

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

Electronically Filed
Aug 13 2015 10:55 a.m.
Tracie K. Lindeman
Clark of Supreme Court

(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.
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 5/6/13 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		

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If continuation sheet 8 of 9

Division of Public and Behavioral Health

PRINTED: 09/04/2013
FORM APPROVED

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		

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STATE FORM

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If continuation sheet 9 of 9


CLERK OF THE COURT

1 ASTA

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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
11 Plaintiff(s),

12 vs.

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

1 Name Lee E. Szymborski
2 Address 4605 Black Station Avenue
3 City NLV, NV. State 89031
4 Email leeszymborski@outlook.com
5 Telephone (702) 609-6762

FILED

SEP 17 1 16 PM '14

Ann L. Schmitt
CLERK OF THE COURT

District Court
Clark County, Nevada

Lee E Szymborski

Plaintiff,

Case No.: A-14-700178-C

Department: XXXI

13 Spring Mountain Treatment Center
14 DARRY DUBOCA in his official capacity
15 DOES 1-XX INCLUSIVE AND
16 ROE CORPORATION'S 1-XX INCLUSIVE
Defendant

A-14-700178-C
ADDM
Addendum
4253040



ADDENDUM
Notice of Motion

18 Please take notice that the hearing on ~~Motion For~~ Addendum To
19 Motion For Reconsideration on the Alternative Motion To Set Aside
20 will be heard on Sept. 19th, 2014 in Department XXXI Floor Courtroom
21 at the hour of 3 (AM/PM).

Dated this 16 day of Sept, 2014

[Signature]

RECEIVED
SEP 17 2014
CLERK OF THE COURT

14

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@artlook.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 Dubera in his official capacity

14 DOES I-XX inclusive AND

15 ROE CORPORATIONS I-XX inclusive

16 Defendant(s).

17 ~~Amended~~ **1 MONITOR**

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, + Schoonvelo, 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 Ben for)
Dept. of Health + Human Services
Division of Public and Behavioral Health
State of Nevada Brian Samoual Governor
Michael J. Willden Director Richard White, MS Administrator
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, are 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

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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		
(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			

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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 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.

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If continuation sheet 3 of 8

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
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		

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If continuation sheet 4 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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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: NVS3268H081	(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

6020

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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 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
---	--	--	---

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 8

PRINTED: 08/28/2014
FORM APPROVED

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

APPELLANT 222

FILED

SEP 17 2 21 PM '14

Ann L. Johnson
CLERK OF THE COURT

X45

1 Lee Szymborski
(Name)
2 4605 Black Stallion Ave.
(Address)
3 NLV, NV. 89031
(City, State, Zip)
4 (702) 609-6762
(Telephone)

5 ☒ Plaintiff/ ☐ Defendant, Pro Se

6
7 EIGHTH JUDICIAL DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 LEE E. Szymborski
10 Spring Mountain Plaintiff(s), Treatment Center
11 DAERL DUBOCCA in his official capacity
12 DOES 1-XX INCLUSIVE AND ROE
13 Corporations 1-XX INCLUSIVE
14 Defendant(s).

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

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 Quornight 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	Sale Qty	Receipt Unit Price	Final Price
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LAS VEGAS NV 89144-0561			\$16.95
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Zone-0
Priority Mail Express 1-Day

USPS Tracking #:

EX37 0893 201U 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.

☒ Plaintiff/ ☐ Defendant, Pro Se

(signature)
(print name)

A-14-700178-C
CERT
Certificate of Mailing
4253890



RECEIVED

SEP 17 2014

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-14-700178-6
Electronically Filed
09/23/2014 02:04:52 PM

Dept. No.: XXXI



CLERK OF THE COURT

10
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
21 **FINDINGS OF FACT**

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

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SEP 23 2014

CLERK OF THE COURT

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28
JOANNA S. NISHNER
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, AAll/ 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

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 This court has consistently explained that "a timely notice of appeal
23 divests the district court of jurisdiction to act and vests jurisdiction in
24 this court" and that the point at which jurisdiction is transferred from
25 the district court to this court must be clearly defined. Although,
26 when an appeal is perfected, the district court is divested of
27 jurisdiction to revisit issues that are pending before this court, the
28 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.

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 prior³
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

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.

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21 JOANNA S. KISHNER
22 DISTRICT COURT JUDGE
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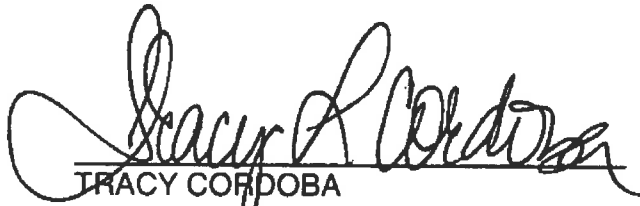
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CERTIFICATE OF SERVICE

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



CLERK OF THE COURT

1 TRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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9 LEE SZYMBORSKI,

10

Plaintiff,

11

vs.

12

SPRING MOUNTAIN TREATMENT
CENTER,

13

14

Defendant.

CASE NO. A700178

DEPT. XXXI

15

BEFORE THE HONORABLE JOSEPH T. BONAVENTURE, DISTRICT COURT
JUDGE

16

TUESDAY, JUNE 24, 2014

17

18

TRANSCRIPT OF PROCEEDINGS:
DEFENDANT SPRING MOUNTAIN TREATMENT CENTER'S MOTION TO
DISMISS

19

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

20

21

APPEARANCES:

22

For the Plaintiff:

IN PROPER PERSON

23

24

For the Defendant:

KERRY J. DOYLE, ESQ.

25

RECORDED BY: RACHELLE HAMILTON, Court Recorder

1 TUESDAY, JUNE 24, 2014, AT 9:26 A.M.

2
3 THE COURT: Lee Szymborski versus Spring Mountain Treatment Center;
4 who's here on that?

5 MR. DOYLE: Kerry Doyle for Spring Mountain Treatment Center and Darryl
6 Dubroca, but apparently plaintiff filed an opposition.

7 THE COURT: Come here.

8 MR. DOYLE: Do you want me to approach, Your Honor?

9 THE COURT: No, no, no, just make a record. I don't -- so go ahead, what
10 do you want to say?

11 MR. DOYLE: Apparently plaintiff filed an opposition which he didn't serve on
12 us and we found out yesterday and was able to get it off the internet. Some -- I
13 would assume that he's going to appear if he took the time to oppose.

14 THE COURT: I would assume too. It's not 9:30 yet.

15 MR. DOYLE: Yeah, I don't know what he looks like or anything.

16 THE COURT: Are you requesting a continuance?

17 MR. DOYLE: No Your Honor, we're prepared to go forward.

18 THE COURT: Is that him?

19 MR. DOYLE: I don't know, I've never seen him before.

20 THE COURT: Mr. Szymborski?

21 MR. SZYMBORSKI: Yes.

22 THE COURT: Okay. This is on as to A-14-700178-C, Lee Szymborski
23 versus Spring Mountain Treatment Center and Darryl Dubroca. Who's Darryl
24 Dubroca?

25 MR. DOYLE: He's the CEO of the facility.

1 THE COURT: You're representing him also?

2 MR. DOYLE: Yes, Your Honor. Kerry Doyle on behalf of Spring Mountain
3 Treatment Center and Darryl Dubroca.

4 THE COURT: All right Spring Mountain filed a motion to dismiss this Mr.
5 Szymborski; you have a copy of that?

6 MR. SZYMBORSKI: Yes.

7 THE COURT: Now you filed an opposition but you've got to serve the other
8 party. I mean you've got to serve the other party so he comes into court without
9 you having properly served your opposition to that.

10 MR. SZYMBORSKI: I didn't realize that. I filed it in court but, you know, I
11 thought that was, you know --

12 THE COURT: Well you've got to serve the party. That's part of the law.
13 That's why you need lawyers on these things.

14 MR. SZYMBORSKI: Yeah, well.

15 THE COURT: I mean I'm looking at the case --

16 MR. SZYMBORSKI: Yeah.

17 THE COURT: -- and you filed some sort of a complaint and the -- your son is
18 involved. Are you seeking any damages on behalf of your son or just --

19 MR. SZYMBORSKI: No --

20 THE COURT: -- property damage?

21 MR. SZYMBORSKI: This is strictly a negligence case.

22 THE COURT: It's a medical malpractice case the defendant is saying.

23 MR. SZYMBORSKI: They're misrepresenting my complaint.

24 THE COURT: Well you're not -- you're not -- you're not seeking any claims
25 for your son at all, just you?

1 MR. SZYMBORSKI: No.

2 THE COURT: And what are you claiming? I'm just curious. Property
3 damage, is that what it is?

4 MR. SZYMBORSKI: It's property damage. I suffered physical injury.

5 THE COURT: You did; you suffered?

6 MR. SZYMBORSKI: Yes. Yes.

7 THE COURT: And what else?

8 MR. SZYMBORSKI: And extreme mental trauma.

9 THE COURT: You?

10 MR. SZYMBORSKI: Yes.

11 THE COURT: Okay. All right.

12 MR. SZYMBORSKI: And I have many exhibits of that, pictures and so --

13 THE COURT: All right, well we have to get to the crux of it right now. You
14 filed a motion to dismiss, counsel?

15 MR. DOYLE: Correct, Your Honor.

16 THE COURT: Now there's something about a press here. I don't know if
17 there's any press here or not but I'm not going to worry about that, there's nobody
18 here so. I signed it already but it's subject to me vacating it, but I'm not going to
19 worry about it now.

20 It's a simple issue you're saying; they didn't file a medical affidavit?

21 MR. DOYLE: That's correct, Your Honor. The entire case stems on whether
22 or not his -- I believe it's his son; Sean Szymborski was -- whether or not he was
23 properly discharged from --

24 THE COURT: Right.

25 MR. DOYLE: --the facility. In his complaint he alleges that because of this

1 improper discharge his son went to his home and caused damage to the residence.
2 So really the case -- the crux of the case is whether or not he was properly
3 discharged. Discharge requires a doctor to make the decision as to --

4 THE COURT: Tell me a little about Spring Mountain Treatment. What kind
5 of a facility is it and is a --

6 MR. DOYLE: It's a mental health facility.

7 THE COURT: And they have doctors of course --

8 MR. DOYLE: Yes.

9 THE COURT: -- and nurses.

10 MR. DOYLE: Correct, Your Honor.

11 THE COURT: And they have, you know, certified doctors, MD's, right?

12 MR. DOYLE: Right.

13 THE COURT: And they're -- what's their field?

14 MR. DOYLE: Well in this case it's mental health. I believe they also deal
15 with other drug addictions and things like that, but the course of the patient's stay is
16 directed by a physician. There's nurses; they have the ability to run tests and get
17 lab work and all the things that would expect from a larger hospital. They just focus
18 more on mental health type issues.

19 In this case the plaintiff's son was admitted for -- at least according to
20 the complaint he was admitted for spice abuse and I believe he had some other
21 psychiatric disorder such as paranoid schizophrenia.

22 THE COURT: I notice somebody setting up there. Do you want to say
23 anything about it or just -- we'll just proceed?

24 MR. DOYLE: Well Your Honor we did receive the request yesterday and we
25 attempted to file an opposition or an objection to their presence.

1 THE COURT: You did file it. I have it. I have it here.

2 MR. DOYLE: Right but I guess it wasn't signed or --

3 THE COURT: Well I mean I can -- why do you want me to exclude the
4 press?

5 MR. DOYLE: Well the issues in this case -- for two reasons. The main
6 reason is that Sean Szymborski was a patient at the facility. Today we're here
7 talking about his diagnosis and his treatment. He is not here to consent so the
8 release of his medical information in a public forum like that and the plaintiff is not a
9 guardian of an adult, or at least he hasn't represented that he's the guardian of Mr.
10 Szymborski, and he doesn't have the authority to waive his HIPPA rights. So that's
11 the first issue.

12 The second issue this case involves allegations of improper discharge
13 of a mental health patient which has been all over the news recently with the
14 Rawson-Neal allegations at that federal facility of patient dumping. It's a hot button
15 issue. I think that it's a very complicated issue. It's difficult to discuss in this forum
16 let alone to have it put on the news in a minute to a minute and a half segment. It
17 potentially taints the -- a jury pool.

18 So those are the two issues why we objected to the media presence.

19 THE COURT: All right. The Court reviewed it and I don't think this is the
20 type of forum where they get deeply into the medical diagnosis; it's just a motion to
21 dismiss. Perhaps at another hearing if you have other, you know, evidentiary
22 hearing you want renew that, but as of right now I'm going to deny it and just hear
23 this brief issue about why he should filed a affidavit -- medical affidavit --

24 MR. DOYLE: Understand, Your Honor.

25 THE COURT: -- pursuant to the statute to determine whether they have to

1 do that or it should be dismissed. That's really I want to hear. I don't want to hear
2 medical diagnosis. You know, in the general terms we're going to talk about it
3 briefly, but go ahead.

4 MR. DOYLE: Okay, I understand Your Honor. So with respect to the
5 medical malpractice claim again the entire crux of his case centers around whether
6 or not Sean Szyborski was properly discharged from the facility. That requires a
7 doctor's decision with inputs from nurses and case workers, but ultimately it's up to
8 the physician. And if you look at point of complaint he himself specifically points out
9 in his allegations that -- that the facility had a duty to render proper medical
10 treatment and they breached that duty by improperly discharging his son.

11 He also points to several administrative codes that deal with discharge
12 of patients and they all center around is the patient medically safe to be discharged.
13 It's medical determination. As a result he's required under the statute to file an
14 affidavit with his complaint, which he failed to do.

15 THE COURT: And you cite the statutes --

16 MR. DOYLE: Correct, Your Honor.

17 THE COURT: -- 41A071: if an action for medical malpractice is filed in district
18 court, the district court shall -- it doesn't say could or would or maybe -- it said shall
19 dismiss an action, without prejudice though, right?

20 MR. DOYLE: Correct.

21 THE COURT: If the action is filed without an affidavit supporting the
22 allegations contained in the action submitted by a medical expert who practices or
23 has practiced in an area that is substantially similar to the type of practice engaged
24 in and at the time of the alleged malpractice.

25 MR. DOYLE: Correct, Your Honor.

1 THE COURT: And you cite the *Washoe Medical Center v. Second Judicial*
2 Supreme Court case where it says since a void complaint does not legally exist it
3 cannot be amended. So I couldn't say well this is [indiscernible], why don't you
4 amend this and file an affidavit with an amended complaint. The Supreme Court
5 specifically says to me as a district court judge you can't give leave to amend, it has
6 to be dismissed without prejudice.

7 MR. DOYLE: That's correct, Your Honor, and I had an opportunity to reply to
8 the -- to his opposition I would have added as well that the Nevada Supreme Court
9 has also held that the maintenance of medical records is a proper medical
10 malpractice allegation. So if the Nevada Supreme Court is willing to go as far as
11 the maintenance of medical records being a medical malpractice action certainly
12 the decision to discharge a patient would fall under that as well.

13 THE COURT: The basic -- the decision to discharge requires medical care
14 providers to identify whether a patient will need additional health care based upon
15 their diagnosis and current medical status; is that correct?

16 MR. DOYLE: Correct, Your Honor.

17 THE COURT: And you have no doubt that the -- even if you put some codes
18 in there, whatever he wants to do, this basically substantially is a medical
19 malpractice case?

20 MR. DOYLE: Correct, Your Honor.

21 THE COURT: Failure to discharge is a medical malpractice case.

22 MR. DOYLE: That's correct, Your Honor. I mean even the administrative
23 codes he cites all deal with determining the health consequences that a patient
24 would suffer upon discharge.

25 THE COURT: I guess the reason for the -- the reason for this, Mr.

1 Szymborski, is to lower costs, reduce frivolous lawsuits, ensure the medical
2 malpractice actions are filed in good faith based upon competent expert medical
3 opinions. It was designed to streamline and expedite medical malpractice cases,
4 lower overall costs. So that's why the legislature put that into effect, they're saying
5 we don't want every Tom, Dick and Harry to file a medical malpractice case
6 because you just can't -- it will just -- the cost, the medical -- all we require a plaintiff
7 to do -- and it's not a big -- listen to me Mr. Szymborski.

8 MR. SZYMBORSKI: Yes, I am.

9 THE COURT: It's not a big deal to get a medical expert in the same field and
10 get -- produce -- it's just like a written affidavit that we do all the time. An affidavit,
11 you sign our name, we swear it is; just a simple -- it's not a big deal. It's not like
12 overly burdensome. You got to get some -- that's what the defendant is saying --

13 MR. SZYMBORSKI: This is not --

14 THE COURT: You got to get some medical expert to say you know what, I've
15 reviewed what happened to Mr. Szymborski and he was discharged on such and
16 such a date in -- on May 14, 2013, and I think he -- the discharge was medical
17 malpractice because he shouldn't have done that, for whatever reasons. You know
18 I'm not going to go into the whole case. It's not a burdensome thing.

19 Now if I do decide to dismiss this, I don't want to give any -- on that
20 law, but I don't know if the statute of limitations has run, probably not, but I can't
21 give you -- but all you have to do is file -- is go get a little medical affidavit, file
22 another complaint, attach it, that's it. I mean it's not overly burdensome but I'm
23 going to listen to what you want to say briefly.

24 MR. SZYMBORSKI: Okay. This is an action of negligence. It has nothing to
25 do medical malpractice on me.

1 THE COURT: Failure to discharge or discharging a patient willfully?

2 MR. SZYMBORSKI: There's no -- it has nothing to do with their failure to
3 discharge. It -- I'm the public. They have a duty to protect the public. I have no
4 doctor-patient relationship with them, okay? They perpetrated a felony crime
5 against the state of Nevada, against the public of which I am the victim. Nothing in
6 my -- I filed negligence, professional negligence, and they're misrepresenting this
7 as a medical malpractice action.

8 They have a duty to protect the public and their failure was reckless
9 and grossly negligent. Now I have suffered over \$21,000 in property damage,
10 physical injuries and extreme mental torment which I am under doctor's care. It
11 should be held to strict liability. This is a public facility licensed by the state of
12 Nevada. I spoke with Chief Deputy Attorney General Linda Anderson. She agreed
13 with me and she instructed me to put a request for prosecution.

14 What they did is I demanded my son not be released to my home. I
15 said -- I left several messages which were substantiated by Direct Willden's office
16 which led an investigation into the hospital which resulted in nine pages of
17 substantiated charges where they broke Nevada laws, violated codes -- nine
18 pages. So these are not allegations or whimsical types of arguments, these are
19 based on substantiated charges.

20 This case firmly hangs on the three prongs of negligence where they
21 knew, should have known they had a duty. Where they had a duty to the injured
22 person, their act was not reasonable, I think it's reckless and I've suffered injuries.
23 Three prongs of negligence.

24 The reason my son went into Spring Mountain Treatment Center was
25 that he was violent in my home and started to destroy my home, and he started to

1 get violent with me. I need a plate put in my head; I have several skull fractures, so
2 I ran outside. That's' the reason he went in, and they knew that. So they knew not
3 to send him to my home. I demanded that. So -- but they did it anyway and that's
4 reckless disregard for public safety, and if this allowed to continue we're going to
5 have more of this. The police are tied up chasing their responsibility, the court
6 systems are overloaded with these criminal cases that naturally flow from these
7 types of crimes. So the theme in my complaint rests solidly the prima facie, the
8 theme, is on the three prongs of negligence. And so, you know, they need to be
9 held accountable for public safety.

10 THE COURT: Well thank you sir. Any response to that, counsel?

11 MR. DOYLE: With all due respect to the plaintiff, the fact of the matter is he
12 still has to have someone -- if this case were to go to trial he's going to have an
13 expert -- he's going to have a medical expert to come up there and discuss why or
14 why not his son was properly or improperly discharged from the facility. It's a
15 medical decision made by a physician and it's a medical malpractice case.

16 Your Honor, I also got a little ahead of myself. Mr. Dubroca, we filed a
17 joinder on his behalf. Other than in the caption and a statement at the beginning of
18 the complaint over jurisdiction there's not a single allegation against Mr. Dubroca --

19 THE COURT: Okay.

20 MR. DOYLE: -- and so for that reason he should be dismissed from this case
21 regardless of what Your Honor's decision is with respect to medical malpractice.

22 THE COURT: All right well, again I've been dealing with it for a long time and
23 most recently as a senior judge I handle numerous medical malpractice cases in
24 settlement conferences and a lot of them have to do with early discharge from
25 hospitals, infants or cancer patients or -- whatever the early discharge that

1 shouldn't have happened is it's medical malpractice. I mean I've handled dozens of
2 these types of cases in settlement conferences. I've read a lot of law on it and I just
3 -- I sympathize with you Mr. Szyborski but it's not an unreasonable burden for you
4 to get a medical affidavit, and you could proceed with this, so the motion to dismiss
5 is granted. Plaintiff does not cite any legal basis to consider this a negligence
6 action instead of medical malpractice action. As there's no affidavit attached to the
7 complaint, the complaint is void ab initio and must be dismissed without prejudice
8 and leave to amend is improper. So -- but you still have a remedy but as of right
9 now this case is dismissed both as to Spring Mountain and defendant Dubroca
10 because I'm allowing him -- I'm granting the joinder and dismissing as to him also,
11 all right? But thank you.

12 MR. DOYLE: Your Honor, do you want me to prepare the order?

13 THE COURT: Yeah you prepare the order.

14 MR. DOYLE: Send it to Mr. Szyborski?

15 THE COURT: Yeah.

16 MR. DOYLE: Thank you, Your Honor.

17 MR. SZYMBORSKI: Thank you, Your Honor.

18
19 [Proceeding concluded at 9:44 a.m.]
20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video recording in the above-entitled case to the best of my ability.

23 

24 RACHELLE HAMILTON
25 Recorder/Transcriber