wounds were self inflicted with a sharp object.	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 7 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 602	<p>Continued From page 7</p> <p>On 5/6/13 at 2:42 PM, LSW #1 documented weapons were at the patient's mothers home, but not at the patient's fathers home. The LSW did not identify what weapons were at the patient's mothers home. There was no documented evidence the patient's mother was contacted to verify where the weapons were located.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified safety concerns, including weapons in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the patient asked the MA if the taxi would be able to take the patient to the mother's house after the patient went to the father's house. The MA documented the patient would have to pay for any taxi after being dropped off at the father's house.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the LSW did not follow up on identifying what weapons and if the patient had access to the weapons prior to discharge.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>"8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to locate and secure the items...Weapons are not considered secured until verification has been received that the task is completed..."</p>	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 8 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 602	Continued From page 8 Severity: 2 Scope: 1 Complaint #NV00035655	S 602			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

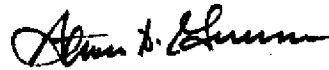
8091

00KP11

If continuation sheet 9 of 9

4810-8686-6440, v. 1

EXHIBIT B


CLERK OF THE COURT

NEOJ
Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: efile@hpslaw.com
*Attorneys for Defendant Spring Mountain
Treatment Center and Darryl Dubroca*

DISTRICT COURT
CLARK COUNTY, NEVADA

LEE E. SZYMBORSKI,

Plaintiff,

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

**NOTICE OF ENTRY OF ORDER ON
DEFENDANT SPRING MOUNTAIN
TREATMENT CENTER AND DARRYL
DUBROCA'S MOTION TO DISMISS**

Please take notice that an Order granting Defendants Spring Mountain Treatment Center and Darryl Dubroca's Motion to Dismiss was entered in the above entitled Court on the 23rd day of July, 2014, a copy of which is attached hereto.

DATED this 30th day of July, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Kerry J. Doyle, Esq.

KERRY J. DOYLE, ESQ.

Nevada Bar No.: 10571

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendants Summerlin Hospital

///

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

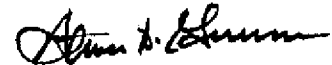
CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of Hall Prangle & Schoonveld, LLC; that on the 30th day of July, 2014, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER ON DEFENDANT SPRING MOUNTAIN TREATMENT CENTER AND DARRYL DUBROCA'S MOTION TO DISMISS** in a sealed envelope, via US Mail, first class postage pre-paid to the following parties at their last known address as an email for electronic service as not been provided by Plaintiff:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person

/s/ Audrey Ann Stephanski
An employee of Hall Prangle & Schoonveld, LLC

4851-0812-9564, v. 1



CLERK OF THE COURT

ORDR

Michael Prangle, Esq.
Nevada Bar No. 8619
Kerry J. Doyle, Esq.
Nevada Bar No. 10571
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(702) 889-6400 – Office
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Email: efile@hpslaw.com
Attorneys for Defendant
Spring Mountain Treatment Center
and Darryl Dubroca

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LEE E. SZYMBORSKI,

Plaintiff,

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

vs.

SPRING MOUNTAIN TREATMENT
CENTER, DARRYL DUBROCA, in his
official capacity, DOES I-XX, inclusive, and
ROE CORPORATIONS I-XX, inclusive,

Defendants.

**ORDER ON DEFENDANT SPRING
MOUNTAIN TREATMENT CENTER
AND DARRYL DUBROCA'S MOTION
TO DISMISS**

*before Sr. Judge Joseph Bonaventura,
sitting for*

ORDER

Defendants Spring Mountain Treatment Center and Darryl Dubroca's Motion to Dismiss, having come on regularly for hearing on June 24, 2014, in Department XXXI, the Honorable Joanna S. Kishner presiding; LEE E. SZYMBORSKI appeared pro se, KERRY J. DOYLE, ESQ., appeared on behalf of Defendants, SPRING MOUNTAIN TREATMENT CENTER, and DARRYL DUBROCA; the Court having considered the pleadings on file and having heard oral argument from the parties, good cause appearing therefore, the Court finds and orders as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that, Defendant Spring Mountain Treatment Center, and Darryl Dubroca's Motion to Dismiss is GRANTED. Mr.


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1 Szymborski's claims are based upon allegations of medical malpractice. As a result, the
2 Complaint is required to be supported by a medical expert affidavit pursuant to NRS 41A.071.
3 Mr. Szymborski failed to provide the requisite affidavit and as a result, both Spring Mountain
4 Treatment Center and Mr. Dubroca are hereby dismissed from the instant action.


5 **IT IS SO ORDERED.**

6 DATED this 21 day of July, 2014.

7  JOANNA S. KISHNER

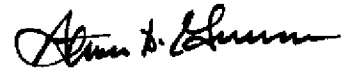
8 DISTRICT COURT JUDGE

9 Submitted By:

10 
11
12 HALL PRANGLE & SCHOONVELD, LLC
13 KENNETH M. WEBSTER, ESQ.
14 Nevada Bar No.: 7205
15 KERRY J. DOYLE, ESQ.
16 Nevada Bar No.: 10571
17 1160 N. Town Center Dr., Ste. 200
18 Las Vegas, NV 89144
19 *Attorneys for Defendants Summerlin Hospital*

20 4844-0011-1900, v. 1

EXHIBIT C


CLERK OF THE COURT

1 **MDSM**
2 Michael Prangle, Esq.
3 Nevada Bar No. 8619
4 Kerry J. Doyle, Esq.
5 Nevada Bar No. 10571
6 HALL PRANGLE & SCHOONVELD, LLC
7 1160 N. Town Center Dr., Ste. 200
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11 Email: mprangle@hpslaw.com
12 Email: kdoyle@hpslaw.com
13 *Attorneys for Defendant Spring Mountain Treatment Center*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 LEE E. SZYMBORSKI,
12
13 Plaintiff,

CASE NO.: A-14-700178-C
DEPT. NO.: XXXI

14 vs.

15 SPRING MOUNTAIN TREATMENT
16 CENTER, DARRYL DUBROCA, in his
17 official capacity, DOES I-XX, inclusive, and
18 ROE CORPORATIONS I-XX, inclusive,

19 Defendants.

20 **DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S**
21 **MOTION TO DISMISS**

22 **Hearing Date:** _____

23 **Hearing Time:** _____

24 COMES NOW, Defendant Spring Mountain Treatment Center (hereinafter referred to as
25 "Spring Mountain"), by and through their attorneys, Hall Prangle & Schoonveld, LLC, and
26 respectfully submits this Motion to Dismiss.

27 ///

28 ///

1 This Motion is made and based on the following Points and Authorities, pleadings and
2 papers on file herein and any arguments of counsel at the time of hearing of this matter.

3 Dated this 22nd day of May, 2014.

4 HALL PRANGLE & SCHOONVELD, LLC

5 /s/: Kerry J. Doyle, Esq.
6 Michael Prangle, Esq.
7 Nevada Bar No. 8619
8 Kerry J. Doyle, Esq.
9 Nevada Bar No. 10571
10 1160 N. Town Center Dr., Ste. 200
11 Las Vegas, NV 89144
12 *Attorneys for Defendant*
13 *Spring Mountain Treatment Center*

14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that the undersigned will bring the foregoing DEFENDANT
16 SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS for hearing before
17 the above entitled court on the 24th day of JUNE, 2014 at the hour of 9:30A a.m. in Department
18 No. XXXI, or as soon thereafter as counsel can be heard.

19 Dated this 22nd day of May, 2014.

20 HALL PRANGLE & SCHOONVELD, LLC

21 /s/: Kerry J. Doyle, Esq.
22 Michael Prangle, ESQ.
23 Nevada Bar No. 8619
24 Kerry J. Doyle, Esq.
25 Nevada Bar No. 10571
26 1160 N. Town Center Dr., Ste. 200
27 Las Vegas, NV 89144
28 *Attorneys for Defendant*
Spring Mountain Treatment Center

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff's Complaint against Defendant, Spring Mountain must be dismissed because the claims asserted therein are medical malpractice allegations and the Complaint fails to attach an expert affidavit as required by statute. Although Plaintiff attempts to side-step the affidavit requirement by alleging general negligence as well as medical malpractice, it is clear that this case is based solely on an alleged act of medical malpractice. Therefore, Spring Mountain respectfully requests that the Complaint be dismissed.

II.

STATEMENT OF FACTS

This is a medical malpractice action arising out of the care and treatment rendered to Sean Szymborski at Spring Mountain. According to Plaintiff's complaint, Sean Szymborski, a mentally ill patient, was improperly discharged from Spring Mountain to Lee Szymborski's (Plaintiff) home in violation of NAC 449.332. See Plaintiff's Complaint, hereinafter **Exhibit A**. Further, as a result of this improper discharge, Sean Szymborski smashed the windows, walls, doors, furniture, and completely destroyed the interior of the residence before going missing for three weeks. *Id.* As a result of the alleged improper discharge, Plaintiff has filed suit against Spring Mountain for the damages to his residence as well as emotional distress suffered by Plaintiff. However, no expert affidavit supporting his claims was attached. Accordingly, Defendant Spring Mountain respectfully requests that Plaintiff's Complaint be dismissed.

///

///

III.

LEGAL STANDARD

NRCP 12(b) states in part:

[E]very defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

...

(5) failure to state a claim upon which relief can be granted.

On a motion to dismiss for failure to state a claim for relief, the trial court, and the Supreme Court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff. *Merluzzie v. Larson*, 96 Nev. 409, 411-12, 610 P.2d 739, 741 (1980) overruled on other grounds by *Smith v. Clough*, 106 Nev. 568, 796 P.2d 592 (1990). A complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief. *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 169, 400 P.2d 621, 624 (1965).

As set forth below, Plaintiff has failed to state a claim for relief for medical malpractice since Plaintiff did not attach an expert affidavit as required by statute.

IV.

ARGUMENT

A. Plaintiff's Complaint must be dismissed because it is not supported by an Expert Affidavit.

Dismissal of Plaintiff's Complaint is required by NRS 41A.071 because Plaintiff's claims are for medical malpractice but are not supported by an expert affidavit. NRS 41A.071 states:

[i]f an action for medical malpractice or dental malpractice is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit, supporting the allegations contained in the action,

1 submitted by a medical expert who practices or has practiced in an area that is
2 substantially similar to the type of practice engaged in at the time of the alleged
malpractice.

3 The Nevada Supreme Court has held that "under NRS 41A.071, a complaint filed without
4 a supporting expert affidavit is void ab initio and must be dismissed." *Washoe Med. Ctr. v.*
5 *Second Judicial Dist. Court*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006). And since "a void
6 complaint does not legally exist, it cannot be amended." *Id.* In *Washoe*, the Court reasoned that:

7
8 "shall" is mandatory and does not denote judicial discretion. The Legislature's
9 choice of the words "shall dismiss" instead of "subject to dismissal" indicates that
10 the legislature intended that the court have no discretion with respect to dismissal
11 and that a complaint filed without an expert affidavit would be void and must be
automatically dismissed.

12 *Id.* at 1303, 148 P.3d at 793-94. Moreover, the Court discussed the legislative intent underlying
13 NRS 41A.071, stating that the

14 legislative history further supports the conclusion that a complaint defective under
15 NRS 41A.071 is void NRS 41A.071 was adopted as part of the 2002
16 medical malpractice tort reform that abolished the Medical-Legal Screening
17 Panel. NRS 41A.071's purpose is to "lower costs, reduce frivolous lawsuits, and
18 ensure that medical malpractice actions are filed in good faith based upon
19 competent expert medical opinion." According to NRS 41A.071's legislative
20 history, the requirement that a complaint be filed with a medical expert affidavit
was designed to streamline and expedite medical malpractice cases and lower
overall costs, and the Legislature was concerned with strengthening the
requirements for expert witnesses.

21 *Id.* at 1304, 148 P.3d at 794. Accordingly, the Supreme Court has made it very clear that any
22 medical malpractice case must be dismissed if it is filed without an expert affidavit.

23 Here, Plaintiff is asserting that the Spring Mountain negligently discharged Sean
24 Szymborski in violation of NAC 449.332. It is clear that Plaintiff failed to file an expert
25 affidavit in support of his claims. Thus, the only question remains is whether this is a medical
26 malpractice claim.
27
28

1 NRS 41A.009 defines "medical malpractice" as "the failure of a physician, hospital or
2 employee of a hospital, in rendering services to use the reasonable care, skill or knowledge
3 ordinarily used under similar circumstances." The decision to discharge is a medical decision
4 and clearly falls under the definition of a hospital rendering services as set forth in NRS
5 41A.009. Thus, Plaintiff's allegations clearly fall under the requirements of NRS 41A.071.

6
7 NAC 449.332, the administrative code that Plaintiff relies on to support his claim,
8 further demonstrates that the decision to discharge is a medical decision. NAC 449.332 states in
9 part:

10 3. A hospital shall, at the earliest possible stage of hospitalization, identify each
11 patient who is likely to suffer adverse health consequences upon discharge if
12 the patient does not receive adequate discharge planning. The hospital shall
13 provide for an evaluation of the needs related to discharge planning of each
patient so identified.

14 NAC 449.332 (emphasis added). Thus, the decision to discharge requires medical care providers
15 to identify whether a patient will need additional health care based upon their diagnosis and
16 current medical status.

17
18 Plaintiff himself also acknowledges that the allegations in this case are medical in nature.
19 He specifically alleges that Defendants were "entrusted to provide medical care owed to patients
20 and a duty to provide adequate medical treatment..." Ex A at para 36. Plaintiff goes on to state
21 that "Defendant breached the duty of care by discharging the patient...in violation of discharge
22 policies and procedures, pursuant to NAC 449.332." Plaintiff's entire theory of liability is based
23 upon the allegation that Spring Mountain breached a duty owed to Plaintiff to provide his son
24 with medical treatment by improperly discharging him.

25
26 As a result of the above, it is undisputed that Plaintiff's Complaint is based solely on
27 allegations of medical malpractice and each cause of action relies solely on whether the
28

1 discharge of Sean Szymborski was medically negligent. Therefore, having failed to comply with
2 NRS 41A.071 by attaching an expert affidavit to the Complaint, Plaintiff's Complaint must be
3 dismissed.

4 **B. Plaintiff's claim for Punitive Damages fails as Plaintiff has not alleged facts that**
5 **warrant punitive damages against an employer under NRS § 42.007.**

6 As Plaintiff's causes of action are all based in medical malpractice, any claims for
7 punitive damages also must be dismissed. However, even if those claims survive, Plaintiff has
8 asserted no facts that support a claim for punitive damages against Spring Mountain.
9

10 Plaintiffs' are not entitled to punitive damages against Spring Mountain because
11 Plaintiff's Complaint merely alleges negligence by the hospital's employees; yet, it does not
12 allege any independent wrong-doing or ratification by the hospital itself as is required by law.
13 NRS § 42.007 governs an award of punitive damages against an employer for the conduct of
14 employees as follows:
15

16 Except as otherwise provided in subsection 2, in an action for the
17 breach of an obligation in which exemplary or punitive damages
18 are sought pursuant to subsection 1 of NRS 42.005 from an
19 employer for the wrongful act of his or her employee, the employer
is not liable for the exemplary or punitive damages unless;

- 20 (a) The employer had advance knowledge that the employee was
21 unfit for the purposes of the employment and employed the
22 employee with a conscious disregard of the rights or safety of
23 others;
24 (b) The employer expressly authorized or ratified the wrongful act
of the employee for which the damages are awarded; or
25 (c) The employer is personally guilty of oppression, fraud or
malice, express or implied.
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1 If the employer is a corporation, the employer is not liable for
2 exemplary or punitive damages unless the elements of paragraph
3 (a), (b) or (c) are met by an officer, director or managing agent of
4 the corporation who was expressly authorized to direct or ratify the
5 employee's conduct on behalf of the corporation.

...

6 Nev. Rev. Stat. § 42.007(1).

7 In this case, Plaintiff is requesting punitive damages against a corporation, Spring
8 Mountain, for the actions of its employees in treating Sean Szymborski's condition. While
9 Plaintiff does list Darryl Dubroca in his official capacity in the caption of the Complaint, there
10 are no allegations of any wrongdoing on his part or that he was aware or ratified any of the
11 alleged acts. In fact, the only mention of Mr. Dubroca in the Complaint is that he is the
12 CEO/Managing Director of Spring Mountain. Ex. A, at para. 2. Consequently, to succeed in this
13 request under NRS § 42.007, Plaintiffs must allege and prove one of the following:

- 14 • That an officer/director/managing agent of Spring Mountain had advance
15 knowledge that the employees attending to Sean Szymborski were unfit for their
16 employment, but nonetheless were employed with a conscious disregard of the
17 safety of others;
- 18 • That an officer/director/managing agent of Spring Mountain "expressly
19 authorized or ratified" the negligent treatment of Sean Szymborski; or
- 20 • That an officer/director/managing agent of Spring Mountain was himself/herself
21 guilty of "oppression, fraud or malice."

22 Here, there are no such allegations in the Complaint. On the contrary, Plaintiff merely
23 concludes that the alleged "negligent" treatment by Spring Mountain's *employees* warrants
24 punitive damages. Therefore, Plaintiffs' claims for punitive damages are insufficient as a matter
25 of law, and must be dismissed.

26 Moreover, as set forth above, Plaintiff's allegations against the hospital staff are for
27 negligence, which is not a permissible basis for a punitive damage claim. See NRS 42.005
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(stating that a plaintiff must, by clear and convincing evidence, prove "the defendant has been guilty of oppressions, fraud or malice . . ." to warrant punitive damages). "A plaintiff is never entitled to punitive damages as a matter of right." *Dillard Department Stores v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985)). "[E]ven unconscionable irresponsibility will not support a punitive damages award." *Maduikie v. Agency Rent-A-Car*, 114 Nev. 1, 5-6, 953 P.2d 24, 27 (1998)(quoting *First Interstate Bank v. Jafros Auto Body*, 106, Nev. 54, 57, 787 P.2d 765, 767 (1990)). The Nevada Supreme Court has further stated that "[s]ince its language plainly requires evidence that a defendant acted with a culpable state of mind, we conclude that NRS 42.001(1) denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence." *Countrywide v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243 (2008).

Thus, notwithstanding Plaintiff's inability to overcome the employer specific hurdles under NRS 42.007, Plaintiffs' allegations of negligent medical treatment are insufficient as a matter of law to warrant punitive damages. Therefore, Plaintiff's claim for punitive damages should be dismissed.

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///

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V.

CONCLUSION

Based upon the foregoing, Spring Mountain respectfully requests this Honorable Court issue an Order Dismissing, Plaintiffs' Complaint.

Dated this 22nd day of May, 2014.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Kerry J. Doyle, Esq.

Michael Prangle, Esq.

Nevada Bar No. 8619

Kerry J. Doyle, Esq.

Nevada Bar No. 10571

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant

Spring Mountain Treatment Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 22 day of May, 2014, I served a true and correct copy of the foregoing

DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS

attached hereto in a sealed envelope, via U.S. Mail, first-class postage pre-paid to the following parties at their last known address:

Lee E. Szymborski
4605 Black Stallion Avenue
Las Vegas, Nevada 89031
Plaintiff in Proper Person


An employee of HALL PRANGLE & SCHOONVELD, LLC

4821-1809-2059, v. 1

4810-8686-6440, v. 1

EXHIBIT A

1 fictitiously named Defendants is in some way liable to Plaintiff on the causes of action below and
2 therefore sues these defendants by such fictitious names. Plaintiff believes said fictitious
3 Defendants assisted, devised, schemed, planned or took part in the actions set forth hereinbelow.
4 Plaintiff will move to amend this Complaint and insert the true names and capacities of
5 fictitiously named Defendants when the same have been ascertained.

6 5. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, each actually and fictitiously names Defendant was the principal, agent, co-venturer,
8 partner, surety, guarantor, officer, director and/or employee of each co-defendant and in doing the
9 things herein alleged, was acting within the scope of authority and with the permission of each
10 co-defendant or took some part in the acts and omissions hereinafter set forth, and by reason
11 thereof, each of said Defendants is liable to Plaintiff for the relief prayed.

12 6. That on or about May 14, 2013, at approximately 3:30 p.m., Defendant SPRING
13 MOUNTAIN TREATMENT CENTER, 7000 W. Spring Mountain Road, Las Vegas, Nevada
14 89117, due an "UNAUTHORIZED UNSAFE DISCHARGE" of a mentally ill adult patient, to
15 wit: SEAN T. SZYMBORSKI, in violation of NAC 449.332, to the residence of Plaintiff. See
16 Exhibit "1".

17 7. That said SEAN T. SZYMBORSKI was provided a taxi ride, released without any
18 money; without appropriate medication, without the ability to care for himself, and being a
19 danger to both himself and other.

20 8. Defendant SPRING MOUNTAIN TREATMENT CENTER was directed by
21 KATHLEEN BUCHANAN to provide a Guardianship for Defendant SEAN T. SZYMBORSKI,
22 and failed to do so.

23 9. Defendant SPRING MOUNTAIN TREATMENT CENTER Caseworker
24 "REBECCA" was directed NOT to release SEAN T. SZYMBORSKI to the residence of
25 Plaintiff, however he was transported by taxi directly to the home of Plaintiff, where he smashed
26 windows, walls, doors, furniture, and completely destroyed the interior of the residence, before
27 going missing for three weeks. (A missing persons report was filed by NLVPD.)
28

10. An investigation by the Division of Public and Behavioral Health substantiated that Defendant SPRING MOUNTAIN TREATMENT CENTER was in violation of NAC 449.332, Discharge Planning, based upon evidence by interview of staff, record review and document review.

11. It was determined that the facility failed to assure the patient was discharged to a **safe environment** due to the following issues in this matter:

a. Patient was admitted to the facility on 5/3/13, and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.

b. On 5/13/13 at 1 p.m. the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.

c. On 5/15/13 at 2:0 p.m. the Masters of Art (MA) met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up patient's debit card prior to going to the new apartment.

d. Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.

e. The Patient Continuing Care Plan, dated 5/14/13 identified the parties was to go to father's home first then on to an address in North Las Vegas, Nevada.

f. The Acute Physician Discharge Progress Note on 5/14/13 at 8:50 a.m. documented the patient did not want to return to the patient's father's home due to ongoing conflict. The note documented the patient participated in treatment planning to find housing.

g. The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.

1 h. On 7/9/13 at 8:49 a.m. the Risk Manager confirmed the MA did not follow up on
2 verifying the identified apartment.

3 i. On 7/9/13 at 11:20 a.m., Licensed Social Worker (LSW) indicated multiple telephone
4 messages were left by the patient's father. The father would state the patient could return to the
5 home; the next telephone message from the father would demand the patient not be discharged to
6 the father's home. The LSW acknowledged she did not speak directly with the patient's father.
7 The LSW stated due to the large number of patients on the LSW's caseload, the LSW had to
8 delegate telephone calls and discharge planning to the MA.

9 j. The LSW indicated when a patient identified their own placement, the LSW would try
10 to obtain as much information as possible regarding the address and name of the apartment. If
11 unable to verify placement, the physician would be notified prior to discharge from the facility.

12 k. The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 a.m. documented
13 the patient did not want to return to his father's home due to ongoing conflict. The note
14 documented the patient participated in treatment planning to find housing.

15 12. An evaluation of the needs of a patient relating to discharge planning must include,
16 without limitation, consideration of:

17 a. The needs of the patient for postoperative services and the availability of those
18 services.

19 b. The capacity of the patient for self-care; and

20 c. The possibility of returning the patient to a previous care setting or making
21 another appropriate placement of the patient after discharge.

22 13. Defendant SPRING MOUNTAIN TREATMENT CENTER is in **violation of NAC**
23 **449.394**, Psychiatric Services, which requires that a hospital shall develop and carry out policies
24 and procedures for the provision of psychiatric treatment and behavioral management services
25 that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and
26 services are safely and appropriately used. The hospital shall ensure that the policies and
27 procedures protect the safety and rights of the parties - and the public at large.

1 14. That Defendant SPRING MOUNTAIN TREATMENT CENTER **has failed to met**
2 **these statutes and regulations**, for the reasons set forth above.

3 15. That due to the failure to meet these responsibilities, SEAN T. SZYMBORSKI, was
4 driven by taxi to the home of Plaintiff, and dropped off, at the expense of the Defendant SPRING
5 MOUNTAIN TREATMENT CENTER, where he proceeded to cause significant property
6 damage to Plaintiff's residence, and go missing.

7 16. That when SEAN T. SZYMBORSKI was located, he had sustained wounds from a
8 self inflicted injuries with a sharp object, using weapons obtained at the home of his mother; and
9 not at the home of his father.

10 17. The patient care plan, dated 5/14/13 indicated that safety concerns, including
11 weapons, in the patient's home were non-applicable and verified by the patient's father. There
12 was no documented evidence the patient's father was contacted for verification. Furthermore,
13 Defendant SPRING MOUNTAIN TREATMENT CENTER indicated they assisted in obtaining a
14 home for SEAN T. SZYMBORSKI, therefore, even confirming no weapons in father's home was
15 not reasonable to consider this non-applicable.

16 18. In violation of the stated statutes, it was determined that the LSW did not follow up
17 on identifying what weapons and if the patient had access to weapons prior to discharge. (8.0
18 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining
19 permission and contacting any person that may be able to located and secure items... Weapons are
20 not considered secured until verification has been received that the task is completed...")

21 19. Due to the inactions of Defendant SPRING MOUNTAIN TREATMENT CENTER,
22 SEAN T. SZYMBORSKI was convicted of criminal charges related to the property destruction at
23 the home of Plaintiff, rather than receiving treatment for his known mental illness.

24 20. Defendant SPRING MOUNTAIN TREATMENT CENTER acted in reckless
25 disregard of SEAN T. SZYMBORSKI's psychiatric condition in pre-paying for a taxi to dump
26 him at an verified location [Plaintiff's residence], without notice to occupants, without money,
27 and without the ability to provide care for himself due to long standing mental illness.

1 21. The failures of Defendant SPRING MOUNTAIN TREATMENT CENTER to deliver
2 the statutory mandated care to patients in their custody and control resulted in systematic
3 disregard of the serious psychological and medical conditions and resulted in adverse
4 consequences, which predictably flow from such failures, and caused damages to patients and
5 others, who became victims of such disregard.

6 22. Defendant SPRING MOUNTAIN TREATMENT CENTER is a for profit
7 corporation, whose estimated annual revenue is in excess of TWO BILLION DOLLARS
8 (\$2,000,000,000).

9 **FIRST CLAIM FOR RELIEF**

10 (NEGLIGENCE)

11 23. Plaintiff realleges and incorporates by reference all of the previous allegations of
12 this Complaint at this point as if set forth fully herein.

13 24. Nevada recognizes negligence claims, where a Plaintiff establishes: (1) the
14 existence of a duty of care (2) breach of that duty; (3) legal causation; and (4) damages.

15 25. Defendants, in the exercise of reasonable care had a duty to know, or should have
16 known, that they are required to comply with NAC 449.332, regarding DISCHARGE PLAN of
17 Patients; and with NRS 449.765 to 449.786.

18 26. Defendants breached their duty by failing to carefully investigate, monitor and/or
19 oversee discharge activities at SPRING MOUNTAIN TREATMENT CENTER, including but
20 not limited to, the development, implementation, and supervision of discharge policies and
21 practices.

22 27. That Defendants negligently and/or carelessly, permitted the dumping of SEAN T.
23 SZYMBORSKI, by taxi to the home of Plaintiff, without notice to Plaintiff, in violation of their
24 own internal policies; NAC 449.332; and NRS 449.865 to 449.786.

25 28. Defendants knew or should have known that patients, including SEAN T.
26 SZYMBORSKI are members of the class of patients that could foreseeably suffer injury to
27 themselves, and/or inflict injury on others, as a result of Defendants' failure to exercise
28

1 reasonable care in the discharge of their statutorily imposed duties, and/or common-law duties of
2 care.

3 29. As a direct and proximate result of the negligence and carelessness of Defendants,
4 Plaintiff has suffered extreme emotional and mental distress, further issues and conflict in the
5 family unit, in addition to approximately \$20,000 in physical damage to the residence, including
6 smashed windows, which required immediate action to secure assets in the residence, and other
7 damages the full extent of which shall be provided through discovery.

8 30. As a direct and proximate result of Defendants' acts or omissions, Plaintiff has
9 suffered punitive, general and special damages.

10 **SECOND CLAIM FOR RELIEF**

11 (Professional Negligence)

12 (Negligent act or omission to act by a provider of health care in rendering of professional
13 services, which act or omission is the proximate cause of a personal injury or wrongful death,
NRS 41A.015)

14 31. Plaintiff realleges and incorporates by reference all of the previous allegations of
15 this Complaint at this point as if set forth fully herein.

16 32. Defendants in the capacity of a for profit hospital providing medical care to the
17 public, government agencies overseeing the hospital's operations, licensed social workers,
18 registered nurses, psychiatrists, and the hospital administrator owed Plaintiff a duty to employ
19 medical staff adequately trained in the care and treatment of patients consistent with the degree
20 of skill and learning possessed by competent medical personnel practicing in the United States of
21 America under the same or similar circumstances; and a duty to comply with Nevada statutes,
22 including NRS 41A.015.

23 33. Defendants breached its duty of care by failing to function as a patient advocate by
24 providing proper care to the patients at the time of discharge, and specifically causing physical,
25 mental and emotional pain and suffering to the patient; as well as physical, mental and emotional
26 pain and suffering to the public at large, and specifically in this matter, to the Plaintiff.

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1 46. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
2 mental and emotional pain and suffering, in addition to financial loss.

3 WHEREFORE, Plaintiff prays judgement as follows:

4 1. For a temporary restraining order and/or preliminary injunction and permanent
5 injunction enjoining and restraining Defendants from continuing or repeating the unlawful
6 policies, practices and conduct complained of herein;

7 2. For declaratory judgment against Defendants' policies, practices and conduct as
8 alleged herein in violation of patient rights, and the safety of the public at large;

9 3. For compensatory damages according to proof;

10 4. For punitive damages in consideration of the annual income in excess of
11 \$2,000,000,000.

12 5. For emotional distress caused by the violations herein.

13 6. For costs of suit, including attorney fees, and other costs.

14 7. For such other and further relief as the Court may deem appropriate.

15 DATED this ____ day of ____, 2014

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18 LEE E. SZYMBORSKI
19 Plaintiff in Proper Person
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EXHIBIT 1

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
State Health Officer

STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH DIVISION

☐ Health Facilities/Lab Services
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-1030
Fax: (775) 684-1073

☒ Health Facilities/Lab Services
4220 S. Maryland Parkway
Suite 810, Building D
Las Vegas, NV 89119
(702) 486-6515
Fax: (702) 486-6520

☐ Radiation Control
4150 Technology Way
Suite 300
Carson City, Nevada 89706
(775) 687-7550
Fax: (775) 687-7552

☐ Radiation Control
2080 E. Flamingo
Suite 319
Las Vegas, Nevada 89119
(702) 486-5280
Fax: (702) 486-5024

☐ Child Care Licensing
727 Fairview Dr, Suite E
Carson City, Nevada 89701
(775) 684-4463
Fax: (775) 684-4464

☐ Child Care Licensing
4180 S. Pecos, Ste 150
Las Vegas, Nevada 89121
(702) 486-7918
Fax: (702) 486-6660

☐ Child Care Licensing
1010 Ruby Vista, Ste 101
Elko, Nevada 89801
(775) 753-1237
Fax: (775) 753-1336

May 22, 2013

Lee Szymborski
4605 Black Stallion Avenue
North Las Vegas, NV 89032

RE: Complaint # NV00035655

Dear Mr. Szymborski,

Thank you for alerting us about your dissatisfaction with Spring Mountain Treatment Center. We understand your concerns about admission, transfer and discharge, quality of care-responsible party not notified of patients change in condition, patient not assessed after change in condition, patient's medications improperly administered.

Our team of investigators will review your specific concerns, and evaluate the facility's actions, to determine if the facility is in compliance with state and/or federal regulations. Please refer to the enclosed fact sheet that describes the investigation process.

We will inform you of the investigation results, and send you a copy of the report. If you want to know the status of your complaint, please call the team supervisor, Rosemary Palladino-Marcus, HFI III, and refer to the complaint number listed above.

Please know that the Nevada State Health Division takes all complaints very seriously. By reporting your concerns, you play an important role in promoting the safety of health care recipients and improving the quality of care and services that facilities provide. We thank you.

Sincerely,

Johna Thacker, AAII/Complaint Intake Coordinator

cc: Rosemary Palladino-Marcus, Health Facilities Inspector III

Encl: 1 Page Complaint Process Fact Sheet

Public Health Working for a Safer and Healthier Nevada

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	Initial Comments This Statement of Deficiencies was generated as a result of a complaint investigation initiated on 6/25/13, and finalized in your facility on 7/9/13, in accordance with Nevada Administrative Code, Chapter 449, Hospital. The census at the time of the investigation was 63. Five discharged medical records were reviewed. Complaint #NV00035655 was substantiated with deficiencies cited. (See Tags S0146, S0153 and S0602) The findings and conclusions of any investigation by the Health Division shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.	S 000		
S 146 SS=D	NAC 449.332 Discharge Planning 4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of: (a) The needs of the patient for postoperative services and the availability of those services; (b) The capacity of the patient for self-care; and (c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to assure the patient was discharged to a safe environment for 1 of 5 sampled patients (Patient #1).	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HQS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 1</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/13/13 at 1:00 PM, the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.</p> <p>On 5/14/13 at 2:30 PM, the Masters of Art (MA) documented the MA met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up the patient's debit card prior to going to the new apartment.</p> <p>Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified the patient was to go to the father's home first then on to an address in North Las Vegas.</p> <p>The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 AM, documented the patient did not want to return to the patient's fathers home due to on-going conflict. The note</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 2 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 2</p> <p>documented the patient participated in treatment planning to find housing.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.</p> <p>On 7/9/13 at 11:20 AM, Licensed Social Worker (LSW) #2 explained multiple telephone messages were left by the patient's father. The father would state the patient could return to the father's home. The next telephone message from the father would demand the patient not be discharged to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW explained during the first meeting with the patient, the patient expressed a willingness to return to the father's home and would work on finding an apartment from the father's home. The LSW explained due to the large number of patient's on the LSW's case load, the LSW had to delegate telephone calls and discharge planning to the MA.</p> <p>The LSW explained when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If the LSW was unable to verify placement, the physician would be notified prior to discharge from the facility.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 146	Continued From page 3 Procedure: "...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager:... 4.4 Housing needs and/or placement issues;...4.8 Personal support systems..." "...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate, and documented in the medical record...5.2 Where and with whom the patient will live following discharge..." "...6.0 The Social Services Discharge Note is completed for every patient at the time of discharge. This note includes, but is not limited to: 6.1 Living arrangements..." Severity: 2 Scope: 1 Complaint #NV00035655	S 146			
S 153 SS=D	NAC 449.332 Discharge Planning 11. The patient, members of the family of the patient and any other person involved in caring for the patient must be provided with such information as is necessary to prepare them for the post-hospital care of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to notify 2 of 5 sampled patients families prior to discharge (Patient #1 and #5).	S 153			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

0090

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If continuation sheet 4 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 153	<p>Continued From page 4</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/10/13 at 9:00 AM, the LSW #2 documented the case manager received a voice mail from the patient's father saying the patient was not to return to his home. The LSW documented the case manager would assist the patient with alternative placement.</p> <p>On 5/10/13 at 11:15 AM, the MA documented the patient's father wanted the patient to return to his home, but not to be discharged "today".</p> <p>There was no further documented evidence the patient's father was contacted to confirm discharge to the patient's father's home.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the MA met with the patient. The patient requested the father's telephone number and told the father of being discharged and a taxi would transport the patient to the father's home.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented the discharge was not coordinated with the family. Documentation with the father on the day of discharge was not documented.</p> <p>On 7/9/13 at 9:50 AM, the Risk Manager acknowledged the facility should have arranged for the taxi driver to wait at the patient's father's</p>	S 153			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 5 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 153	<p>Continued From page 5</p> <p>house until the patient retrieved the debit card, then drive the patient to the new apartment.</p> <p>On 7/9/13 at 11:34 AM, LSW #2 explained the family member should be contacted prior to the patient's discharge to assure the family was alright with the patient returning home. The LSW acknowledged the patient's father should have been contacted by the facility staff prior to the patient being discharged.</p> <p>Four additional discharged medical records were reviewed.</p> <p>Patient #5</p> <p>Patient #5 was admitted to the facility on 6/4/13 and discharged on 6/18/13, with a diagnosis of major depressive disorder.</p> <p>There was no documented evidence the social worker/Case Manager notified the family of the patient's discharge. There was no documented evidence the family was educated on the patient's medications and follow up care needed. There was no family contact from the social worker/Case Manager after 6/6/13.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate,</p>	S 153			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 6 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 153	Continued From page 6 and documented in the medical record..." Severity: 2 Scope: 1 Complaint #NV00035655	S 153			
S 602 SS=D	NAC 449.394 Psychiatric Services 3. A hospital shall develop and carry out policies and procedures for the provision of psychiatric treatment and behavioral management services that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately used. The hospital shall ensure that the policies and procedures protect the safety and rights of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to identify what weapons were at Patient #1's mother's home and if the patient would have access to the weapons. Findings include: Patient #1 Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse. On 5/3/13 at 12:00 PM, the Comprehensive Assessment Tool documented patient had multiple scab areas on his legs. The Comprehensive Assessment Tool documented the patient's father stated the patient's wounds were self inflicted with a sharp object.	S 602			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 7 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 602	<p>Continued From page 7</p> <p>On 5/6/13 at 2:42 PM, LSW #1 documented weapons were at the patient's mothers home, but not at the patient's fathers home. The LSW did not identify what weapons were at the patient's mothers home. There was no documented evidence the patient's mother was contacted to verify where the weapons were located.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified safety concerns, including weapons in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the patient asked the MA if the taxi would be able to take the patient to the mother's house after the patient went to the father's house. The MA documented the patient would have to pay for any taxi after being dropped off at the father's house.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the LSW did not follow up on identifying what weapons and if the patient had access to the weapons prior to discharge.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>"8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to locate and secure the items...Weapons are not considered secured until verification has been received that the task is completed..."</p>	S 602			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 8 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER		STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 602	Continued From page 8 Severity: 2 Scope: 1 Complaint #NV00035655	S 602			

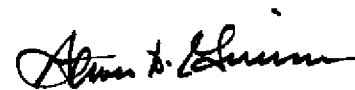
If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 9 of 9



CLERK OF THE COURT

1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 LEE E. SZYMBORSKI,

10 Plaintiff(s),

11 vs.

12
13 SPRING MOUNTAIN TREATMENT CENTER;
14 DARRYL DUBROCA,

15 Defendant(s),

Case No: A-14-700178-C
Dept No: XXXI

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Lee E. Szymborski

20 2. Judge: Joanna Kishner

21 3. Appellant(s): Lee E. Szymborski

22 Counsel:

23 Lee E. Szymborski
24 4605 Black Stallion Ave.
N. Las Vegas, NV 89031

25 4. Respondent (s): Spring Mountain Treatment Center; Darryl Dubroca

26 Counsel:

27 Michael Prangle, Esq.
28 1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144

1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A

2 Permission Granted: N/A

3 Respondent(s)'s Attorney Licensed in Nevada: Yes

4 Permission Granted: N/A

5 6. Appellant Represented by Appointed Counsel In District Court: No

6 7. Appellant Represented by Appointed Counsel On Appeal: N/A

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, May 20, 2014

8 ***Expires 1 year from date filed*

9 Appellant Filed Application to Proceed in Forma Pauperis: N/A

10 9. Date Commenced in District Court: May 2, 2014

11 10. Brief Description of the Nature of the Action: NEGLIGENCE - Medical/Dental

12 Type of Judgment or Order Being Appealed: Judgment

13 11. Previous Appeal: No

14 Supreme Court Docket Number(s): N/A

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 28 day of August 2014.

18 Steven D. Grierson, Clerk of the Court

19 

20 Teodora Jones, Deputy Clerk

21 200 Lewis Ave

22 PO Box 551601

23 Las Vegas, Nevada 89155-1601

24 (702) 671-0512

Name

Lee E. Szymboriski

Address

4605 Black Station Avenue

City

WLV, NV. 89031

Email

leeszymboriski@outlook.com

Telephone

(702) 609-6762

FILED

SEP 17 1 16 PM '14

Ann L. Johnson
CLERK OF THE COURT

District Court

Clark County, Nevada

Lee E Szymboriski

Plaintiff,

Case No.: A-14-700178-C

Department: XXXI

Spring Mountain Treatment Center
vs.
DARRY DUBOCA IN HIS OFFICIAL CAPACITY
DOES 1-XX INCLUSIVE AND
ROE CORPORATIONS 1-XX INCLUSIVE
Defendant

A-14-700178-C
ADDM
Addendum
4263040



ADDENDUM
Notice of Motion

Please take notice that the hearing on ~~Motion For~~ Addendum to
~~Motion For Reconsideration~~ in the Alternative Motion to Set Aside
will be heard on Sept. 19th, 2014 in Department XXXI Floor Courtroom
at the hour of 3 AM/PM.

Dated this 16 day of Sept, 2014

Notice of Motion - I

RECEIVED
SEP 17 2014
CLERK OF THE COURT

0001

1 Lee E. Szymborski
(Name)
2 4605 Black Stallion Avenue.
(Address)
3 North Las Vegas, NV. 89031
(City, State, Zip)
4 (702) 609-6762
(Telephone)
5 leeszymborski@aol.com
(E-mail Address)

6 Plaintiff/ Defendant, In Proper Person

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 LEE E Szymborski

11 Plaintiff(s),

Case No.: A-14-700178-C
Dept. No.: XXXI

12 vs. Spring Mountain Treatment Center

13 Darryl Dubrova in his official capacity
14 DOES 1-XX inclusive AND
15 ROE CORPORATION, 1-XX inclusive
16 Defendant(s).

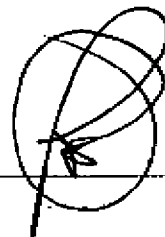
17 ~~ADDENDUM~~ **ADDENDUM** to
18 MOTION FOR RECONSIDERATION of the
19 ALTERNATIVE MOTION TO SET ASIDE.
(Insert Title of Motion)

20 (Check one box) Plaintiff Defendant, (insert your name)

LEE E. Szymborski

21 _____, appearing in proper person, submits this
22 motion based upon the following Memorandum of Points and Authorities; the pleadings and
23 papers on file in this case; the attached exhibits hereto, if any; and the argument allowed by the
24 Court at the time of hearing.

25 DATED: 9/16, 2014.

26 

(Signature)

Spring Mountain Treatment Center, Darryl Duboca

NOTICE OF MOTION

TO: In his official capacity, DOES I-XX inclusive ROE Corporations /XX
(Name of Nonmoving Party) inclusive

Hall, Prangle, + Schoonveld, LLC (Name of Nonmoving Party's Attorney)

(NOTE: Sign below, but DO NOT insert date and time for hearing. The court clerk will complete upon filing.)

YOU AND EACH OF YOU take notice that on the 19th day of September,
2014, at the hour of 3 o'clock A.m., of said day, the above **MOTION FOR Reconsideration**
or in the alternative Motion to Set Aside will be heard in Department
1 of the above-entitled Court.

DATED: 9/16, 2014.

[Signature]
Plaintiff/Defendant, In Proper Person

MEMORANDUM OF POINTS AND AUTHORITIES

Under Rule 60(2) Newly Discovered
Evidence

Attached is the expert Affidavit (Exhibit D)
as required by NRS 41A.071
signed by Kyle Devine (gub Rep for)
Dept. of Health + Human Services
Division of Public and Behavioral Health
State of Nevada Brian Samouel Governor
Michael J. Wilken Director Richard White, MS Administration
Tracey D. Green M.D Chief Medical Officer

(Check if continued on attached pages)

DATED: 9/16, 2014.

[Signature]
(Signature)

EXHIBIT D

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

727 Fairview Dr., Suite E, Carson City, NV 89701

Telephone: 775-684-1030, Fax: 775-684-1073

www.health.nv.gov

CERTIFIED MAIL# 9171 9690 0935 0037 8520 44

September 12, 2014

Lee Szymborski
4605 Black Stallion Ave.
North Las Vegas, NV 89031

Re: Complaint Number NV00035685

Dear Mr. Szymborski,

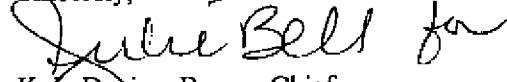
This letter will follow your telephone conversation with Donna McCafferty, Health Program Manager III, conducted on 8/28/14. This letter, along with the associated Statement of Deficiencies (SOD) enclosed, and evidence Complaint Number NV00035685 against Spring Mountain Treatment Center was substantiated. The investigator substantiated the allegation the facility failed to ensure a resident was discharged to a safe environment. The investigator substantiated the allegation the facility failed to notify a patient's family member prior to their discharge. The investigator substantiated the allegation the facility failed to identify potential weapons, and access to weapons upon discharge. The enclosed SOD provides additional specific information regarding the substantiated allegations.

During the investigation, the State Inspector interviewed patients/residents, reviewed their records, interviewed staff, and made observations while the facility or agency was in operation. The facility's or agency's actions were evaluated using applicable state and/or federal rules and regulations to determine if they were in compliance.

Based on the completed investigation, it was concluded that the facility or agency was not in compliance with rules and/or regulations.

Thank you for reporting your concerns.

Sincerely,


Kyle Devine, Bureau Chief

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	--	--	---

NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE, 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
--	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of a complaint investigation initiated on 6/25/13, and finalized in your facility on 7/9/13, in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the investigation was 63. Five discharged medical records were reviewed.</p> <p>Complaint #NV00035655 was substantiated with deficiencies cited. (See Tags S0146, S0153 and S0602)</p> <p>The findings and conclusions of any investigation by the Health Division shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws.</p>	S 000		
S 146 SS=D	<p>NAC 449.332 Discharge Planning</p> <p>4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of:</p> <p>(a) The needs of the patient for postoperative services and the availability of those services;</p> <p>(b) The capacity of the patient for self-care; and</p> <p>(c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge.</p> <p>This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to assure the patient was discharged to a safe environment for 1 of 5 sampled patients (Patient #1).</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 1</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/13/13 at 1:00 PM, the Nursing Progress Note documented the patient had much trepidation about going back to the father's home. The patient was restless when talking about the father.</p> <p>On 5/14/13 at 2:30 PM, the Masters of Art (MA) documented the MA met with the patient to confirm the address of the apartment. The MA documented the patient was vague about the address. The patient needed to stop by the father's home to pick up the patient's debit card prior to going to the new apartment.</p> <p>Review of the Social Services Discharge Note revealed the patient would live in an apartment upon discharge. There was no documented evidence of an address for the apartment. There was no documented evidence the Case Manager confirmed the patient had made arrangements to live in the apartment.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified the patient was to go to the father's home first then on to an address in North Las Vegas.</p> <p>The Acute Physician Discharge Progress Note, on 5/14/13 at 8:50 AM, documented the patient did not want to return to the patient's fathers home due to on-going conflict. The note</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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If continuation sheet 2 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HQS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	---	--	--

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	<p>Continued From page 2</p> <p>documented the patient participated in treatment planning to find housing.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented placement to the apartment was not verified.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the MA did not follow up on verifying the identified apartment.</p> <p>On 7/9/13 at 11:20 AM, Licensed Social Worker (LSW) #2 explained multiple telephone messages were left by the patient's father. The father would state the patient could return to the father's home. The next telephone message from the father would demand the patient not be discharged to the father's home. The LSW acknowledged she did not speak directly with the patient's father. The LSW explained during the first meeting with the patient, the patient expressed a willingness to return to the father's home and would work on finding an apartment from the father's home. The LSW explained due to the large number of patient's on the LSW's case load, the LSW had to delegate telephone calls and discharge planning to the MA.</p> <p>The LSW explained when a patient identified their own placement, the LSW would try to obtain as much information as possible regarding the address and name of the apartment. If the LSW was unable to verify placement, the physician would be notified prior to discharge from the facility.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p>	S 146		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 3 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
---	--	--	---

NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 146	Continued From page 3 Procedure: "...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager:... 4.4 Housing needs and/or placement issues;...4.8 Personal support systems..." "...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate, and documented in the medical record...5.2 Where and with whom the patient will live following discharge..." "...6.0 The Social Services Discharge Note is completed for every patient at the time of discharge. This note includes, but is not limited to: 6.1 Living arrangements..." Severity: 2 Scope: 1 Complaint #NV00035655	S 146		
S 153 SS=D	NAC 449.332 Discharge Planning 11. The patient, members of the family of the patient and any other person involved in caring for the patient must be provided with such information as is necessary to prepare them for the post-hospital care of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to notify 2 of 5 sampled patients families prior to discharge (Patient #1 and #5).	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 4 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HQS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

**7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 4</p> <p>Findings include:</p> <p>Patient #1</p> <p>Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse.</p> <p>On 5/10/13 at 9:00 AM, the LSW #2 documented the case manager received a voice mail from the patient's father saying the patient was not to return to his home. The LSW documented the case manager would assist the patient with alternative placement.</p> <p>On 5/10/13 at 11:15 AM, the MA documented the patient's father wanted the patient to return to his home, but not to be discharged "today".</p> <p>There was no further documented evidence the patient's father was contacted to confirm discharge to the patient's father's home.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the MA met with the patient. The patient requested the father's telephone number and told the father of being discharged and a taxi would transport the patient to the father's home.</p> <p>The Risk Manager investigated a telephone complaint from the patient's father. The Administrative Review documented the discharge was not coordinated with the family. Documentation with the father on the day of discharge was not documented.</p> <p>On 7/9/13 at 9:50 AM, the Risk Manager acknowledged the facility should have arranged for the taxi driver to wait at the patient's father's</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 5 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	<p>Continued From page 5</p> <p>house until the patient retrieved the debit card, then drive the patient to the new apartment.</p> <p>On 7/9/13 at 11:34 AM, LSW #2 explained the family member should be contacted prior to the patient's discharge to assure the family was alright with the patient returning home. The LSW acknowledged the patient's father should have been contacted by the facility staff prior to the patient being discharged.</p> <p>Four additional discharged medical records were reviewed.</p> <p>Patient #5</p> <p>Patient #5 was admitted to the facility on 6/4/13 and discharged on 8/18/13, with a diagnosis of major depressive disorder.</p> <p>There was no documented evidence the social worker/Case Manager notified the family of the patient's discharge. There was no documented evidence the family was educated on the patient's medications and follow up care needed. There was no family contact from the social worker/Case Manager after 6/6/13.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>Procedure:</p> <p>"...4.0 In developing the continuing care plan, the following is evaluated by the Case Manager...4.8 Personal support systems..."</p> <p>"...5.0 Continuing care plans are communicated to the patient and family/guardian, as appropriate,</p>	S 153		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 6 of 8

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 153	Continued From page 6 and documented in the medical record..." Severity: 2 Scope: 1 Complaint #NV00035655	S 153		
S 602 SS=D	NAC 449.394 Psychiatric Services 3. A hospital shall develop and carry out policies and procedures for the provision of psychiatric treatment and behavioral management services that are consistent with NRS 449.765 to 449.786, inclusive, to ensure that the treatment and services are safely and appropriately used. The hospital shall ensure that the policies and procedures protect the safety and rights of the patient. This Regulation is not met as evidenced by: Based on interview, record review and document review, the facility failed to identify what weapons were at Patient #1's mother's home and if the patient would have access to the weapons. Findings include: Patient #1 Patient #1 was admitted to the facility on 5/3/13 and discharged on 5/14/13 with diagnoses including psychosis not otherwise specified and spice abuse. On 5/3/13 at 12:00 PM, the Comprehensive Assessment Tool documented patient had multiple scab areas on his legs. The Comprehensive Assessment Tool documented the patient's father stated the patient's wounds were self inflicted with a sharp object.	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 7 of 9

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 07/09/2013
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

SPRING MOUNTAIN TREATMENT CENTER

7000 WEST SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89117

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 602	<p>Continued From page 7</p> <p>On 5/8/13 at 2:42 PM, LSW #1 documented weapons were at the patient's mothers home, but not at the patient's fathers home. The LSW did not identify what weapons were at the patient's mothers home. There was no documented evidence the patient's mother was contacted to verify where the weapons were located.</p> <p>Patient Continuing Care Plan, dated 5/14/13, identified safety concerns, including weapons in the patient's home were non-applicable and verified by the patient's father. There was no documented evidence the patient's father was contacted for verification.</p> <p>On 5/14/13 at 2:30 PM, the MA documented the patient asked the MA if the taxi would be able to take the patient to the mother's house after the patient went to the father's house. The MA documented the patient would have to pay for any taxi after being dropped off at the father's house.</p> <p>On 7/9/13 at 8:49 AM, the Risk Manager confirmed the LSW did not follow up on identifying what weapons and if the patient had access to the weapons prior to discharge.</p> <p>Continuing Care Plan Discharge Planning, Interdisciplinary Policy #PC.067, revised 4/13, documented:</p> <p>"8.0 Securing Weapons...Social Services staff initiates attempts to secure the weapons, obtaining permission and contacting any person that may be able to locate and secure the items...Weapons are not considered secured until verification has been received that the task is completed..."</p>	S 602		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 8 of 8

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS3268HOS1	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 07/09/2013
NAME OF PROVIDER OR SUPPLIER SPRING MOUNTAIN TREATMENT CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 7000 WEST SPRING MOUNTAIN ROAD LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 602	Continued From page 8 Severity: 2 Scope: 1 Complaint #NV00035655	S 602			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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If continuation sheet 9 of 9

FILED

SEP 17 2 21 PM '14

Ann L. Pearson
CLERK OF THE COURT

1 Lee Symborski
(Name)
2 4605 Black Stallion Ave.
(Address)
3 NLV, NV. 89031
(City, State, Zip)
4 (702) 609-6762
(Telephone)

5 ☒ Plaintiff/ ☐ Defendant, Pro Se

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 LEE E. Symborski

Case No.: A-14-700178-C
Dept. No.: XXX1

11 Spring Mountain Plaintiff(s), Treatment Center
DAERYL DUBOCCA in his official capacity
12 DOES 1-XX INCLUSIVE AND ROE
CORPORATIONS 1-XX INCLUSIVE
13 Defendant(s).

Date of Hearing: 9/19th/2014
Time of Hearing: 3:00 AM

15 CERTIFICATE OF MAILING

16 I HEREBY CERTIFY that on the 17 day of Sept., 2014, I placed a true
17 and correct copy of the following document: "ADDENDUM" TO

18 MOTION For Reconsideration, or in the Alternative Motion to Set Aside
19 OVERNIGHT GUARANTEED DELIVERY BY 12:00 NOON
in the United States Mail, with first-class postage prepaid, addressed to the following:

DOWNTOWN STA
LAS VEGAS, Nevada
891019997

09/17/2014 3148830008 -0099 01:39:55 PM
(702)382-5779

Product Description	Sales Receipt		Final Price
	Qty	Unit Price	

LAS VEGAS NV 89144-0561			\$16.95
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Zone-0
Priority Mail Express 1-Day

USPS Tracking #: 9505 700 0000
EX37 0893 2010 S

Scheduled Delivery Day: Thu 09/18/14
2:00PM - Money Back Guarantee
includes \$100 insurance

Signature Requested

Issue Postage: \$16.95

Total: \$16.95

Paid by:

Per NRS 53.045, I declare under penalty of perjury
that the foregoing is true and correct.

[Signature]
☒ Plaintiff/ ☐ Defendant, Pro Se

(signature)
(print name)

A-14-700178-C
CERT
Certificate of Mailing
4253890



1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 LEE SZYMBORSKI;

5 PLAINTIFF(S),

6 VS.

7 SPRING MOUNTAIN TREATMENT
8 CENTER, *et al.*,

9 DEFENDANT(S).

Case No.: A-14-700178-0
Electronically Filed
09/23/2014 02:04:52 PM
Dept. No.: XXXI



CLERK OF THE COURT

11
12 **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION, OR IN**
13 **THE ALTERNATIVE, MOTION TO SET ASIDE**

14 This matter came on for hearing on September 19, 2014, before
15 Department XXXI's Chamber's Calendar on Plaintiff's Motion for
16 Reconsideration, or in the Alternative, Motion to Set Aside. Having reviewed the
17 papers, pleadings, documents and file, oral arguments of counsel at the June 24,
18 2014, hearing on the underlying motion, the supplemental pleading and all
19 applicable statutes and case law, the Court finds as follows:

20 **FINDINGS OF FACT**

21
22 1. On May 2, 2014, Plaintiff filed his Complaint alleging negligence,
professional negligence, malpractice, gross negligence, negligence per se and
negligent hiring, supervision and training against Spring Mountain Treatment
Center and Darryl Dubroca, in his official capacity as CEO/Managing Director of
Spring Mountain Treatment Center. Attached to the Complaint was a letter from

RECEIVED

SEP 23 2014

CLERK OF THE COURT

47
28
JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

1 the State of Nevada, Department of Health and Human Services, Health Division,
2 which included a "complaint process fact sheet." That letter was signed by Johna
3 Thacker, AAIL/ Complaint Intake Coordinator. The letter and "fact sheet" were
4 not signed by a medical expert compliant with NEV. REV. STAT. § 41A.071
5

6 2. The Complaint, however did not have an affidavit of a medical
7 expert pursuant to NEV. REV. STAT. § 41A.071.

8 3. The Complaint alleges that Defendants were negligent in providing
9 treatment to patient Sean Szymborski. Specifically, Plaintiff alleges, *inter alia*,
10 that the improper discharge of the patient resulted in \$20,000 in damage to
11 Plaintiff's residence. The Complaint further alleges a failure to provide necessary
12 medical and psychiatric care for the patient resulted in damage to Plaintiff.
13

14 4. On May 22, 2014, Defendant Spring Mountain Treatment Center
15 filed a Motion to Dismiss Complaint based on the failure to attach an affidavit in
16 compliance with NEV. REV. STAT. § 41A.071. Defendant Darryl Dubroca joined in
17 that motion on May 29, 2014.

18 5. Plaintiff filed an Opposition to the motion on June 13, 2014. There
19 was no certificate of service attached.
20

21 6. The parties appeared for oral argument on the motion on June 24,
22 2014, before the Honorable Senior Judge T. Joseph Bonaventure. At the
23 hearing, counsel for Defendants indicated he had never been served with the
24 opposition, but had no objection to the Court considering the opposition and
25 proceeding with oral argument. The Court found that the Motion to Dismiss was
26 meritorious, and granted the motion. That ruling was reduced to writing in an
27
28

1 Order signed on July 21, 2014, and filed by Defendants on July 23, 2014. The
2 notice of entry of that Order was filed on July 30, 2014.

3 7. On August 7, 2014, Plaintiff filed the instant Motion for
4 Reconsideration, or in the Alternative, to Set Aside. Although the motion did not
5 include a certificate service, an Opposition was filed by both Defendants on
6 August 25, 2014.

7 8. Also on August 25, 2014, Plaintiff filed a Notice of Appeal to the
8 Nevada Supreme Court of the Order on the Motion to Dismiss.
9

10
11 **CONCLUSIONS OF LAW**

12 1. In the instant case, on August 25, 2014, Plaintiff filed a Notice of
13 Appeal regarding the Court's ruling, Granting Defendants' Motion to Dismiss.
14 Thus, prior to determining the propriety of the instant Motion for Reconsideration,
15 the Court needs to determine whether it has jurisdiction to hear the Motion given
16 the purported appeal. Pursuant to *Mack-Manley v. Manley*, 122 Nev. 849, 855,
17 138 P.3d 525, 529-30 (2006), a properly filed notice of appeal vests jurisdiction in
18 the Supreme Court, and the district court is divested of jurisdiction to consider
19 any issues that are pending before Supreme Court on appeal. *Mack-Manley v.*
20 *Manley* states:
21
22

23 This court has consistently explained that "a timely notice of appeal
24 divests the district court of jurisdiction to act and vests jurisdiction in
25 this court" and that the point at which jurisdiction is transferred from
26 the district court to this court must be clearly defined. Although,
27 when an appeal is perfected, the district court is divested of
28 jurisdiction to revisit issues that are pending before this court, the
district court retains jurisdiction to enter orders on matters that are

1 collateral to and independent from the appealed order, *i.e.*, matters
2 that in no way affect the appeal's merits.

3 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006).

4 Additionally, the Nevada Supreme Court in *Foster v. Dingwall*, 126 Nev.
5 Adv. Op. 5, 228 P.3d 453, 455 (2010) set forth that during pendency of appeal,
6 the district court in considering a motion for relief from order or judgment
7 challenged on appeal retains jurisdiction to direct briefing on the motion, hold a
8 hearing regarding the motion, and enter an order denying the motion, but lacks
9 jurisdiction to enter an order granting such a motion. *See also* NEV. R. Civ. P.
10 60(b)(2). Pursuant to applicable precedent, the Court finds it has jurisdiction to
11 determine the pending Motion for Reconsideration.

12 2. As noted herein, a Court has the inherent authority to reconsider its
13 prior orders. *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975).
14 Pursuant to *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga &*
15 *Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997), the trial court may reconsider a
16 previously decided issue if substantially different evidence is subsequently
17 introduced, or if the prior decision is clearly erroneous.

18 3. Within the Eighth Judicial District Court, when a party seeks
19 reconsideration of a Court's previous order, not only must the party comply with
20 the Nevada Rules of Civil Procedure, the party must also comply with EDCR
21 2.24(b). EDCR 2.24(b) requires "[a] party seeking reconsideration of a ruling of
22 the court, other than any order which may be addressed by motion pursuant to
23 N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days
24 after service of written notice of the order or judgment[.]" EDCR 2.24(b).

25 4. Pursuant to EDCR 2.24(b), Plaintiff's Motion for Reconsideration
26 was timely filed.
27
28

1 5. In evaluating a Motion for Reconsideration, the Court engages in a
2 two-step process. First, the Court determines in accordance with N.R.C.P.
3 60(b)'s provisions if there is "mistake, inadvertence, surprise or excusable
4 neglect[.]" If the first step is met, then the Court reviews the evidence to
5 determine if a different result should occur. In Nevada, "[o]nly in very rare
6 instances in which new issues of fact or law are raised supporting a ruling
7 contrary to the ruling already reached should a motion for rehearing be granted."
8 *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113
9 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing *Moore v. City of Las Vegas*, 92
10 Nev. 402, 405, 551 P.2d 244, 246 (1976)).

11 6. Here, Plaintiff has not provided any new facts or evidence and has
12 not shown that the prior decision was clearly erroneous, nor is there any showing
13 of any mistake, inadvertence, surprise, or excusable neglect. Instead, the Motion
14 for Reconsideration points to the attachments to the Complaint to attempt to
15 assert that he was compliant with NEV. REV. STAT. § 41A.071. His attempt to
16 show compliance, however fails. NEV. REV. STAT. § 41A.071 specifically requires
17 that when there is a claim for medical malpractice such as in the instant case, an
18 affidavit from a medical expert must be attached to the Complaint. Plaintiff failed
19 to attach any affidavit compliant with the statute. Specifically, the purported
20 documents from the Department of Health and Human Services, Health Division
21 which were attached to the Complaint do not meet the affidavit requirement.
22 Indeed, the Court previously held that the documents provided by Plaintiff are
23 clearly not compliant with the statute.

24 7. In the present case, although Plaintiff failed to submit new law or
25 facts, making the motion procedurally deficient, the Court still evaluated its prior
26 decision to determine whether the Motion to Dismiss was properly granted. After
27
28

1 a full review, the Court finds that the Motion to Dismiss was properly granted as
2 set forth in further detail below.

3 8. NEV. REV. STAT. § 41A.009 defines medical malpractice as "the
4 failure of a physician, hospital, or employee of a hospital, in rendering services,
5 to use the reasonable care, skill or knowledge ordinarily used under similar
6 circumstances."

7 9. NEV. REV. STAT. § 41A.071 provides, in part that "If an action for
8 medical malpractice...is filed in the district court, the district court *shall* dismiss
9 the action, without prejudice, if the action is filed without an affidavit, supporting
10 the allegations contained in the action, submitted by a medical expert who
11 practices or has practiced in an area that is substantially similar to the type of
12 practice engaged in at the time of the alleged malpractice." (emphasis added)

13 10. It is clear that the allegations in the Complaint all fall under the
14 definition of medical malpractice as defined by statute. The Complaint alleges
15 failures on the behalf of physicians, a hospital and employees of a hospital in
16 treating a patient which resulted in harm to Plaintiff. Nowhere in the statute is
17 medical malpractice defined in such a way that the harms resulting must be felt
18 only by the patient in order to be considered malpractice. As such, although
19 Plaintiff was not a patient, the damages sought still fall under the definition of
20 medical malpractice.

21 11. There is also nothing in the record to suggest even minimal
22 compliance with NEV. REV. STAT. § 41A.071. The only document attached to the
23 Complaint was a letter from a Complaint Intake Coordinator for the Department
24 of Health. The letter does not claim to support any of the allegations in the
25 Complaint nor does its author claim to be a medical expert of any kind. In
26 opposition to the Motion to Dismiss, Plaintiff argued only that the claims were
27
28

1 ordinary negligence, and did not claim that a conforming affidavit was ever
2 attached to the Complaint.

3 12. As the Court finds that its previous Order was legally sound and in
4 accordance with applicable statutes and caselaw, the instant Motion for
5 Reconsideration, or in the Alternative, to Set Aside, is appropriately DENIED.

6 13. Furthermore, although leave to amend the Complaint was not
7 requested, it would not be appropriate as noncompliance with NEV. REV. STAT. §
8 41A.071 renders a complaint *void ab initio*, and no subsequent amendments can
9 cure the defect. *Washoe Medical Center v. Second Judicial District Court*, 122
10 Nev. 1298, 148 P.3d 790 (2006).

11
12 **ORDER**

13 Based upon the foregoing, It is hereby **ORDERED, ADJUDGED, AND**
14 **DECREED**, that Plaintiff's Motion for Reconsideration, or in the Alternative, to Set
15 Aside, is DENIED as set forth herein.

16
17 Dated this 19th day of September, 2014.

18
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20 
21 JOANNA S. KISHNER
22 DISTRICT COURT JUDGE
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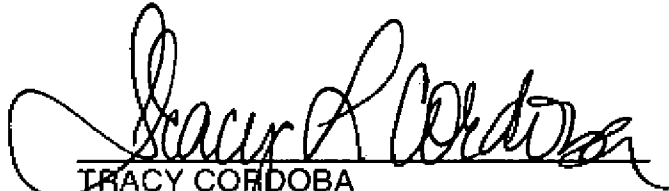
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

LEE SZYMBORSKI
4605 E BLACK STALLION AVE
NORTH LAS VEGAS, NV 89031

KERRY DOYLE
HALL PRANGLE & SCHOONVELD, LLC


TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

June 24, 2014

A-14-700178-C	Lee Szymborski, Plaintiff(s)
	vs.
	Spring Mountain Treatment Center, Defendant(s)

June 24, 2014 9:30 AM All Pending Motions

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES

PRESENT:	Doyle, Kerry J.	Attorney
	Szymborski, Lee E	Plaintiff

JOURNAL ENTRIES

- DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS...DARRYL DUBROCA'S JOINDER TO SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO DISMISS

Mr. Doyle states he was not served with opposition, happened to notice opposition online late yesterday. Court noted to Mr. Szymborski documents must be properly served. Mr. Doyle argued medical malpractice claim, no affidavit. Mr. Szymborski argued this is an action of negligence, has nothing to do with medical malpractice. Further arguments by Mr. Szymborski. Court stated its findings and ORDERED, Defendant Spring Mountain Treatment Center's Motion to Dismiss and the Joinder thereto are GRANTED; both Spring Mountain Treatment Center and Darryl Dubroca are Dismissed. Mr. Doyle to prepare the order, circulating to Plaintiff. Matter SET for Status Check regarding receipt of proposed order.

7/11/14 STATUS CHECK: ORDER (CHAMBERS)

PRINT DATE: 12/15/2014

Page 1 of 2

Minutes Date: June 24, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

September 19, 2014

A-14-700178-C Lee Szymborski, Plaintiff(s)
vs.
Spring Mountain Treatment Center, Defendant(s)

**September 19, 2014 3:00 AM Motion For
Reconsideration**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court NOTED a Decision and Order has been filed, denying the motion.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated December 8, 2014, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 233.

LEE E. SZYMBORSKI,

Plaintiff(s),

vs.

SPRING MOUNTAIN TREATMENT
CENTER,

Defendant(s),

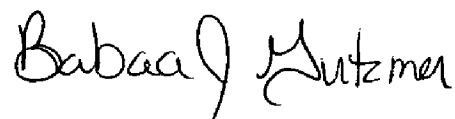
Case No: A700178

Dept. No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 15 day of December 2014.

Steven D. Grierson, Clerk of the Court



Barbara J. Gutzmer, Deputy Clerk