

EXHIBIT “C”

EXHIBIT “C”



QUALITY MEDICAL IMAGING

PHONE: 866-508-4870 FAX: 866-274-0710

PEEK

Radiology Interpretation

PATIENT NAME: PEEK FRANK
DATE OF BIRTH: ~~REDACTED~~
RAD NUMBER: 70308
PHYSICIAN: BERNARDINO, RUSTICA
FACILITY: HIGH DESERT STATE PRISON
DATE OF EXAM: 2014-03-08
PROCEDURES: XR Hand >=3 views
HISTORY: PAIN IN JOINT, HAND (719.44)

Three views of the left hand.

No acute fractures are seen. Alignment is normal. Soft tissues are unremarkable.

Impression: Negative left hand.

Completed: 2014-03-08 20:45:05 PST

Electronically Signed By: Jon Jaksha MD

Jonathan Jaksha

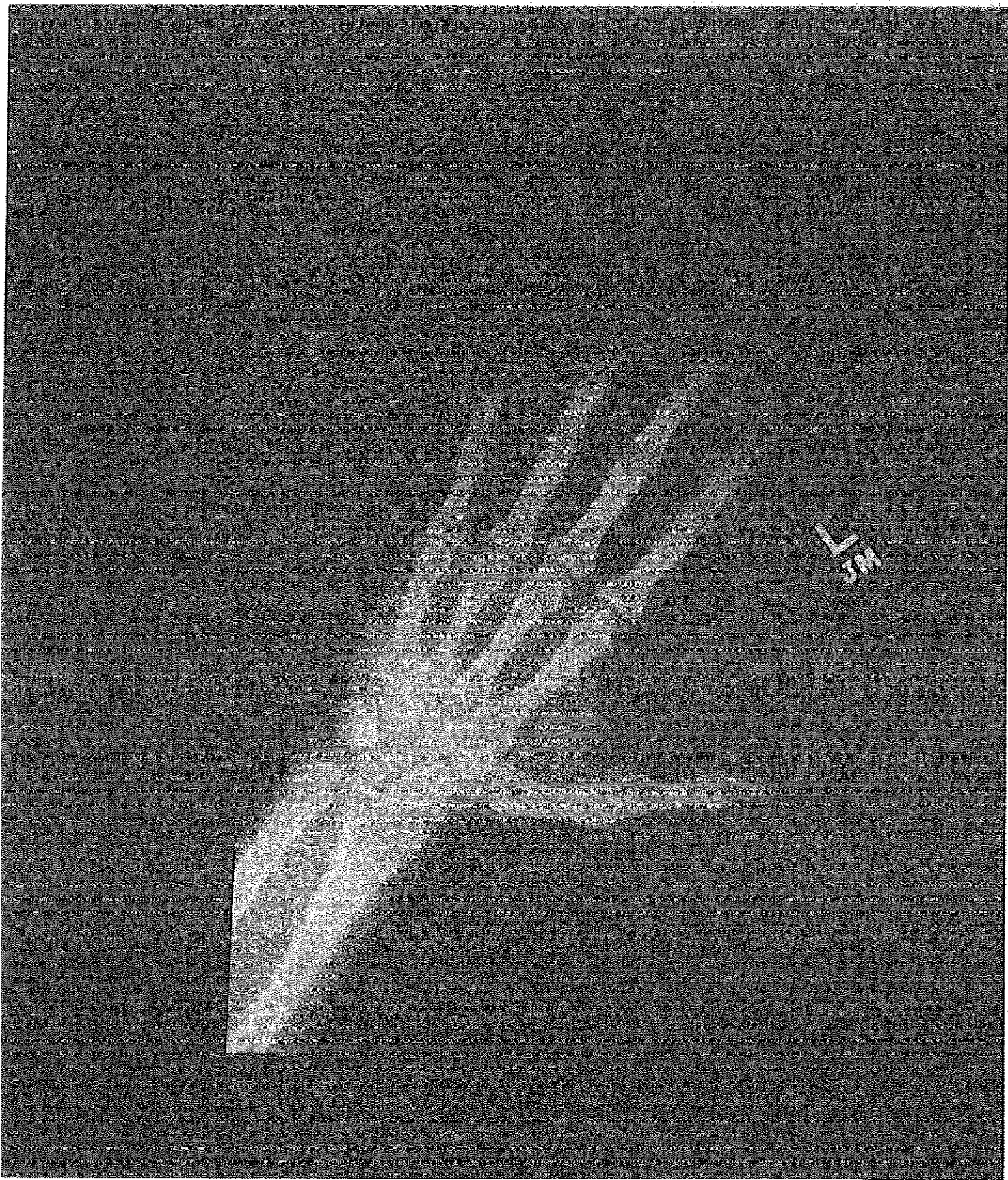
*mw HP-c
3/14/14*

7A14

Provider: BERNARDINO, RUSTICA

Report Completed: 2014-03-08 20:45:05 PST

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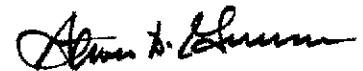


Patient ID: 70308
Patient Name: Peck, Frank
Study Date: 03/08/2014

Patient ID: 70308
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Patient ID: 70308
Patient Name: Peck, Frank
Study Date: 03/08/2014



CLERK OF THE COURT

FD
ARTHUR W. TUVerson, ESQ.
Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
LAW OFFICES OF ARTHUR W. TUVerson
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Facsimile: (702) 631-5777
dwoodrum@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

FEE DISCLOSURE

Filing fees are submitted for Defendant DAVID R. ZIPF, M.D. for the Motion for Judgment on the Pleadings and Supporting Affidavit of Danielle Woodrum, Esq. in the above-entitled action as indicated below:

Motion for Judgment on the Pleadings	\$200.00
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Total remitted:	\$200.00
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DATED: June 18, 2015

LAW OFFICES OF ARTHUR W. TUVerson

BY: /s/ Danielle Woodrum

DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERTSON, and that on this 18th day of June, 2015, I served a copy of FEE DISCLOSURE as follows:

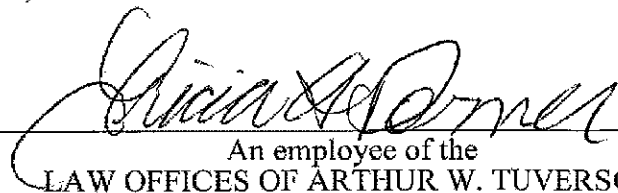
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

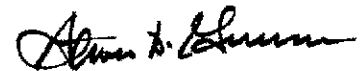
Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

John F. Bemis, Esq.
Ian M. Houston, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400
(702) 384-6025 fax
Attorneys for Defendant Valley Hospital Medical Center

☒ By Electronic Service through Eighth Judicial District Court to;

David J. Mortensen, Esq.
Chelsea R. Hueth, Esq.
ALVERTSON TAYLOR MORTENSEN &
SANDERS
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Las Vegas, NV 89117
Facsimile (702) 385-7000
efile@alversontaylor.com
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dkurdziel@alversontaylor.com
smasia@alversontaylor.com
Attorneys for Defendant Michael D. Barnum, M.D.


An employee of the
LAW OFFICES OF ARTHUR W. TUVERTSON



CLERK OF THE COURT

1 NOTM
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Facsimile: (702) 631-5777
7 dwoodrum@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 FRANK M. PECK,
12 Plaintiff,

CASE NO.: A-14-708447-C
DEPT. NO.: III

13 v.

14 VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
15 BARNUM, M.D., JOHN DOES I - V,
16 Defendants.

NOTICE OF MOTION

Hearing Date: 7/22/15
Hearing Time: 9:00 a.m.

17
18 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Defendant's
19 Motion for Judgment on the Pleadings on for hearing before the above-entitled Court, in
20 Department 3 at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on
21 the 22nd day of July, 2015, at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

22 DATED: June 18, 2015

LAW OFFICES OF ARTHUR W. TUVerson

23
24 BY: /s/ Danielle Woodrum

DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERSON, and that on this 18th day of June, 2015, I served a copy of **NOTICE OF MOTION** as follows:

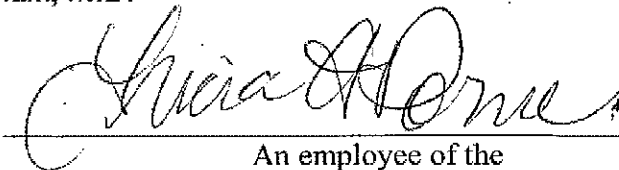
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

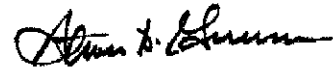
John F. Bemis, Esq.
Ian M. Houston, Esq.
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1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400
(702) 384-6025 fax
Attorneys for Defendant Valley Hospital Medical Center

☒ By Electronic Service through Eighth Judicial District Court to;

David J. Mortensen, Esq.
Chelsea R. Hueth, Esq.
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dkurdziel@alversontaylor.com
smasia@alversontaylor.com
Attorneys for Defendant Michael D. Barnum, M.D.



An employee of the
LAW OFFICES OF ARTHUR W. TUVERSON


CLERK OF THE COURT

MOT
ARTHUR W. TUVerson, ESQ.
Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
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Facsimile: (702) 631-5777
dwoodrum@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

Hearing Date:

Hearing Time:

**DEFENDANT DAVID R. ZIPF, M.D.'S MOTION FOR JUDGMENT ON THE
PLEADINGS AND SUPPORTING AFFIDAVIT OF DANIELLE WOODRUM, ESQ.**

COMES NOW, Defendant DAVID R. ZIPF, M.D., by and through his counsel of record,
the LAW OFFICES OF ARTHUR W. TUVerson, LLP, and hereby submits this motion for
judgment on the pleadings and supporting affidavit of Danielle Woodrum, Esq.

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///

1 This Motion is made based upon the attached Memorandum of Points & Authorities, the
2 papers and pleadings on file, and any evidence and/or argument that may be taken at the time for
3 hearing on this matter.

4 DATED: June 17, 2015

LAW OFFICES OF ARTHUR W. TUVERTSON

5
6 BY: 

ARTHUR W. TUVERTSON, ESQ.

Nevada State Bar No. 005156

DANIELLE WOODRUM, ESQ.

Nevada State Bar No. 012902

7201 West Lake Mead Boulevard, Suite 570

Las Vegas, Nevada 89128

(702) 631-7855

Attorneys for Defendant DAVID R. ZIPF, M.D.

11
12 **NOTICE OF MOTION**

13 TO: All parties, and their respective attorneys:

14 PLEASE TAKE NOTICE that Defendant DAVID R. ZIPF, M.D.'s MOTION FOR
15 JUDGMENT ON THE PLEADINGS or will be heard in Department III of the above entitled
16 Court on the 22 day of JULY, 2015, at 9:00A .m.

17 DATED: June 17, 2015

LAW OFFICES OF ARTHUR W. TUVERTSON

18
19 BY: 

ARTHUR W. TUVERTSON, ESQ.

Nevada State Bar No. 005156

DANIELLE WOODRUM, ESQ.

Nevada State Bar No. 012902

7201 West Lake Mead Boulevard, Suite 570

Las Vegas, Nevada 89128

(702) 631-7855

Attorneys for Defendant DAVID R. ZIPF, M.D.


CLERK OF THE COURT

MSTR
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Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
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Telephone: (702) 631-7855
Facsimile: (702) 631-5777
dwoodrum@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

Hearing Date: 07/29/15

Hearing Time: 9:00 AM

DEFENDANT DAVID R. ZIPF, M.D.'S MOTION TO STRIKE PUNITIVE DAMAGES

COMES NOW, Defendant DAVID R. ZIPF, M.D., by and through his counsel of record,
the LAW OFFICES OF ARTHUR W. TUVerson, LLP, and hereby submits this motion to
strike Plaintiff's cause of action for punitive damages..

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///

1 This Motion is made based upon the attached Memorandum of Points & Authorities, the
2 papers and pleadings on file, and any evidence and/or argument that may be taken at the time for
3 hearing on this matter.

4 DATED: June 25, 2015

LAW OFFICES OF ARTHUR W. TUVERSON

5
6 BY: 

ARTHUR W. TUVERSON, ESQ.
Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

11
12 **NOTICE OF MOTION**

13 TO: All parties, and their respective attorneys:

14 PLEASE TAKE NOTICE that Defendant DAVID R. ZIPF, M.D.'s MOTION TO
15 STRIKE PUNITIVE DAMAGES or will be heard in Department III of the above entitled Court
16 on the 29 day of July, 2015, at 9:00 A.m.

17 DATED: June , 2015

LAW OFFICES OF ARTHUR W. TUVERSON

18
19 BY: 

ARTHUR W. TUVERSON, ESQ.
Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

MEMORANDUM OF POINTS & AUTHORITIES**I. INTRODUCTION**

Plaintiff, a prisoner at High Desert State Prison in Indian Springs, filed the instant "medical malpractice negligence" ("professional negligence") action alleging an intravenous ("IV") needle, was inadvertently left in his hand after he was hospitalized at Defendant Valley Hospital Medical Center ("Valley Hospital"). Plaintiff alleges that Defendant David Zipf, M.D., a physician who treated him at Valley Hospital, is liable under a theory of *res ipsa loquitur* for the allegedly retained foreign object. Plaintiff has not alleged any other causes of action against Dr. Zipf other than professional negligence. Moreover, he has not alleged that Dr. Zipf acted with oppression, fraud or malice. Thus, his claim for punitive damages must be stricken from the Complaint.

II. FACTUAL ALLEGATIONS

Plaintiff was admitted to Valley Hospital on December 31, 2013. (See Complaint filed on October 13, 2014 ("Compl.") at ¶ 1.) He was discharged from Valley Hospital on January 17, 2014. (Compl. at ¶ 2.) Over a month after his discharge from Valley Hospital, on February 18, 2014, Plaintiff alerted the prison staff that there may have been a problem with his left hand, stating "something possibly a needle is just under the skin in my left hand." (Compl. at ¶ 3.) X-rays taken on March 8, 2014, clearly showed an object in Mr. Peck's left hand. (Compl. at ¶ 5).

Plaintiff alleges the Defendants are collectively negligent for the allegedly retained foreign object stating:

... that the Defendants' (sic) committed (sic) medical malpractice by deviating from the accepted standard of medical care or practice by "leaving a foreign substance in Mr. Peck's Hand" NRS 41A.100(1)(a) (*res ipsa loquitur* doctrine) legally causing the injury suffered by Plaintiff. *Fernandez v. Admirand*, 108 Nev. 963, 843 P 2d 354 (1992).

III. LEGAL ARGUMENT

A plaintiff is not entitled to punitive damages as a matter of right. *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 392 (1999). To recover punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant "has been guilty of oppression, fraud or malice,

1 express or implied.” NRS 42.005. This statute defines oppression as “despicable conduct that
2 subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.
3 NRS 42.001(4). “Malice, express or implied means “conduct which is intended to injure a person
4 or despicable conduct which is engaged in with a conscious disregard of the rights or safety of
5 others.” NRS 42.001(1). In applying NRS 42.001, the Nevada Supreme Court held that a
6 plaintiff cannot recover punitive damages even when a defendant has acted with unconscionable
7 irresponsibility. *Maduik v. Agency Rent-A-Car*, 114 Nev. 1, 5 (2008).

8 Here, there are no specific allegations as to what Dr. Zipf did or did not do that would
9 justify the imposition of punitive damages. The only claims against him is that he, along with all
10 of the other Defendants, is responsible for a foreign object, which Plaintiff suspects is an IV
11 needle, being left in his hand after he was discharged from Valley Hospital. There are absolutely
12 no facts showing that Dr. Zipf acted in a fraudulent, oppressive or malicious manner.

13 The single cause of action against Dr. Zipf is negligence. Simply alleging negligence is
14 not sufficient to implicate punitive damages. Merely negligent conduct does not warrant the
15 assessment of punitive damages against a defendant. *Id.*; see also *Noe v. Kaiser Foundation*
16 *Hospitals*, 248 Or. 420, 435 P.2d 306 (1967). Because Plaintiff cannot recover punitive damages
17 based upon allegations of merely negligent conduct, this Court should find that Plaintiff is not
18 entitled to an award of punitive damages and strike Plaintiff’s claim for punitive damages from
19 the Complaint.

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27 ///

28

IV. CONCLUSION

Based on the foregoing, Dr. Zipf respectfully requests the Court strike Plaintiff's claim for punitive damages from the Complaint.

DATED: June 25, 2015

LAW OFFICES OF ARTHUR W. TUVERSON

BY:


ARTHUR W. TUVERSON, ESQ.

Nevada State Bar No. 005156

DANIELLE WOODRUM, ESQ.

Nevada State Bar No. 012902

7201 West Lake Mead Boulevard, Suite 570

Las Vegas, Nevada 89128

(702) 631-7855

Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERSON, and that on this 25th day of June, 2015, I served a copy of **DEFENDANT DAVID R. ZIPF, M.D.'S MOTION TO STRIKE PUNITIVE DAMAGES** as follows:

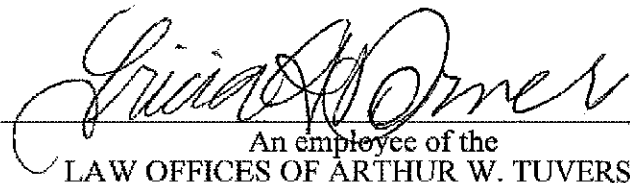
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

John F. Bemis, Esq.
Ian M. Houston, Esq.
HALL PRANGLE & SCHOONVELD, LLC
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Las Vegas, NV 89144
(702) 889-6400
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Attorneys for Defendant Valley Hospital Medical Center

☒ By Electronic Service through Eighth Judicial District Court to;

David J. Mortensen, Esq.
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dkurdziel@alversontaylor.com
smasia@alversontaylor.com
Attorneys for Defendant Michael D. Barnum, M.D.


An employee of the
LAW OFFICES OF ARTHUR W. TUVERSON

Frank M. Peck 57106

FILED

HDSP Box 650

JUN 26 2015

Indian Springs, NV, 89070

CLERK OF COURT

Plaintiff, pro se

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,

CASE NO. A-14-708447-L

Plaintiff,

DEPT NO. 3

vs.

Valley Hospital Medical Center, et al,

Date

Defendants.

Time

OPPOSITION TO DEFENDANT'S DAVID R. ZIPF MD'S

MOTION FOR JUDGEMENT ON THE PLEADINGS

Comes Now, the Plaintiff, Frank M. Peck pro se herein-
after Mr Peck with his OPPOSITION TO DEFENDANT DAVID
R ZIPF'S MD MOTION FOR JUDGEMENT ON THE PLEADINGS.

This OPPOSITION is made and based upon all papers
and pleadings on file in this case as well as the attached
points and authorities exhibits and Affidavit of Mr.
Peck.

Dated 6-19-15

RECEIVED

A-14-708447-C
OPPS
Opposition
4487679



Frank Peck
Frank M. Peck Pltff pro se

1 of 7

CLERK OF THE COURT

JUN 26 2015

Points and Authorities

Notwithstanding all of the claims that the Defendant makes in his motion for judgment on the pleadings these facts remain:

FACTS

1. Dr. Suwec a HDSP Ordered AN X-RAY based on his 'observation' of an object just under the skin.
2. Nurse Brenda who is in charge of blood draws KNEW EXACTLY what the object was when she felt Mr. Peck's hand and said, "oh it's probably a needle guide".
3. Needleguides are plastic and do NOT show up on AN X-RAY. (photocopy of X-RAY is useless)
4. The only object ruled out by the X-RAYS is A metal surgical needle.
5. The Defendant's (EX-B) is not specific as to where or what to look for and unless specifically instructed, what appeared to be clear plastic would be easily missed.
6. The Defendant's (EX-C) only shows PAIN IN JOINT; HAND (719.44) AS HISTORY and the negative impression was for Alignment and fractures and soft-tissue and did not address the AREA where the object is.

7. Mr. Peck was discharged from Valley Hospital with extensive sinusitis and bilateral mastoid fluid levels indicative of mastoiditis. Mastoiditis if left untreated can cause meningitis, leading one to think that the effect was treated but not the cause, however, Mr. Peck (because he is a prisoner) cannot obtain an affidavit from a health care provider to raise the issue. (SEE EX-1).

Re: Defts ARGUMENT

A. The Defendant's claim. THE COMPLAINT DOES NOT MEET THE REQUIREMENTS OF NRS 41A.071 AND MUST BE DISMISSED.

NRS 41A.071 EXPERT AFFIDAVIT REQUIREMENT DOES NOT APPLY. Plaintiff's claim fits squarely under NEVADA'S RES IPSA LOQUITUR statute NRS - 41A.100 which does not require expert testimony at trial. A rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened, provided: (1) the occurrence is the kind of thing that does not ordinarily happen without negligence; (2) The occurrence must have been caused by an agency or instrumentality within the exclusive control of the defendant;

(3) the occurrence was not due to contribution or voluntary action by the plaintiff. Rosser & Keeton, Torts, 243-244 (5th ed 1984). The gist of it, and the key to it, is the inference, or process of reasoning by which the conclusion is reached. This must be based upon the evidence given, together with a sufficient background of human experience to justify the conclusion. The effect of invoking the doctrine is to shift the burden of going forward with the evidence which normally attaches to the plaintiff, to the defendant, who is thereby charged with introducing evidence to refute the presumption of negligence which has been created. The Deft's have not met that burden.

B. The Defendants claim. PLAINTIFF CANNOT SHOW THE ALLEGED ACCIDENT IS ONE THAT DOES NOT ORDINARILY OCCUR ABSENT NEGLIGENCE, THUS RES IPSA LOQUITUR IS NOT APPLICABLE

The device or part thereof that is in Mr. Peck's hand is ordinarily removed from the vein in which it is to temporarily reside during treatment.

The Defendants assertion that a "Penrose drain's" retention and removal is analogous to an IV needle or catheter -

REQUIRES expert medical testimony to describe purpose proper use, insertion and removal "defies common sense and human experience", Szydel v. Markman 121 NEV. 453, 117 P3d 200 2005 NEV. LEXIS 62 Aug 11 2005.

C. The Defendants claim. RES IPSA LOQUITUR DOES NOT APPLY TO DR. ZIPF.

Dr. David R. Zipf M.D. is the "ATTENDING DOCTOR", AS SUCH, had "EXCLUSIVE controll" of Mr. Peck and the instrumentalities causing the harm during the period of the injury and is/WAS "in a better position to explain the cause of the accident"; Landmark Hotel & Casino 104 NEV 297, 230, 757 P2d 361 363 (1988) citing Otis Elevator Co v Reid, 101 NEV 515, 518 706 P2d 1378 (1985), (SEE EX-1).

D. The Defendants claim. EVEN IF PLAINTIFF'S COMPLAINT IS FOUND TO STATE A VIABLE CAUSE OF ACTION JUDGEMENT AS A MATTER OF LAW IS APPROPRIATE.

The Defendants assertions are belied by FACTS 2 pg 2-3 # 1-7 AND (EX-1).

STANDARD OF REVIEW

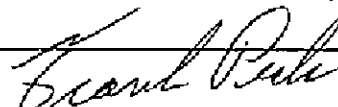
A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the Plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief. Simpson v. Mars Inc, 113 Nev 188, 929 P2d 966 (1997) The court must construe the pleading liberally and draw every fair intendment in favor of the non-moving party. Moreover, all factual allegations of the complaint must be accepted as true. Foster v. Washoe County 114 Nev 936, 964 P2d 788 (Nev 1998)

CONCLUSION

Therefore, this Honorable Court must DENY the Defendant's MOTION FOR JUDGEMENT ON THE PLEADINGS.

Dated this 20th day of JUNE 2015

Respectfully submitted



Frank M. Peck Plaintiff pro se

*

Affidavit, certificate of service and Affirmation

I Frank M. Peck do hereby swear under penalty of perjury that:

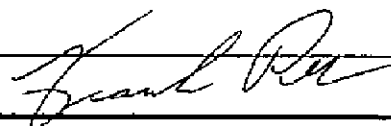
1. I AM the Plaintiff in CCDC CASE NO A-14-708447-C.
2. All assertions in the attached OPPOSITION are true based on personal knowledge and information believed to be true, I AM competent to testify to all matters contained therein.
3. I bring this action and opposition in good faith and for no improper reason.
4. Said object under the skin of my hand is "observable" as well as the length when moved.

I attempted to resolve this dispute via letters to Valley Hospital for which I received no response and the decision to file this suit WAS "agonizing" as Dr. Zipf literally saved my life!

5. A true and correct copy of this OPPOSITION was mailed this date to the Clerk of the Court @ 200 Lewis Ave 3rd floor LAS VEGAS, NV, 89155-1160 for filing and ELECTRONIC SERVICE / NOTICE on the Dett's Atty: Danielle Woodrum ESO dwoodrum@awtlawoffice.com pursuant to NEFR rule 9(c).

Signed under the penalty of perjury NRS 208.165 and 28 U.S.C. SEC 1746

* Affirmation: Contains NO social security numbers of any person.



Frank M. Peck 57106

HDSP BOX 650

Indian Springs, NV 89070

7 of 7

Plaintiff, pro se.

INDEX OF EXHIBITS

EXHIBIT # 1

Pages 2

Description: Valley Hospital Medical Center

Discharge information.

VHM- Valley Hospital Medical Center
620 Shadow Lane
Las Vegas, NV 89106-4184

Patient: PECK, FRANK
MRN: VHM63538254

Admit: 12/31/2013

Disch: 1/17/2014

Disch Time: 19:53 PST

FIN: VHM0000113111371

DOB/Sex: 3/2/1962 / Male

Attending: Zipf MD, David R

Discharge Info

DOCUMENT NAME:
SERVICE DATE/TIME:
RESULT STATUS:
PERFORM INFORMATION:
SIGN INFORMATION:

Discharge Transfer
1/14/2014 12:16 PST
Auth (Verified)
Zipf MD, David R (1/14/2014 12:02 PST)
Zipf MD, David R (1/14/2014 13:22 PST)

VH Transfer Summary

DATE OF TRANSFER: 01/17/2014

DISCHARGE DISPOSITION: Back to prison infirmary.

DISCHARGE CONDITION: Stable.

DISCHARGE DIAGNOSES:

1. Resolving acute viral meningitis.
2. Hypertension.
3. Possible underlying type 2 diabetes.
4. Seizure disorder.

TRANSFERRING MEDICATIONS:

1. NovoLog insulin subcutaneous sliding scale per intermediate BMI protocol.
2. Dilantin 300 mg p.o. at bedtime.
3. Cartia XT 120 mg p.o. daily.
4. Mevacor 20 mg p.o. at bedtime.
5. Aspirin 81 mg p.o. daily.

✓ side effects - hair falling out

FOLLOW-UP: The patient will follow up with the prison physician in 1 to 2 days. He will need a front-wheel walker for ambulation.

HOSPITAL COURSE: This is a 51-year-old male who was admitted to Valley Hospital on a 12/31/2013 with altered mental status, combativeness, and fevers. The patient's temperatures in the emergency room were as high as 103 to 104. The patient had a lumbar puncture, which was consistent with viral meningitis. The patient went into an acute respiratory failure, requiring intubation and mechanical ventilation. The patient was maintained on the ventilator by Dr. Stewart of Pulmonary Associates. The patient did have hypertension. This was able to be controlled with Cardizem. He was also tachycardic at the time. He had hyponatremia and hypokalemia. These were replaced. He had mild lactic acidosis. This was corrected. His blood sugars did seem to run elevated throughout his stay. He has been on NovoLog insulin subcutaneous sliding scale. His antibiotics were directed by Dr. Fanning of infectious disease. An EEG did not show what appeared to be a

LEGEND: c=Corrected * =Abnormal C=Critical L=Low H=High f=Footnote I=Interp Data R=Ref Lab

Medical Record

Print Date/Time 3/5/2014 12:44 PST

Report Request ID: 37327348

Page 1 of 2

VHM- Valley Hospital Medical Center

Patient: PECK, FRANK
 MRN: VHM63538254
 DOB/Sex: 3/2/1962 / Male
 Attending: Zipf MD, David R

Admit: 12/31/2013

Disch: 1/17/2014

FIN: VHM0000113111371

Discharge Info

seizure disorder. He was on antiepileptics as directed by the neurology service. Over time, the patient's mentation seemed to resolve and the patient was able to be extubated. The patient is still weak and debilitated. He is still having some ataxia with walking. He is, however, walking the Valley hallways unassisted with a front-wheel walker. He is able to be transferred back to the prison infirmary to continue PT/OT with assistance of a walker.

His white cell count at this time is 4.8, hemoglobin is 12.2, platelet count of 236. Sodium 140, potassium 3.7, chloride 111, bicarbonate 20, BUN 22, creatinine 0.6, glucose of 170. Temperature is 96.4, pulse 74, respirations 16, blood pressure 129/82. AST and ALT are mildly elevated at 506 and 121. This will need to be monitored while patient is on his Mevacor as well as Dilantin. Mevacor may need to be discontinued should his liver function tests remain elevated. Most recent Dilantin level was 6. MRI of the brain done on January 3rd showed some motion artifact. There is an extensive sinusitis and bilateral mastoid fluid levels indicative of mastoiditis, but there is no evidence of any acute ischemia, masses or abnormality seen in the brain parenchyma.

Please do not hesitate to call 702-450-1717 should you have any questions regarding this patient's hospital stay.

DAVID R ZIPF, MD

D: 10527 / T: 6504311 / DT: 01/14/2014 12:02:36PST / TT: 01/14/2014 12:16:51PST / V: 113111371 / Job#: 9935916 / Mod: 01/14/2014 15:16:51

CC:

Electronically Signed By: Zipf, David MD
 On: 01.14.2014 13:22 PST

hyponatremia

hypo kalemia

Lactic acidosis

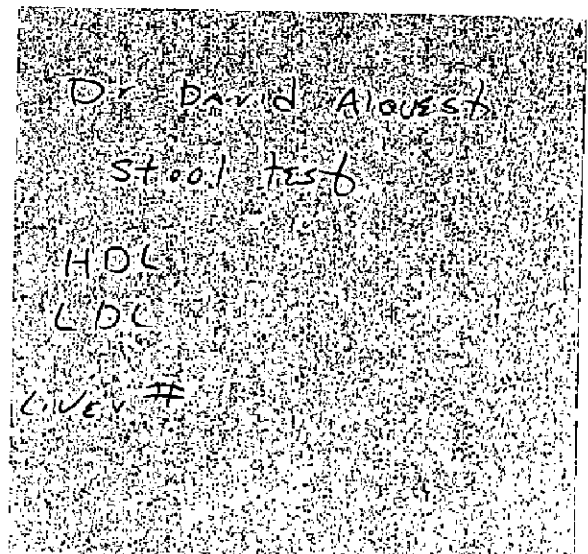
insulin

Liver function elevated?

Dilantin level 6

Brain - motion artifact?
 mastoiditis

Print Date/Ti



Frank M. Peck 57106
HOSP Box 650
Indian Springs, NV 89070

CONFIDENTIAL

LEGAL MAIL

Confidential legal mail

Clerk of the Court
200 LEWIS AVE, 3rd floor
LAS VEGAS, NV 89155-1160

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3 DAVID J. MORTENSEN, ESQ.
4 Nevada Bar No. 002547
5 R. DOUGLAS KURDZIEL, ESQ.
6 Nevada Bar No. 004658
7 7401 West Charleston Boulevard
8 Las Vegas, NV 89117-1401
9 702-384-7000
10 702-385-7000 (fax)
11 E-File: efile@alversontaylor.com
12 Attorneys for DEFENDANT
13 Michael D. Barnum, M.D.

Electronically Filed
07/02/2015 10:51:07 AM


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

vs.

VALLEY HOSPITAL MEDICAL CENTER, et al.,
DAVID R. ZIPF, M.D., MICHAEL D. BARNUM,
M.D., JOHN DOES I - V,

Defendants.

CASE NO: A-14-708447-C
DEPT NO: III

**DEFENDANT MICHAEL D.
BARNUM, M.D.'S JOINDER TO
DEFENDANT DAVID R. ZIPF, M.D.'S
MOTION FOR JUDGMENT ON
THE PLEADINGS**

Hearing Date: July 22, 2015
Hearing Time: 9:00 a.m.

COMES NOW Defendant MICHAEL D. BARNUM, M.D., through his attorneys of record, Alverson, Taylor, Mortensen & Sanders, and hereby joins in Defendant David R. Zipf, M.D.'s Motion for Judgment on the Pleadings. By this Joinder, Defendant MICHAEL D. BARNUM, M.D. ("Barnum"), adopts all the arguments made therein as his own and such oral argument as may be entertained by the Court at the time and place of the hearing of this Joinder.

I.

LEGAL STANDARD

Barnum's Joinder in this matter is appropriate. This matter should be dismissed against Dr. Barnum, pursuant to NRCP 12(c). A Rule 12 (c) motion" is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings." See *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987), citing, 5 C Wright and A Miller, Federal Practice and Procedure §1367(1969). "The Motion on the pleadings has utility only when all material allegations of fact are admitted in the pleadings and only questions of law remain." *Id.* NRCP 12(b) motions and NRCP 12(c) motions are functionally identical. See *Dworkin V. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1988). "The principle difference between the two motions is the time of filing." *Id.* "The Opposing party cannot defeat the use of a NRCP 12(c) motion by merely alleging that an issue of fact exists." See *Duhamel v. United States*, 119 F. Supp. 192, 195 (1954). "While a motion for judgment on the pleadings admits all facts well pleaded, it does not admit, *inter alia*, facts pleaded which would be inadmissible in evidence at trial." *Id.*

II.

LEGAL DISCUSSION

Plaintiff filed a claim sounding in medical practice. He did not include an expert affidavit with his complaint. Nevada law is very clear that causes of action sounding in medical malpractice are void ab initio and dismissed without prejudice if a medical affidavit is not attached to the complaint when it is filed. See 41A.071.

Plaintiff asserts he did not need to file a medical expert affidavit in this case because it falls under the the *res ipsa loquitur* exception, which provides a medical expert affidavit is not

1 needed if a “foreign substance other than medication or a prosthetic devise was unilaterally left
2 within the body of a patient following surgery.” See 41A.100(1)(a). “[A] res ipsa claim filed
3 without an expert affidavit must, when challenged by the defendant in a pretrial or trial motion,
4 meet the prima facie requirements for a res ipsa case.” *Szydel v. Markman*, 121 Nev. 453, 460,
5 117 P.3d 200, 205 (205). A prima facie showing requires a party to make a showing “with
6 competent evidence of essential facts.” *Cf. Viega GmbH v. Eighth Judicial Dist. Court*, 130
7 Nev. ___, ___, 328 P.3d 1152, 1156 (2014). In the instant case, Plaintiff must present facts and
8 produce evidence “that show the existence of one or more of the situations enumerated in NRS
9 41A.100(1)(a-e).” *Id.*

11 To survive Defendant Barnum’s Joinder, Plaintiff needs to establish with competent
12 evidence two essential threshold facts[:]” 1. a foreign substance, other than medication or a
13 prosthetic device, was unintentionally left in his hand. See NRS 41A.100(1)(a); and, 2) the
14 foreign object was left after surgery. *Id.* In addition to the above, the Nevada Supreme Court
15 also requires that “the event must be caused by an agency or instrumentality within the exclusive
16 control of the defendant.” See *Woolsey v. State Farm Ins. Co.*, 117 Nev. 182, 188, 18 P.3d 317,
17 321 (2001).

19 Plaintiff cannot meet his burden to make a prima facie showing to move forward with his
20 res ipsa loquitur case. Plaintiff cannot establish the threshold requirement that a foreign
21 substance was unintentionally left in his hand. Generally, matters outside the pleadings are not
22 considered by a court when ruling on a judgment on the pleadings. In this case, however, the
23 Plaintiff’s pleadings should not be accepted as true given that the allegations in his complaint are
24 contradicted by the very documents that Plaintiff alleges in his complaint form the basis for his
25 res ipsa claim. See *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d P.2d 1258,
26 1261 (1993). Mr. Peck’s complaint references that Nevada Radiology “took (3) x-rays of Mr.
27
28

1 Peck's left hand that clearly showed an object in Mr. Peck's left hand." *See* Plaintiff's
2 Complaint at ¶5. His reliance on these X-Rays is misplaced. The Radiologists report states the
3 following findings after reading the X-Rays of Plaintiff's left: 1) "No acute fractures are seen;"
4 2) "Alignment is normal;" 3) Soft tissues are unremarkable; and 4) Impression: Negative left
5 hand." *See* Defendant Zepf's Motion for Judgment on the Pleadings, Exhibit C.

7 Even if this court were to accept Plaintiff's allegation that a foreign substance was left in
8 his left hand, which it should not, Plaintiff's allegations also fail to allege that the foreign
9 substance was left there unintentionally:

10 Plaintiff Peck alleges that the Defendants' (sic) committed medical
11 malpractice by deviating from the accepted standard of medical
12 care or practice by 'leaving a foreign substance in Mr. Peck's left
13 hand' [sic] NRS 41A.100(1)(a)(res ipsa loquitur doctrine) legally
causing the injury suffered by Plaintiff. *Fernandez v. Admirand*,
108 Nev. 963, 843 P.2d 354 (1992).

14 Plaintiff's Complaint at ¶6.

15 Plaintiff cannot establish the second threshold fact necessary to make a prima facie
16 showing. NRS 41A.100(1)(a) requires that the foreign substance be left during surgery. Plaintiff
17 has not alleged that there was a surgery. Consequently, even if this court were to accept as true
18 Plaintiff's allegation that a foreign substance was left in his hand, he has not alleged any facts for
19 the court to find that the foreign substance was left after Plaintiff was operated on.

21 Plaintiff has alleged no facts to make a prima facie showing that that Dr. Barnum had
22 exclusive control over the foreign substance allegedly left in Mr. Peck's left hand. *See* Plaintiff's
23 Complaint. No facts have been alleged that either directly or even indirectly implicate or infer
24 that Dr. Barnum had anything to with the alleged placement or removal of the foreign substance
25 in his left hand, allegedly an IV needle or catheter.

1 Plaintiff's complaint is fatally flawed. Even accepting Plaintiff's allegations as true, to
2 the extent that they are not contradicted, he cannot make a prima facie showing that a foreign
3 substance was left in his left hand as a result of a surgery or that the Dr. Barnum had exclusive
4 control over the instrumentality. In short, Plaintiff's Complaint fails as a matter of law because
5 he did not have a foreign substance in his hand.

6 III

7 CONCLUSION

8 Based on the foregoing, this court should grant Defendant Dr. Michael D. Barnum,
9 M.D.'s Joinder to Defendant David R. Zepf, M.D.'s Motion for Judgment on the Pleadings.

10 DATED this 2nd day of July, 2015.

11 ALVERSON, TAYLOR,
12 MORTENSEN & SANDERS

13 
14

15 DAVID J. MORTENSEN, ESQ.

16 Nevada Bar No. 002547

17 R. DOUGLAS KURDZIEL, ESQ.

18 Nevada Bar No. 004658

19 7401 W. Charleston Boulevard

20 Las Vegas, NV 89117-1401

21 702-384-7000

22 E-File: efile@alversontaylor.com

23 Attorneys for DEFENDANT

24 Michael D. Barnum, M.D.

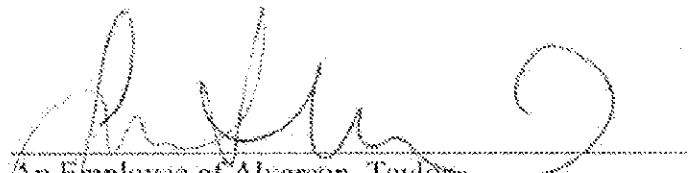
CERTIFICATE OF SERVICE AND MAILING

The undersigned hereby certifies that on the 2nd day of July, 2015, the forgoing
**DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO DEFENDANT DAVID R.
ZIPF, M.D.'S MOTION FOR JUDGMENT ON THE PLEADINGS** was served on the
following by Electronic Service to All parties on the Wiznet Service List, addressed as follows:

Arthur W. Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, NV 89128
*Attorney for Defendant
David R. Zipf, M.D.*

The foregoing **DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO
DEFENDANT DAVID R. ZIPF, M.D.'S MOTION FOR JUDGMENT ON THE
PLEADINGS** was also served by First Class Mail, by placing same in a sealed envelope upon
which first class postage was prepaid in Las Vegas, Nevada, addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per


An Employee of Alverson, Taylor,
Mortensen & Sanders

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-4401
(702) 384-7000

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO DEFENDANT DAVID R. ZIPF, M.D.'S MOTION FOR JUDGMENT ON THE PLEADINGS** filed in District Court Case No. A-14-708447-C.

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

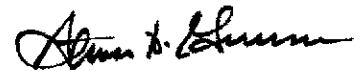
DATED this 2nd day of July, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
R. DOUGLAS KURDZIEL, ESQ.
Nevada Bar No. 004658
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702-384-7000
702-385-7000 (fax)
E-File: cfile@alversontaylor.com
Attorneys for DEFENDANT
Michael D. Barnum, M.D.

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CLERK OF THE COURT

1 **JMOT**
2 **ALVERSON, TAYLOR, MORTENSEN & SANDERS**
3 **DAVID J. MORTENSEN, ESQ.**
4 Nevada Bar No. 002547
5 **R. DOUGLAS KURDZIEL, ESQ.**
6 Nevada Bar No. 004658
7 7401 West Charleston Boulevard
8 Las Vegas, NV 89117-1401
9 702-384-7000
10 702-385-7000 (fax)
11 **E-File: efile@alversontaylor.com**
12 **Attorneys for DEFENDANT**
13 **Michael D. Barnum, M.D.**

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 **FRANK M. PECK,**

13 Plaintiff,

14 vs.

15 **VALLEY HOSPITAL MEDICAL CENTER, et al.,**
16 **DAVID R. ZIPF, M.D., MICHAEL D. BARNUM,**
17 **M.D., JOHN DOES I - V,**

18 Defendants.

CASE NO: A-14-708447-C

DEPT NO: III

DEFENDANT MICHAEL D.
BARNUM, M.D.'S JOINDER TO
DEFENDANT DAVID R. ZIPF, M.D.'S
MOTION TO STRIKE PUNITIVE
DAMAGES CLAIM

Date of Hearing: August 5, 2015

Time of Hearing: 9:00 a.m.

19
20 COMES NOW, Defendant MICHAEL D. BARNUM, M.D., through his attorneys of
21 record, Alverson, Taylor, Mortensen & Sanders, and hereby joins in Defendant David R. Zipf,
22 M.D.'s Motion to Motion to Strike Punitive Damages. By this Joinder, Defendant MICHAEL D.
23 BARNUM, M.D., adopts all the arguments made therein as his own and such oral argument as
24 may be entertained by the Court at the time and place of the hearing of this Joinder.

25
26 / / /

27 / / /

I.

BRIEF STATEMENT OF FACTS

This is a lawsuit alleging, as its sole cause of action, medical malpractice. Defendant Dr. Barnum, M.D. is a named defendant. The action is brought under NRS 41A.100(1)(a) alleging that a foreign substance was left in Plaintiff's hand. Nothing in the Complaint, however, alleges that Dr. Barnum acted with the requisite oppression, fraud or malice, express or implied necessary for Plaintiff to recover punitive damages. See NRS 42.005.

II.

LEGAL ARGUMENT

To recover punitive damages the Plaintiff must allege conduct amounting to fraud, malice or oppression in his Complaint. *Sprouse v. Wentz*, 105 Nev. 597, 603, 781 P.2d 1136, 1139-1140 (1989) ("In the prayer for relief . . . Wentz did not mention punitive damages . . . [and] did not allege any conduct amount to fraud, malice or oppression in connection with the conversion cause of action."). Defendant Barnum's procedural due process and fair trial rights will be violated in the absence of any allegations alleging oppression, fraud or malice due to insufficient notice of such a claim. *Id.* Simply listing "punitive damages" in the Prayer for Relief, without alleging any conduct on Dr. Barnum's part that would amount to oppression, fraud or malice, renders the prayer for punitive damages immaterial and meaningless and does not provide notice.

Based on the foregoing, Plaintiff's claim for punitive damages should be stricken. Nevada Rule of Civil Procedure Rule 12(f) provides in relevant part:

Upon motion made by a party . . . upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, **immaterial**, impertinent, or scandalous matter.

NRCP 12(f)(emphasis added)..

Punitive damages are not recoverable as a matter of right. A plaintiff must establish that the "defendant is guilty of oppression, fraud or malice, express or implied by clear and convincing evidence to be awarded punitive damages. See NRS 42.005. The Nevada Revised Statutes define the foregoing terms as follows:

1. "Conscious disregard" means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.

2. "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his or her rights or property or to otherwise injure another person.

3. "Malice, express or implied" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.

4. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.

See NRS 42.001.

The Nevada Supreme Court has held that a defendant's "unconscionable irresponsibility" does not warrant the recovery of punitive damages. See *Maduik v. Agency-Rent-Car*, 114 Nev. 1, 5, 953 P.2d 24, 26 (2008), citing, *First Interstate Bank v. Jafros Auto Body*, 106 Nev. 54, 57, 787 P.2d 765, 767 (1990)(Without substantial evidence of oppression, fraud or malice, express or implied, punitive damages are not recoverable, even if the defendant acted with unconscionable irresponsibility).

Simply stated, Plaintiff's complaint does not allege any facts or even infer what Dr. Barnum did or did not do that would justify the imposition of punitive damages. The only allegation referring to Dr. Barnum is a global allegation made by Plaintiff wherein he alleges that

1 all named defendants are collectively negligent for the allegedly retained foreign object in his left
2 hand:

3 Plaintiff Peck alleges that the Defendants' (sic) committed medical
4 malpractice by deviating from the accepted standard of care or
5 practice by "leaving a foreign substance in Mr. Peck's hand" (sic)
6 NRS 41A.100(1)(a)(res ipsa loquitur doctrine) legally causing
7 injury suffered by Plaintiff. Fernandez v. Admirand, 108 Nev.
8 963, 843 P.2d 354 (1992).

9 See Complaint at ¶5. There are no facts that allege Dr. Barnum acted with fraud, malice or
10 oppression. Consequently, in a worst case scenario, Dr. Barnum is alleged to have acted
11 negligently. Negligent behavior, without evidence of fraud, malice and oppression does not
12 support a claim punitive damages.

13 III.

14 CONCLUSION

15 Based on the foregoing, the Court should strike Plaintiff's claim for punitive damages.

16 DATED this 2nd day of July, 2015.

17 ALVERSON, TAYLOR,
18 MORTENSEN & SANDERS

19 
20 DAVID J. MORTENSEN, ESQ.
21 Nevada Bar No. 002547
22 R. DOUGLAS KURDZIEL, ESQ.
23 Nevada Bar No. 004658
24 7401 W. Charleston Boulevard
25 Las Vegas, NV 89117-1401
26 702-384-7000
27 E-File: efile@alversontaylor.com
28 Attorneys for DEFENDANT
Michael D. Barnum, M.D.

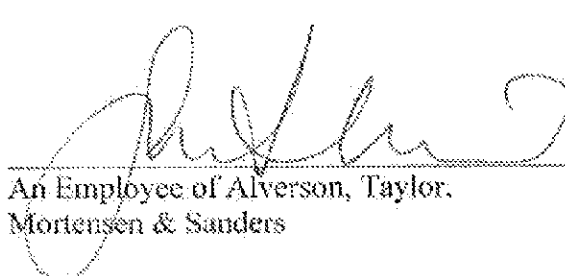
CERTIFICATE OF SERVICE AND MAILING

The undersigned hereby certifies that on the 22nd day of July, 2015, the forgoing
**DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO DEFENDANT DAVID R.
ZIPE, M.D.'S MOTION TO STRIKE PUNITIVE DAMAGES** was served on the following
by Electronic Service to All parties on the Wiznet Service List, addressed as follows:

Arthur W. Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, NV 89128
*Attorney for Defendant
David R. Zipe, M.D.*

The foregoing **DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO
DEFENDANT DAVID R. ZIPE, M.D.'S MOTION TO STRIKE PUNITIVE DAMAGES**
was also served by First Class Mail, by placing same in a sealed envelope upon which first
class postage was prepaid in Las Vegas, Nevada, addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per



An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO DEFENDANT DAVID R. ZIPE, M.D.'S MOTION TO STRIKE PUNITIVE DAMAGES** filed in District Court Case No. A-14-708447-C.

 X Does not contain the social security number of any person.

-OR-

 Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:


[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 2nd day of July, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
R. DOUGLAS KURDZIEL, ESQ.
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Attorneys for DEFENDANT
Michael D. Barnum, M.D.

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Frank M. Peck 57106
H.D.S.P. Box 650
Indian Springs, NV. 89070
Plaintiff, prose.

12
FILED
JUL - 9 2015
CLERK OF COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck, CASE NO. A-14-708447-C
Plaintiff. DEPT NO. 111

vs.
Valley Hospital Medical Center, et al,
Defendants.

A-14-708447-C
OPPM
Opposition to Motion
4470685



OPPOSITION TO DAVID R. ZIPF MD'S MOTION TO
STRIKE PUNITIVE DAMAGES

Come's Now, the Plaintiff, Frank M. Peck prose
hereinafter Mr. Peck with the above entitled
OPPOSITION.

This OPPOSITION is made and based upon all
papers and pleadings on file in this case as well
as the attached points and authorities and
affidavit of Mr. Peck.

Dated 6-29-15

Frank Peck

Frank M. Peck Attf prose

lot

CLERK OF THE COURT

JUL 07 2015

RECEIVED

Points and Authorities

Firstly in OPPOSITION the Defts' MOTION is premature AS NO MEET & CONFIR hearing has been conducted AND AS A RESULT under the RULES WRC P rule 16.1 NO discovery or discovery plan exists to support Pltff's OPPOSITION AS discovery will provide the requisite information to prove malice, reckless disregard. Pltff filed MOTION FOR MEET AND CONFIR ON April 28 2015 and MOTION for Subpoenas on March 17 2015 and has received NOTHING from the Court re SAME.

Mr. Peck's "CARE RECORDS" will prove intentional malice inter alia.

It should be noted that Mr. Peck was incapacitated during the time in question and must be allowed to seek discovery PRIOR to hearing this MOTION. Mr. Peck is PRO SE and cannot be held to the same standard as an attorney.

Mr. Peck has received The order Quashing service on Valley Hospital, THAT IS ALL. Mr. Peck has NOT received A scheduling ORDER or any such orders.

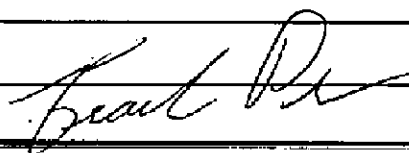
This court should also note that Mr Peck is dealing with nefarious conduct of Prison Staff in the mailroom. Mr Peck was unable to correct the Service Defect on Valley Hospital due to the Mailroom withholding time sensitive service of process of documents that would have enabled Mr Peck to cure the defect in service had the mail room not withheld Mr Peck's mail for "OVER A MONTH" this ~~more~~ incident is well documented GRIEVANCED and will become A TORT CLAIM against the Prison, NOTWITHSTANDING. Mr. Peck requests "FAIR PROCESS" a rule 16.1 Hearing and a scheduling ORDER.

This is not Mr. Peck's only litigation. Mr Peck is deeply entrenched in "legal warfare" and this institution refuses to order investigations into the nefarious conduct of officers in the mailroom. (Disposing of mail, Legal or otherwise)

Conclusion

Therefore, this Honorable Court should ORDER A MEET & confer hearing consistent with the NRCP 16.1, AND issue a scheduling ORDER ? DENY the Deft's MOTION.

Dated 6-29-15



3d

Frank M. Peck Pltff Drose

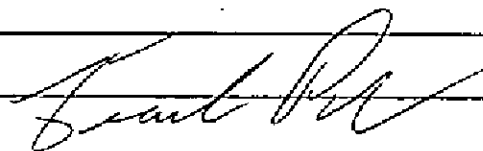
Affidavit, certificate of service and Affirmation

I Frank M. Peck do hereby swear under penalty of perjury:

1. I am the Plaintiff in CCDC case NO. A-14-708447-C.
2. All assertions in this OPPOSITION are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this OPPOSITION in good faith and for no improper reason.
4. A true and correct copy of said OPPOSITION was mailed this date to the Clerk of the Court @ 200 LEWIS AVE 3rd floor LAS VEGAS, NV. 89155-1160 for filing and Electronic Service / notice per NEFR rule 9(c) on the parties and Defts Atty Danielle Woodrum Esq @ dwoodrum @ awtlawoffice.com
5. Dated done and mailed this 29th day of June 2015.
Signed under penalty of perjury NRS 208.165,
28 USC 1746.

Dated 6-29-15

*** Affirmation contains no social security numbers of any person.



Frank M. Peck 57106

HDSD Box 650

Indian Springs, NV, 89070

Plaintiff, pro se

4-64

Frank M. Peck 57106
HDSR Box 650
Indian Springs, NV. 89070

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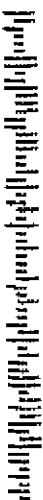
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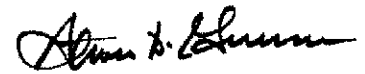
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200 Lewis Ave 3rd floor
LAS VEGAS, NV. 89155-1160

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CLERK OF THE COURT

ROPP
 ARTHUR W. TUVERTSON, ESQ.
 Nevada State Bar No. 005156
 DANIELLE WOODRUM, ESQ.
 Nevada State Bar No. 012902
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dwoodrum@awtlawoffice.com
 Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT**CLARK COUNTY, NEVADA**

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
 et al., DAVID R. ZIPF, M.D., MICHAEL D.
 BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
 DEPT. NO.: III

**DEFENDANT DAVID R. ZIPF, M.D.'S
 REPLY TO PLAINTIFF'S OPPOSITION
 TO MOTION FOR JUDGMENT ON THE
 PLEADINGS**

Hearing Date: 7/22/15

COMES NOW, Defendant DAVID R. ZIPF, M.D., by and through his attorneys, the
 LAW OFFICES OF ARTHUR W. TUVERTSON, LLP, and hereby submits the following Reply to
 Plaintiff's Opposition to Motion for Judgment on the Pleadings.

This Reply is made based upon the attached Memorandum of Points & Authorities, the
 papers and pleadings on file, and any evidence and/or argument that may be taken at the time for
 hearing on this matter.

DATED: July 15, 2015

LAW OFFICE OF ARTHUR W. TUVERTSON

BY: 

DANIELLE WOODRUM, ESQ.,
 Nevada State Bar No. 012902
 7201 West Lake Mead Boulevard, Suite 570
 Las Vegas, Nevada 89128
 (702) 631-7855
 Attorneys for Defendant DAVID R. ZIPF, M.D.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

In his Opposition to David Zipf, M.D.'s Motion for Judgment on the Pleadings, Plaintiff concedes that he did not attach an expert affidavit supporting the allegations in his Complaint. Nevertheless, Plaintiff erroneously contends that he was not required to do so because the *res ipsa loquitur* exception embodied in NRS 41A.100 to the expert affidavit is applicable. However, in his Complaint, he has failed to plead facts to support his contention that the *res ipsa loquitur* exception applies. Specifically, Plaintiff has not alleged that a foreign object was unintentionally left inside his body during a surgical procedure.

As an attempt to save his Complaint, Plaintiff alleges new facts in his Opposition. However, when ruling on a motion for judgment on the pleadings, the Court must only consider the pleadings and the documents referenced therein. Thus, the Court may not consider the new, contradictory facts that Plaintiff now alleges. Because Plaintiff has failed to plead facts *in his Complaint* that would invoke the *res ipsa loquitur* exception to the expert affidavit requirement, he was required to attach to his Complaint a supporting expert affidavit. His failure to do so renders his Complaint *void ab initio* and the Court must dismiss it as a matter of law.

II. LEGAL ARGUMENT

A. PLAINTIFF'S ALLEGATIONS ARE NOT SUPPORTED EXPERT OPINION AND FAIL TO MEET THE MINIMUM PLEADING THRESHOLD OF NRS 41A.071 AND MUST BE DISMISSED.

In his Opposition, Plaintiff erroneously argues that this case "falls squarely under Nevada's *res ipsa loquitur* statute NRS 41A.100," and therefore does not require a supporting affidavit from an expert pursuant to NRS 41A.071. Despite his assertions that NRS 41A.100 is applicable, Plaintiff does not once cite to NRS 41A.100. Instead, Plaintiff cites to a legal treatise describing the general doctrine of *res ipsa loquitur*. Plaintiff fails to acknowledge that in medical malpractice cases in Nevada, the *res ipsa loquitur* doctrine is codified and only applies in a few, select scenarios. NRS 41A.100(1)(a) states, in pertinent part:

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

1 medical testimony, material from recognized medical texts or
2 treatises or the regulations of the licensed medical facility wherein
3 the alleged negligence occurred is presented to demonstrate the
4 alleged deviation from the accepted standard of care in the specific
5 circumstances of the case and to prove causation of the alleged
6 personal injury or death, except that such evidence is not required
7 and a rebuttable presumption that the personal injury or death was
8 caused by negligence arises where evidence is presented that the
9 personal injury or death occurred in any one or more of the
10 following circumstances:

11 (a) A foreign substance other than medication or a prosthetic
12 device was unintentionally left within the body of a patient
13 following surgery.

14 As Defendant Dr. Zipf explained in his Motion for Judgment on the Pleadings, NRS
15 41A.100(1)(a) does not apply here because Plaintiff does not allege that he underwent a surgical
16 procedure where a foreign object was unintentionally left in his body. In fact, Plaintiff does not
17 allege that he underwent a surgical procedure at all. Instead, Plaintiff alleges that an IV guide or
18 catheter was left in his hand. The typical foreign object, *res ipsa loquitur* case involves a
19 situation where medical equipment, such as a sponge or needle, is used during the course of a
20 surgical procedure and inadvertently left within the patient's body during the course of that same
21 surgical procedure. See e.g., Szydel v. Markman, 121 Nev. 453, 117 P.3d 200 (2005); Fierle v.
22 Perez, 125 Nev. 728, 219 P.3d 906 (2009) (finding that a needle left within a patient's breast
23 during a breast procedure invoked the doctrine of *res ipsa loquitur*). *Res ipsa loquitur* does not
24 apply to a situation where a medical device was intentionally left within the patient to serve a
25 medical purpose, such as in this case. If the foreign substance was an IV needle guide, as
26 Plaintiff now alleges, it would have been intentionally left in Plaintiff's hand for the
27 administration of IV medications. This differs markedly from a situation where a foreign object
28 is unintentionally left in a patient during surgery.

It may be true that the allegedly retained IV guide was not intended to be left in Plaintiff indefinitely and was to be removed at a later date. However, as to Dr. Zipf, there is no claim that Dr. Zipf placed any object whatsoever inside the Plaintiff's hand during his hospital at Valley Hospital. This is distinctly different than the factual situation set forth in the Szydel case and the requirements of NRS 41A.100(1)(a). Thus, the *res ipsa loquitur* exception to the affidavit

1 requirement is inapplicable in this case.

2 Because NRS 41A.100(1)(a) is inapplicable, Plaintiff was required to attach the affidavit
3 of an expert to his Complaint which supported the allegations therein. Plaintiff concedes that he
4 failed to do so. Thus, his Complaint is *void ab initio*. Szydel v. Markman, 121 Nev. 453, 117
5 P.3d 200 (2005); Fierle v. Perez, 125 Nev. 728, 219 P.3d 906 (2009). Moreover, any argument
6 by Plaintiff that he is excused from doing so because of his status as an inmate, is unfounded.
7 See i.e. Kinford v. Bannister, 2012 WL 6627995 (D. Nev. 2012) (holding that Nevada state
8 prisoner who brought an medical malpractice action was required to file an expert affidavit in a
9 case where he alleged a physician failed to remove hardware that had previously been implanted
10 during surgery).

11 **B. PLAINTIFF'S ALLEGATIONS OF MEDICAL MALPRACTICE ARE NOT**
12 **SUPPORTED BY COMPETENT EXPERT OPINION AND FAIL TO**
13 **MEET THE MINIMUM PLEADING THRESHOLD OF NRS 41A.071 AND**
14 **MUST BE DISMISSED.**

15 In his Opposition, Plaintiff lists facts that directly contradict his Complaint. For instance,
16 Plaintiff now alleges that the foreign object allegedly left in his hand was a plastic IV guide that
17 would not show up on an x-ray. However, in his Complaint, Plaintiff states the following: "On
18 March 8th, 2014, an x-ray technician employed by Desert Radiology took (3) x-rays of Mr.
19 Peck's left hand that clearly showed an object in Mr. Peck's left hand." (Compl. ¶ 5.) Plaintiff
20 cannot now plead new facts that directly contradict the allegations made in his Complaint to try
21 and save his defective Complaint.

22 A motion for judgment on the pleadings must be based on the "pleadings." See Lovelock
23 Lands, Inc. v. Lovelock Land & Dev. Co., 54 Nev. 1, 7 P.2d 593, 594 (1932) ("upon a motion for
24 judgment on the pleadings, nothing dehors the complaint or any defense thereto set up in an
25 answer can be taken into account in disposing of such motion, but the motion is to be determined
26 upon the same principles as would be a demurrer to the complaint upon the same ground").
27 NRCP 12(c) itself expressly recognizes only matters in the pleadings should be considered.
28 However, "the court may take into account matters of public record, orders, items present in the
record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss

1 for failure to state a claim upon which relief can be granted.” Breliant v. Preferred Equities
2 Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Thus, the Court is limited to the facts
3 alleged in Plaintiff’s complaint and the documents relied on therein to support it.

4 As explained in Dr. Zipf’s Motion for Judgment on the Pleadings, in his Complaint
5 Plaintiff claimed the x-rays taken on March 8, 2014 confirmed the presence of the foreign object.
6 Now that Plaintiff claims that the x-rays support his contention that a foreign object was left in
7 his hand is demonstrably false, Plaintiff attempts to add new facts in his Opposition to support his
8 claim. For instance, Plaintiff now alleges that a nurse told him that an IV guide was left in his
9 hand. Plaintiff further alleges that the IV guide was plastic would not show up on x-ray even
10 though he claimed in his Complaint that the x-rays confirmed the presence of a foreign object.
11 Plaintiff cannot now plead new facts to try and save his Complaint. When ruling on this motion
12 the Court must only consider the facts that Plaintiff has pled in his Complaint and the documents
13 Plaintiff referenced or incorporated into his Complaint. In doing so, it is clear that Plaintiff’s
14 Complaint fails as a matter of law and must be dismissed.

15 III. CONCLUSION

16 Based upon the forgoing points and authorities, Defendants respectfully requests this
17 Court dismiss Plaintiff’s Complaint as a matter of law.

18 DATED: July/5, 2015

LAW OFFICES OF ARTHUR W. TUVERTON

19
20 BY:


ARTHUR W. TUVERTON, ESQ.

Nevada State Bar No. 005156

DANIELLE WOODRUM, ESQ.

Nevada State Bar No. 012902

7201 West Lake Mead Boulevard, Suite 570

Las Vegas, Nevada 89128

(702) 631-7855

Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERTSON, and that on this 15th day of July, 2015, I served a copy of **DEFENDANT DAVID R. ZIPF, M.D.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS** as follows:

☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

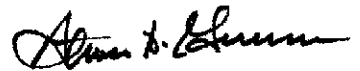
Frank M. Peck, #57106
IIDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

☒ By Electronic Service through Eighth Judicial District Court to;

David J. Mortensen, Esq.
ALVERSON TAYLOR MORTENSEN &
SANDERS
7401 W. Charleston Blvd.
Las Vegas, NV 89117
Facsimile (702) 385-7000
efile@alversontaylor.com
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smasia@alversontaylor.com
Attorneys for Defendant Michael D. Barnum, M.D.



An employee of the
LAW OFFICES OF ARTHUR W. TUVERTSON



CLERK OF THE COURT

RPLY

ALVERSON, TAYLOR, MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

R. DOUGLAS KURDZIEL, ESQ.

Nevada Bar No. 004658

7401 West Charleston Boulevard

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702-384-7000

702-385-7000 (fax)

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

vs.

**VALLEY HOSPITAL MEDICAL CENTER, et al.,
DAVID R. ZIPF, M.D., MICHAEL D. BARNUM,
M.D., JOHN DOES I - V,**

Defendants.

CASE NO: A-14-708447-C

DEPT NO: III

**REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT
BARNUM'S JOINDER TO DR.
ZIPF'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

Date of Hearing: July 22, 2015

Time of Hearing: 9:00 a.m.

Defendant Dr. Barnum ("Barnum") response to Plaintiff's failure to file an Opposition to
Defendant Barnum's Joinder Dr. Zipf's Motion for Judgment on the Pleadings:

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendant Barnum filed his Joinder to Dr. Zipf's Motion for Judgment on the Pleadings
on July 2, 2015. See Defendant Barnum's Joinder to Dr. Zipf's Motion for Judgment on the

1 Pleadings. Plaintiff was mailed a copy of the pleading through the U.S. Mail. *Id.* Plaintiff's
2 Opposition was should have been served on Defendant Barnum on July 13, 2015. *See* EJDRCR
3 2.20(e). Plaintiff has failed to file an Opposition. The Nevada Supreme Court has held that an
4 opposing party's failure to oppose a motion is an admission that the motion is meritorious. *See*
5 *King v. Cartridge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005), citing, *Nye County v. Washoe*
6 *Medical Center*, 108 Nev. 896, 899-900, 839 P.2d 1312, 1314-15 (1992)(affirming district
7 court's decision granting Plaintiff's unopposed motion for summary judgment); *see also Walls v.*
8 *Brewster*, 112 Nev. 175, 178, 912 P.2d 261, 263 (1996)(district court acted properly in
9 construing Plaintiff's failure to respond to motion to dismiss as admission that the motion was
10 meritorious). Therefore, the court should grant Defendant Barnum's Joinder because it is an
11 unopposed motion that should be deemed to be meritorious.

12
13 Defendant Barnum assumes that if Plaintiff had filed an Opposition to his Joinder, which he
14 did not, Plaintiff would have raised the same arguments he raised in Opposition to Dr. Zipf's
15 Motion for Judgment on the Pleadings. In an exercise of caution, Defendant Barnum reply's to
16 the Opposition to Dr. Zipf's Motion for Judgment on the Pleadings.

17 II.

18 LEGAL ARGUMENT

19 A. DEFENDANT BARNUM'S JOINDER TO DR. ZIPF'S MOTION FOR 20 JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED BECAUSE 21 PLAINTIFF'S OPPOSITION FAILS TO ESTABLISH HOW HIS COMPLAINT 22 MEETS THE MINIMUM STANDARDS FOR PLEADING RES IPSA LOQUITUR 23 UNDER NRS 49A.100

24 Plaintiff incorrectly informs this court that his pleading "fits squarely under Nevada's res
25 ipsa loquitur statute NRS 41A.100 which does not require expert testimony at trial." *See*
26 Plaintiff's Opposition at 3. Plaintiff is woefully misinformed. Plaintiff compounds his mistake
27

1 by then informing the court about common law res ipsa loquitur claims. Plaintiff fails to grasp
2 that NRS 41A.100 creates a statutory version of res ipsa loquitur and replaced common law res
3 ipsa claims for medical malpractice.

4 NRS 41A.100 provides in relevant part:

5
6 Liability for personal injury or death is not imposed upon any
7 medical provider of medical care based on alleged negligence in
8 the performance of that care unless evidence consisting of expert
9 medical testimony, material from recognized medical texts or
10 treatises or other regulations of the licensed medical facility
11 wherein the alleged negligence occurred is presented to
12 demonstrate the alleged deviation from the accepted standard of
13 care in the specific circumstances of the case and to prove
14 causation of the alleged personal injury or death, except that such
15 evidence is not required and a rebuttable presumption that the
16 personal injury or death was caused by negligence arises where
17 evidence is presented that the personal injury or death occurred in
18 any one or more of the following circumstances:

19 (a) A foreign substance other than medication or a prosthetic
20 devise was **unintentionally left within the body of a patient**
21 **following surgery.**

22 See NRS 41A.100 (a) (emphasis added).

23 Nothing in Plaintiff's Opposition addresses the conspicuously absent threshold
24 requirements missing in Plaintiff's Complaint. Simply stated, Plaintiff has failed to allege in his
25 Complaint or produce any evidence in his Opposition that the foreign substance allegedly left in
26 his hand was either left unintentionally and was left during surgery.

27 Plaintiff's reliance on his belief that the burden shifts to Barnum to produce evidence that
28 will refute the presumption of negligence is misplaced. Plaintiff is missing the point. He alleged
Nevada's statutory res ipsa loquitur claim for medical malpractice, and not a common law
variety of res ipsa. See Complaint; see also NRS 41A.100 (a). Threshold requirements have not
been alleged. Therefore, his Complaint fails as a matter of law.

1 To this end, Plaintiff's only option to resurrect his Complaint is by alleging Dr. Barnum
2 was negligent, which is a nonstarter because to have a valid claim Plaintiff needed to attach an
3 expert's affidavit to the Complaint. See NRS 41A.100. Plaintiff admits, however, that he did
4 not attach an expert's affidavit to his Complaint. Even if Plaintiff's Complaint is viewed as a
5 negligence claim for medical malpractice, it is *void ab initio* under Nevada law. See *Szydel v.*
6 *Markman*, 121 Nev. 453, 117 P.3d 200 (2005). Therefore, Barnum's Joinder should be granted
7 and Plaintiff's Complaint should be dismissed.
8

9 **B. THE COURT SHOULD DISREGARD PLAINTIFF'S ATTEMPT TO CHANGE**
10 **THE FACTS HE ALLEGED IN HIS COMPLAINT TO SUIT HIS CURRENT**
11 **NEEDS**

12 Plaintiff, faced with the reality that the X-rays he maintained in his Complaint were proof
13 positive that a foreign substance was left in his hand, now contradicts the allegations he raised in
14 his Complaint by alleging that the foreign substance is probably a plastic needle guide. Mr. Peck
15 bases this conclusion on a hearsay statement allegedly made by Nurse Brenda and not
16 admissible. Moreover, Plaintiff then makes the unsupported statement that "[n]eedle guides are
17 plastic and do not show up on an x-ray." This statement should be discounted because there is
18 no basis for the court judge the validity of the statement. Simply stated, at best it is an opinion of
19 a lay witness with no specialized knowledge. For Plaintiff's statement to be even be considered
20 by the court, an expert's opinion on the matter of whether a plastic foreign substance would be
21 revealed by an X-ray. Similarly, Plaintiff's unsupported opinion that "[t]he only object ruled out
22 by the X-rays is a medical surgical needle" should be summarily disregarded for the same
23 reasons.
24
25
26
27
28

1. A Motion for Judgment On the Pleadings Is Based On The Facts Plead In the Complaint

Plaintiff is grasping at straws by asserting his unsupported "red herring" arguments concerning what could and/or could not be seen in an X-ray. The critical fact for the court to keep in focus is contained in ¶5 of the Plaintiff's Complaint. Plaintiff alleged:

On March 8, 2014 an X-Ray technician (sic) employed by Desert Radiology took (3) X-Rays of Mr. Peck's left hand **that clearly showed an object in Mr. Peck's left hand.**

See Complaint at ¶ (emphasis added). Plaintiff's entire argument concerning the alleged plastic needle guide lacks merit because it is not a fact contained in the original pleading, is not a fact supported by a proper expert who has the skill, expertise, education and experience to make such statements and the underlying basis for Mr. Peck's newest position is based on inadmissible hearsay from Nurse Brenda. Plaintiff's statement in his attached Affidavit that "[a]ll assertions in the attached Opposition are true based on my personal knowledge and information believed to be true" is not sufficient to replace expert testimony as to what could be seen in an X-ray. Based on the foregoing, Mr. Peck's attempt to introduce new facts into the argument should be summarily denied by this court.

2. Plaintiff's Plastic Guide Argument Does Not Resurrect the Fact That He Has Not Properly Plead Res Ipsa Loquitur, Pursuant to NRS 41A.100.

Plaintiff's attempt to raise a "red herring" concerning whether the X-Ray would have shown a plastic guide line in retained in Plaintiff's hand does not affect in anyway the basis for Dr. Zipf's Motion for Judgment on the Pleadings and Dr. Barnum's Joinder thereto. Plaintiff has produced no evidence to establish that the foreign object allegedly retained in his hand was unintentionally retained during surgery. As such Defendant Barnum's Joinder to Dr. Zipf's Motion for Judgment on the Pleadings should be granted.

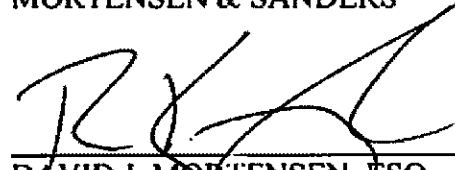
III.

CONCLUSION

Based on the foregoing, Defendant Barnum's Joinder should be granted.

DATED this 17th day of July, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

R. DOUGLAS KURDZIEL, ESQ.

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(702) 364-7060

Stephanie Prescott
An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT BARNUM'S JOINDER TO DR. ZIPF'S MOTION FOR
JUDGMENT ON THE PLEADINGS** filed in District Court Case No. A-14-708447-C.

X Does not contain the social security number of any person.

-OR-

— Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 17th day of July, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547

R. DOUGLAS KURDZIEL, ESQ.
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Attorneys for DEFENDANT

Michael D. Barnum, M.D.

FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

FILED

JUL 21 2015

CLERK OF COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,
Plaintiff,

CASE NO. A-14-708447-C

DEPT NO. 3

vs.

Valley Hospital Medical Center, et al,
Defendants.

JOINDER OF OPPOSITIONS ALREADY ON
FILE TO DEFENDANT MICHAEL D. BARNUM'S
JOINDER TO DEFENDANT DAVID R. ZIPE'S
MOTION FOR JUDGEMENT ON THE PLEADINGS
AND MOTION TO STRIKE PUNITIVE DAMAGES

Comes now, the Plaintiff, Frank M. Peck pro se
with the above titled JOINDER OF OPPOSITIONS

This JOINDER is made and based on all papers and
pleadings on file in this case as well as the attached
points and authorities and affidavit of Mr. Peck.

DATED 7-13-15

A-14-708447-C
JOIN
Joinder
4473708



1 of 5

Points and Authorities

Defendant Michael D. Barnum MD's MOTIONS are certified as "MAILED" on July 2 2015 but were not mailed until 5 days later on the 7th SEE (EX-1) AND NDOC LEGAL MAIL RECEIPT dated 7-8-15. AS SUCH THIS pleading is timely.

Deft Barnum brings NO NEW ARGUMENT, AS SUCH, Plaintiff stands on his OPPOSITIONS ON FILE HEREIN.

Conclusion

Therefore the Defendant's MOTIONS should be denied.

Dated July 13th 2015

Respectfully submitted

Frank Peck

Frank M. Peck 57106

NDSP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

Affidavit, certificate of service and *Affirmation

I Frank M. Peck do hereby swear under penalty of perjury:

1. I am the Plaintiff in CCDC case no. A-14-708447-C.
2. All assertions in the attached document are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this Joinder in good faith and for no improper reason.
4. A true and correct copy of said Joinder was mailed this date to the clerk of the court @ 200 Lewis Ave 3rd floor LAS VEGAS, NV 89155-1160 for filing and NOTICE of conversion / filing per NEFCR to Dett's Attorneys: David J. Mortensen Esq @ - alverson.taylor.com and Danielle Woodrum Esq. @ awtlawoffice.com
5. Dated done and mailed this 13th day of July 2015.

FURTHER AFFIANT SAYETH NAUGHT

Signed under the penalty of perjury NRS 206.165 and 28 USC 1746.

* Affirmation: contains no social security numbers of any person NRS 239 B, 030.

Frank Peck

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

Plaintiff, pro se.

3065

INDEX OF EXHIBITS

Exhibit # 1

PAGES 1

Description: July 7 2015 Postmark from
Alverson, Taylor, Mortensen, Sanders. And
LEGAL MAIL receipt dated 7-8-15.

4,65

22098

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

LAWYERS

7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401



UNITED STATES POSTAGE
\$00.70⁵
0004238427 JUL 07 2015
MAILED FROM ZIP CODE 89117

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070

89070

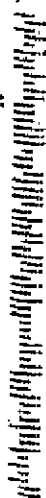


EXHIBIT 1

5 of 5

NEVADA DEPARTMENT OF CORRECTIONS

LEGAL MAIL

NAME: Peck DOC#: 57106 UNIT: 7A14

REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

LEGAL MAIL: At 8/15/15

CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: 7/8/15 OFFICER: Ch

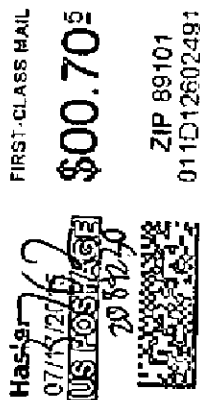
INMATE SIGNATURE: [Signature] DOC#: 57106 DATE: 7-8-15

DOC - 3020 - (REV. 7/01)

Frank M. Peck 57106

HDSP Box 650

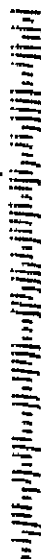
Indian Springs, NV 89070



Clerk of the Court
200 Lewis Ave 3rd floor
LAS VEGAS, NV 89155-1160

Confidential Legal Mail

CONFIDENTIAL



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Plaintiff, prose.

FILED

2015 JUL 29 A 8:35

CLERK OF THE COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,
Plaintiff,

CASE NO. A-14-708447-C

DEPT NO. III

VS.

Valley Hospital

Date 9-2-15

Medical Center, et al.,

Time 9:00 AM

Defendants.

NOTICE OF AND

MOTION FOR TELECONFERENCE OR AUDIOVISUAL

APPEARANCE (AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE)

Comes Now, the Plaintiff, Frank M. Peck prose
hereinafter Mr. Peck with his MOTION FOR TELE-
CONFERENCE OR AUDIOVISUAL APPEARANCE.

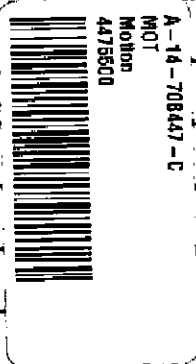
This MOTION is made and based upon all papers
and pleadings on file in this case as well as the
attached points and authorities and affidavit of
Mr. Peck.

Dated 7-20-15

Frank M. Peck

Frank M. Peck Pltff, prose.

1 of 3



RECEIVED

JUL 28 2015

CLERK OF THE COURT

Points And Authorities

Plaintiff is restrained in state prison at High Desert State Prison PO Box 650 Indian Springs, Nevada. 89070.

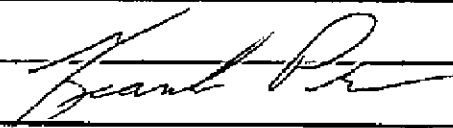
A hearing on the Defendant's MOTION FOR JUDGEMENT ON THE PLEADINGS is scheduled for the 5th day of August 2015.

Pursuant to part IX. Rules Governing Appearance by Audiovisual Transmission Equipment as Amended Feb 2, 2010 Rule 2. , 4 (1) (f).

Plaintiff requests Audiovisual or Teleconference appearance to argue against the Defendant's MOTION.

Dated this 20th day of July 2015.

Respectfully submitted



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

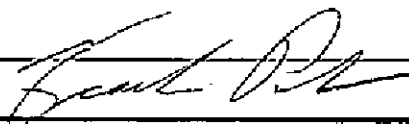
Plaintiff, pro se

* Affidavit, certificate of service and Affirmation

I Frank M. Peck do hereby swear under penalty of perjury:

1. I AM the Plaintiff in CCDC CASE NO. A-14-708447-C.
2. All assertions in the attached MOTION are true base upon personal knowledge and i am competent to testify to all matters contained therein.
3. I bring this MOTION in good faith and for no improper reason.
4. A true and correct copy was mailed this date to the Clerk of the Court at 200 Lewis Ave 3rd floor LAS VEGAS, NV 89155-1160 for filing and ELECTRONIC SERVICE on Defts Attorneys registered and consenting to the NEFCR Electronic filing and Service rules.
5. Dated and done this 20th day of July 2015.
Signed under the penalty of perjury NRS 208.165
28 USC 1746.

* Affirmation Contains no social security numbers of any person NRS 239 B 0.30



Frank M. Peck 57106

HIDSP Box 650

Indian Springs, NV 89070

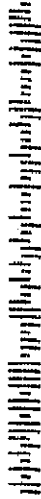
Plaintiff, pro se.

3.063

[illegible]

Indian Springs, Nv. 89070

800-900-4000



IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 23 2015 08:52 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

FRANK MILFORD PECK,
Appellant(s),

vs.

VALLEY HOSPITAL MEDICAL
CENTER; DAVID R. ZIPF, M.D.; AND
MICHAEL D. BARNUM, M.D.,
Respondent(s),

Case No: A708447

Docket No: 68664

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
FRANK M. PECK #57106,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
KIRILL V. MIKHAYLOV, ESQ.
1160 N. TOWN CENTER DR., STE. 200
LAS VEGAS, NV 89144

I N D E X

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A-14-708447-C

Frank Peck, Plaintiff(s)

vs.

Valley Hospital Medical Center, Defendant(s)

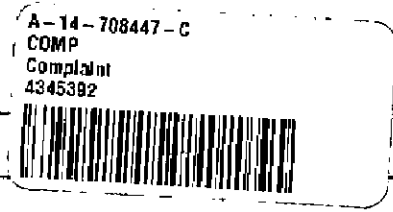
I N D E X

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U.S. MAIL**

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DOCUMENT,
NUMBERED PAGE(S)
7
WILL FOLLOW VIA
U.S. MAIL

230



FILED

OCT 13 2014

CLERK OF COURT

Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff, prose.

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck, CASE NO. A-14-708447-C
Plaintiff, DEPT NO. III

VS. TORT ACTION
Valley Hospital Medical Center, et al, MEDICAL MALPRACTICE,
David B. Ziff M.D., NEGLIGENCE COMPLAINT
Michael D. Barnum M.D., NRS 41A.100 RES IPSA
John Does I-V, LOQUITUR
Defendants, JURY TRIAL DEMANDED

Comes Now, the Plaintiff, Frank M. Peck prose
hereinafter Mr. Peck with his MEDICAL MALPRACTICE
NEGLECTENCE COMPLAINT NRS 41A.009 et seq.

INTRODUCTION

This is a Civil Tort Action Alleging medical
malpractice negligence NRS 41A.100(1)(a).

To wit; Needle or Guide left in Plaintiffs'
left hand.

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SEP 19 2014
CLERK OF THE COURT

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2.

JURISDICTION

This Honorable court has jurisdiction over the Plaintiffs STATE TORT claim under NRS 41A.100 res ipsa loquitur.

3.

PARTIES

Plaintiff Frank M. Peck is A state prisoner incarcerated at High Desert State Prison:
P.O. Box 650 Indian Springs, NV. 89070.

Defendant Valley Hospital Medical Center
620 Shadow Lane Las Vegas, NV. 89106-4194

Defendant Doctor David R. Zipf MD
620 Shadow Lane Las Vegas, NV. 89106-4194

Defendant Doctor Michael D. Barnum MD
620 Shadow Lane Las Vegas, NV. 89106-4194

Defendant John Does 1-5 unknown Nurses PA'S
620 Shadow Lane Las Vegas NV 89106-4194

4.

VENUE

At all times relevant all Defendants worked and resided in Clark County.

5.

Facts

1. Plaintiff Peck was admitted to Valley Hospital on December 31st 2013.
2. Plaintiff Peck was discharged from Valley Hospital on January 17th 2014.
3. Plaintiff Peck on February 18th 2014 submitted a MEDICAL KIT to Prison medical staff alerting them that something possibly a needle is just under the skin in Mr. Peck's left hand.
4. Between Feb 18th 2014 and March 8th 2014 Plaintiff Peck was seen by NDOC Doctor Suwec who confirmed that "something foreign was in in Mr. Peck's hand" and at that time Dr. Suwec ORDERED AN X-RAY of Mr. Peck's hand.
5. On March 8th 2014 AN X-RAY technician employed by Desert Radiology took (3) X-RAYS of Mr. Peck's left hand that clearly showed an object in Mr. Peck's left hand.

(3)

6.

Cause of Action

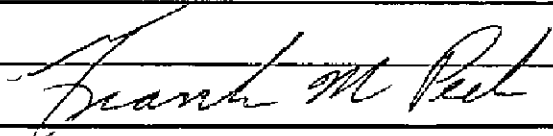
Plaintiff Peck alleges that the Defendants committed medical malpractice by deviating from the accepted standard of medical care or practice by "leaving a foreign substance in Mr. Peck's hand" NRS 41A.100(1)(a) (res ipsa loquitur doctrine) legally causing the injury suffered by Plaintiff. Fernandez v. Admirand, 108 Nev 963, 843 P.2d 354 (1992).

The above claim is specific in regard to all the Defendants named in this complaint as well as the discoverable names of additional defendants.

Damages

Plaintiff seeks damages in the amount of (\$100,000.00), one hundred thousand dollars for pain and suffering, mental and emotional distress for past, current and future suffering plus punitive damages, costs, fees, expenses for removal of object and reasonable attorneys fees. and any other relief the court deems appropriate.

Dated 9-13-14



Frank M. Peck 57106

HDSP Box 650

(4) Indian Springs, NV 89070

State of Nevada ss
County of Clark Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under the penalty of perjury to the following:

1. I Am the Plaintiff in the Attached Civil tort claim for malpractice against Valley Hospital, et al.
2. All assertions in said complaint are true based upon personal knowledge and I am over the age of 18 and competent to testify to all matters contained therein.
3. I bring this complaint in good faith and for no improper reason.

Further affiant saith naught

Dated this 13th day of September 2014.

Signed under penalty of perjury NRS 208.165
and 28 U.S.C. 1746.

* Affirmation contains no social security numbers of any person.

Frank M. Peck

Frank M. Peck 57106

HO SP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se -

(5)

OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION

FILED
DEC 03 2014

[Signature]
CLERK OF COURT

#45

FRANK M PECK

PLAINTIFF

Vs

DAVID R ZIPF MD

DEFENDANT

CASE No. A-14-708447-C
SHERIFF CIVIL NO.: 14007605

AFFIDAVIT OF SERVICE

STATE OF NEVADA

COUNTY OF CLARK

ss:

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on 11/17/2014, at the hour of 11:45 AM. affiant as such Deputy Sheriff served a copy/copies of SUMMONS AND COMPLAINT issued in the above entitled action upon DAVID R ZIPF MD the defendant DAVID R ZIPF MD named therein, by delivering to and leaving with said defendant DAVID R ZIPF MD, personally, at VALLEY HOSPITAL MEDICAL CENTER 620 SHADOW LANE LAS VEGAS, NV 89106 within the County of Clark, State of Nevada, copy/copies of SUMMONS AND COMPLAINT

DATED: November 18, 2014.

Douglas C. Gillespie, Sheriff

SUBSCRIBED AND SWORN to me before me this

18th day of November 2014

NOTARY PUBLIC in and for said County & State

By:

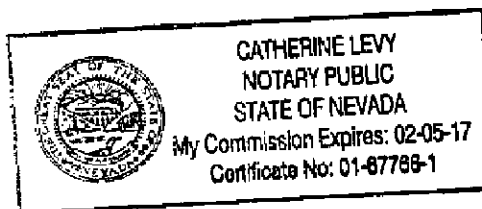
[Signature]
KENNETH ROSS
Deputy Sheriff

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DEC 03 2014

CLERK OF THE COURT

A-14-708447-C
AOS
Affidavit of Service
4417122



PO Box 553220 Las Vegas, NV 89155-3220 (702) 671-5822

5

SUMM

Frank M. Peck 57106
HOSO Box 650
Indian Springs, NV 89070
Plaintiff, pro se.

DISTRICT COURT
CLARK COUNTY, NEVADA

Frank M. Peck

Plaintiff(s),

-vs-

David R. Zipf MD

Defendant(s).

CASE NO. A-14-70849-1
DEPT. NO. 3

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CLARK COUNTY SHERIFF
2014 NOV 13 P 4:41

SUMMONS - CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:
 - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
 - (b) Serve a copy of your response upon the attorney whose name and address is shown below.

SUMM Civil.doc/3/19/2010

- 1 2. Unless you respond, your default will be entered upon application of the
2 Plaintiff(s) and failure to so respond will result in a judgment of default
3 against you for the relief demanded in the Complaint, which could result in
4 the taking of money or property or other relief requested in the Complaint.
5 3. If you intend to seek the advice of an attorney in this matter, you should do
6 so promptly so that your response may be filed on time.
7 4. The State of Nevada, its political subdivisions, agencies, officers,
8 employees, board members, commission members and legislators each
9 have 45 days after service of this Summons within which to file an Answer
10 or other responsive pleading to the Complaint.
11

12
13 Submitted by:

14 Frank M. Peck
15
16 Frank M. Peck 57106
17 HDSP Box 650
18 Indian Springs, NV. 89070
19 Plaintiff, pro se.

STEVEN D. GRIERSON
CLERK OF COURT

By

Deputy Clerk

ADELINE BELSEY

NOV 03 2010

Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

20 **NOTE: When service is by publication, add a brief statement of the object of the**
21 **action. See Nevada Rules of Civil Procedure 4(b).**
22
23
24
25
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27
28

AFFIDAVIT OF SERVICE

STATE OF)
) ss:
COUNTY OF)

_____ being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received _____ copy(ies) of the Summons and Complaint, _____ on the _____ day of _____, 20____ and served the same on the _____ day of _____, 20____ by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the Defendant _____ at (state address) _____
2. Serving the Defendant _____ by personally delivering and leaving a copy with _____ a person of suitable age and discretion residing at the Defendant's usual place of abode located at (state address) _____

[Use paragraph 3 for service upon agent, completing (a) or (b)]

3. Serving the Defendant _____ by personally delivering and leaving a copy at (state address) _____
 - (a) With _____ as _____, an agent lawfully designated by statute to accept service of process;
 - (b) With _____ pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):

- ☐ Ordinary mail
- ☐ Certified mail, return receipt requested
- ☐ Registered mail, return receipt requested

1 addressed to the Defendant _____ at Defendant's last known address which is
2 (state address) _____
3

4 I declare under penalty of perjury under the law of the State of Nevada that the
5 foregoing is true and correct.
6

7 EXECUTED this _____ day of _____, 20____.
8

9 _____
10 Signature of person making service
11
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OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION

FILED
DEC 03 2014

John J. Sullivan
CLERK OF COURT

FRANK M PECK

PLAINTIFF

Vs

MICHAEL D BARNUM MD

DEFENDANT

CASE No. A-14-708447-C
SHERIFF CIVIL NO.: 14007603

AFFIDAVIT OF SERVICE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on 11/17/2014, at the hour of 11:45 AM, affiant as such Deputy Sheriff served a copy/copies of SUMMONS AND COMPLAINT issued in the above entitled action upon MICHAEL D BARNUM MD the defendant MICHAEL D BARNUM MD named therein, by delivering to and leaving with said defendant MICHAEL D BARNUM MD, personally, at VALLEY HOSPITAL MEDICAL CENTER 620 SHADOW LANE LAS VEGAS, NV 89106 within the County of Clark, State of Nevada, copy/copies of SUMMONS AND COMPLAINT

DATED: November 18, 2014.

Douglas C. Gillespie, Sheriff

SUBSCRIBED AND SWORN to me before me this

18th day of November 2014.

[Signature]
NOTARY PUBLIC in and for said County & State

By:

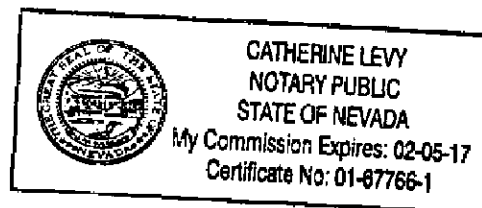
[Signature]
KENNETH ROSS
Deputy Sheriff

RECEIVED

DEC 03 2014

CLERK OF THE COURT

A-14-708447-C
AOS
Affidavit of Service
4417123



PO Box 553220 Las Vegas, NV 89155-3220 (702) 671-5822

5

1 **SUMM**

2 Frank N. Peck 57106

3 4950 Box 250

4 Indian Springs, NV 89070

5 Plaintiff, pro se.

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 Frank N. Peck

9 Plaintiff(s),

10 CASE NO. A-14-708447-C

11 -vs-

12 DEPT. NO. 3

13 Michael D. Barnum MD

14 Defendant(s).

15 **SUMMONS - CIVIL**

16 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**
17 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**
18 **READ THE INFORMATION BELOW.**

19 **TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against
20 you for the relief set forth in the Complaint.

- 21
- 22 1. If you intend to defend this lawsuit, within 20 days after this Summons is
23 served on you, exclusive of the day of service, you must do the following:
- 24 (a) File with the Clerk of this Court, whose address is shown below, a
25 formal written response to the Complaint in accordance with the rules
26 of the Court, with the appropriate filing fee.
- 27 (b) Serve a copy of your response upon the attorney whose name and
28 address is shown below.

SUMM Civil.doc/3/19/2010

RECEIVED
CLARK COUNTY SHERIFF

2014 NOV 13 P 4:18

- 1 2. Unless you respond, your default will be entered upon application of the
2 Plaintiff(s) and failure to so respond will result in a judgment of default
3 against you for the relief demanded in the Complaint, which could result in
4 the taking of money or property or other relief requested in the Complaint.
5 3. If you intend to seek the advice of an attorney in this matter, you should do
6 so promptly so that your response may be filed on time.
7 4. The State of Nevada, its political subdivisions, agencies, officers,
8 employees, board members, commission members and legislators each
9 have 45 days after service of this Summons within which to file an Answer
10 or other responsive pleading to the Complaint.
11

12 Submitted by:

13 Frank M. Peck
14
15 Frank M. Peck 57106
16 HDSO Box 650
17 Indian Springs, NV 89070
18 Plaintiff, pro se.
19

STEVEN D. GRIERSON
CLERK OF COURT

By

Deputy Clerk

ADELINE BELSEY

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

NOV 03 2014

Date

20 NOTE: When service is by publication, add a brief statement of the object of the
21 action. See Nevada Rules of Civil Procedure 4(b).
22
23
24
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28

AFFIDAVIT OF SERVICE

STATE OF)
COUNTY OF) ss:

____ being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received ____c opy(ies) of the Summons and Complaint, ____ on the ____ day of ____, 20____ and served the same on the ____ day of ____ 20____ by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the Defendant ____ at (state address) ____
2. Serving the Defendant ____ by personally delivering and leaving a copy with ____ a person of suitable age and discretion residing at the Defendant's usual place of abode located at (state address) ____

[Use paragraph 3 for service upon agent, completing (a) or (b)]

3. Serving the Defendant ____ by personally delivering and leaving a copy at (state address) ____
 - (a) With ____ as ____ an agent lawfully designated by statute to accept service of process;
 - (b) With ____ pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):

- ☐ Ordinary mail
☐ Certified mail, return receipt requested
☐ Registered mail, return receipt requested

1 addressed to the Defendant _____ at Defendant's last known address which is
2 (state address) _____
3

4 I declare under penalty of perjury under the law of the State of Nevada that the
5 foregoing is true and correct.

6 EXECUTED this _____ day of _____, 20_____.
7

8
9 _____
10 Signature of person making service
11
12
13
14
15
16
17
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25
26
27
28

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

FILED

DEC 05 2014

John I. Blum
CLERK OF COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,

CASE NO. A-14-708447-C

Plaintiff,

DEPT NO. 3

vs.

Valley Hospital Medical Center, et al,

David R. Zipf MD,

Michael D. Barnum MD,

John does I-V.

Defendants.

A-14-708447-C
EXMT
Ex Parte Motion
4417759



EX PARTE MOTION FOR SUBPOENA

Plaintiff requests issuance of subpoena providing physician notes and X-RAYS respective to March 8th 2014 X-RAY @ High Desert State Prison directing NDOC/HDSP medical to produce to Plaintiff said documents and images.

dated Nov 27th 2014.

Contains NO social security numbers of any person.

URS 239 B 030.

Frank M. Peck

Frank M. Peck Pltff pro se

3

RECEIVED

DEC 04 2014

CLERK OF THE COURT

Frank M. Peck 57106
HOSP Box 650
Indian Springs, NV. 89070

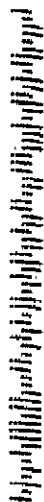
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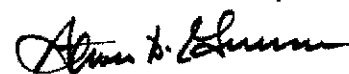
Clerk of the Court
200 Lewis Ave 3rd floor
Las Vegas, NV. 89155-1160

Confidential legal mail

LEGAL MAIL CONFIDENTIAL 000000



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HIGH DESERT
LAW LTD
T. PRISON



CLERK OF THE COURT

ANS
ARTHUR W. TUVERTSON, ESQ.
Nevada State Bar No. 005156
THOMAS R. SLEZAK, JR., ESQ.
Nevada State Bar No. 005503
LAW OFFICES OF ARTHUR W. TUVERTSON
A Limited Liability Partnership
Including Professional Corporations
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Telephone: (702) 631-7855
Facsimile: (702) 631-5777
tslezak@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

DEFENDANT DAVID R. ZIPF, M.D.'S
ANSWER TO PLAINTIFF'S
COMPLAINT

COMES NOW, Defendant DAVID R. ZIPF, M.D., by and through her attorney, the LAW OFFICES OF ARTHUR W. TUVERTSON, LLP, and as and for his Answer to Plaintiff's Complaint on file herein, hereby admits, denies and alleges as follows:

1. Answering Paragraphs 1 and 2 of the Introduction and Jurisdiction sections of Plaintiff's Complaint, this answering Defendant states that the allegations contained therein constitute conclusions of law and therefore require no answer; however, to the extent that said Paragraphs contain allegations of fact, this answering Defendant states that he is without sufficient knowledge or information to form a belief as to the truth or falsity of said allegations and therefore denies the same.

2. Answering Paragraph 3 of the Parties section of Plaintiff's Complaint, this answering Defendant states that he is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in said Paragraph and therefore denies the same.

3. Answering Paragraph 4 of the Venue section of Plaintiff's Complaint, this answering Defendant admits that he is and was a resident of Clark County, Nevada and provided health care services in Clark County, Nevada. As to the remaining allegations, this answering Defendant states that he is without sufficient knowledge or information to form a belief as to the truth or falsity of said allegations and therefore denies the same.

4. Answering Paragraphs 1, 2, 3, 4 and 5 of the Facts section of Plaintiff's Complaint, this answering Defendant states that he is without sufficient knowledge or information to form a belief as to the truth or falsity of said allegations and therefore denies the same.

5. Answering the unnumbered Paragraphs entitled "Cause of Action," this answering Defendant denies each and every allegation contained therein as it pertains to this answering Defendant. This answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained therein and therefore denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

This answering Defendant alleges that the damages, if any, alleged by the Plaintiff were the result of independent intervening acts, over which this answering Defendant had no control,

1 which resulted in a superseding cause of Plaintiff's and/or Decedent's alleged damages.

2 **THIRD AFFIRMATIVE DEFENSE**

3 That the damages or injuries sustained by the Plaintiff and/or Decedent, if any, were
4 caused by the acts of third persons who are not agents, servants or employees of this answering
5 Defendant, and were not acting on behalf of this answering Defendant in any manner or form,
6 and, as such, this answering Defendant is not liable in any manner to the Plaintiff.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 This answering Defendant alleges that the Plaintiff failed to mitigate his damages.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 The Plaintiff's claims are barred by the applicable statute of limitations.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 This answering Defendant alleges that at all times mentioned herein, this answering
13 Defendant acted reasonably and in good faith with regard to the acts and transactions which are
14 the subject of this pleading.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 The complained of acts of this answering Defendant were justified under the
17 circumstances.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 The injuries suffered by the Plaintiff and/or Decedent, if any, as set forth in the
20 Complaint, were caused by a pre-existing condition.

21 **NINTH AFFIRMATIVE DEFENSE**

22 This answering Defendant has been forced to retain the services of an attorney to defend
23 this action and is entitled to an award of reasonable attorney's fees and costs incurred herein.

24 **TENTH AFFIRMATIVE DEFENSE**

25 The injuries or damages, if any, complained of by Plaintiff and/or Decedent in the
26 Complaint for damages were caused by the forces of nature and not by any acts or omissions of
27 this answering Defendant.

28 ///

ELEVENTH AFFIRMATIVE DEFENSE

This answering Defendant did not commit any acts of oppression, fraud, or malice, express or implied.

TWELFTH AFFIRMATIVE DEFENSE

In all medical attention rendered by this answering Defendant, this answering Defendant possessed and exercised the degree of skill and learning ordinarily possessed and exercised by members of her profession in good standing, practicing in similar localities, and that at all times, this answering Defendant used reasonable care and diligence in the exercise of her skills and the application of her learning, and at all times acted according to his best judgment; that the medical treatment administered by this Defendant was the usual and customary treatment for the physical condition and symptoms exhibited by the Decedent, and that at no time was this Defendant guilty of negligence or improper treatment; that on the contrary, this Defendant did and performed each and every act of such treatment in a proper and efficient manner and in a manner approved and followed by the medical profession generally and under the circumstances and conditions as they existed when such medical attention was rendered.

THIRTEENTH AFFIRMATIVE DEFENSE

That in the event this answering Defendant may be found liable for negligence, which this Defendant denies, Defendant is only severally liable and not jointly liable as to the other Defendants and Plaintiff shall only recover that portion of any judgment that represents the percentage of negligence attributable to Defendant. Pursuant to NRS 41A.045, any potential liability of Defendant is several only.

FOURTEENTH AFFIRMATIVE DEFENSE

The damages claimed by Plaintiffs in the Complaint were not the result of any acts or omissions or commission or negligence but were the result of a known risk which was consented to, such risk being inherent in the nature of the treatment, procedures, and medical care rendered to the Decedent; that such risks were assumed.

////

FIFTEENTH AFFIRMATIVE DEFENSE

This answering Defendant did at all times keep Plaintiff and/or Decedent fully advised of Decedent's medical condition and problems and did advise and recommend various treatments to Decedent. That any treatment rendered by this answering Defendant was rendered with the consent of the Plaintiff and/or Decedent.

SIXTEENTH AFFIRMATIVE DEFENSE

That the risks and consequences, if any, attendant to the recommendations and treatment proposed by this answering Defendant were fully explained to the Plaintiff and/or Decedent, who freely consented to such treatment and thereby assumed risks involved in such treatment. Plaintiff and/or Decedent were advised of alternate methods of treatment.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant met the applicable standard of care in his treatment of the Decedent.

EIGHTEENTH AFFIRMATIVE DEFENSE

This answering Defendant avails herself of all affirmative defenses as set forth in and or arising out of NRS §§ 41A.021, 41A.031, 41A.035, 41A.045, 41A.071, 41A.100, 42.020, 41.1395 and all applicable subparts.

NINETEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Plaintiff's Complaint and, therefore, this answering Defendant reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation so warrants.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by reason of his Complaint on file herein;
2. For all attorney's fees incurred in the defense of Plaintiff's Complaint against this

1 answering Defendant;

2 3. For costs and disbursements incurred herein; and

3 4. For such other and further relief as the Court may deem just and proper in these
4 premises.

5 DATED: December 15th 2014

LAW OFFICES OF ARTHUR W. TUVERTSON

6
7 BY: 

8 ARTHUR W. TUVERTSON, ESQ.

Nevada State Bar No. 005156

9 THOMAS R. SLEZAK, JR., ESQ.

Nevada State Bar No. 005503

10 7201 West Lake Mead Boulevard, Suite 570

11 Las Vegas, Nevada 89128

(702) 631-7855

12 Attorneys for Defendant DAVID R. ZIPF, M.D.

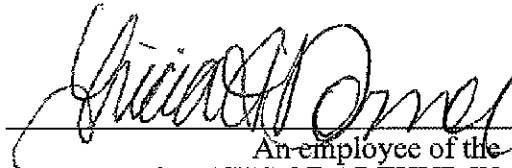
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERTSON, and that on this 15th day of December, 2014, I served a copy of DEFENDANT DAVID R. ZIPF, M.D.'S ANSWER TO PLAINTIFF'S COMPLAINT as follows:

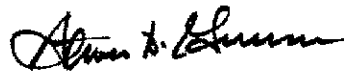
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

☐ By Electronic Service through Eighth Judicial District Court to;

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per



An employee of the
LAW OFFICES OF ARTHUR W. TUVERTSON



CLERK OF THE COURT

1 **IAFD**
ARTHUR W. TUVerson, ESQ.
2 Nevada State Bar No. 005156
THOMAS R. SLEZAK, ESQ.
3 Nevada State Bar No. 005503
LAW OFFICES OF ARTHUR W. TUVerson
4 A Limited Liability Partnership
Including Professional Corporations
5 7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
6 Telephone: (702) 631-7855
Facsimile: (702) 631-5777
7 tslezak@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 *****

12 FRANK M. PECK,

13 Plaintiff,

14 v.

15 VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
16 BARNUM, M.D., JOHN DOES I - V,

17 Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

**INITIAL APPEARANCE FEE
DISCLOSURE**

18
19 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
20 parties appearing in the above-entitled action as indicated below:

21 Defendant – David R. Zipf, M.D. \$223.00

22 Total remitted: \$223.00

23
24 DATED: October , 2014

LAW OFFICES OF ARTHUR W. TUVerson

25
26 BY:

THOMAS R. SLEZAK, ESQ.
Nevada State Bar No. 005503
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Attorneys for Defendant DAVID R. ZIPF, M.D.

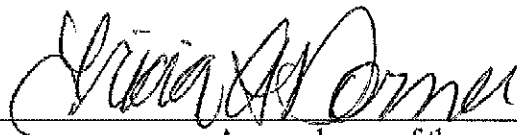
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVerson, and that on this 15th day of December, 2014, I served a copy of INITIAL APPEARANCE FEE DISCLOSURE as follows:

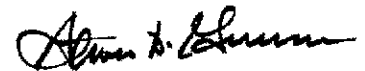
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

☐ By Electronic Service through Eighth Judicial District Court to;

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per



An employee of the
LAW OFFICES OF ARTHUR W. TUVerson



CLERK OF THE COURT

DMJT
ARTHUR W. TUVerson, ESQ.
Nevada State Bar No. 005156
THOMAS R. SLEZAK, JR., ESQ.
Nevada State Bar No. 005503
LAW OFFICES OF ARTHUR W. TUVerson
A Limited Liability Partnership
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7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Telephone: (702) 631-7855
Facsimile: (702) 631-5777
tslezak@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

**DEFENDANT DAVID R. ZIPF, M.D.'S
DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Defendant DAVID R. ZIPF, M.D., in the above-entitled
cause demands a jury, and that said cause be tried by a jury.

DATED: December 15, 2014

LAW OFFICES OF ARTHUR W. TUVerson

BY:

ARTHUR W. TUVerson, ESQ.
Nevada State Bar No. 005156
THOMAS R. SLEZAK, JR., ESQ.
Nevada State Bar No. 005503
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

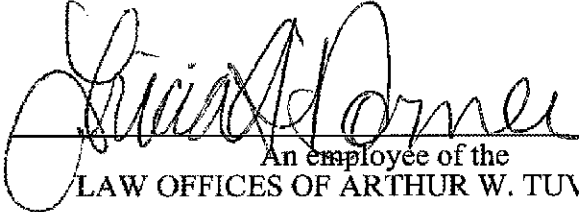
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERTSON, and that on this 15th day of December, 2014, I served a copy of **DEFENDANT DAVID R. ZIPF, M.D.'S DEMAND FOR JURY TRIAL** as follows:

☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

☐ By Electronic Service through Eighth Judicial District Court to;

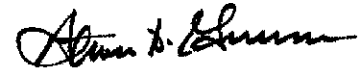
Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per


An employee of the
LAW OFFICES OF ARTHUR W. TUVERTSON

MOT

ARTHUR W. TUVERTSON, ESQ.
Nevada State Bar No. 005156
ANASTASIA L. NOE, ESQ.
Nevada State Bar No. 005442
LAW OFFICES OF ARTHUR W. TUVERTSON
A Limited Liability Partnership
Including Professional Corporations
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Telephone: (702) 631-7855
Facsimile: (702) 631-5777
anoel@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

**DEFENDANT DAVID R. ZIPF, M.D.'S
MOTION TO RE-TITLE ON AN ORDER
SHORTENING TIME**

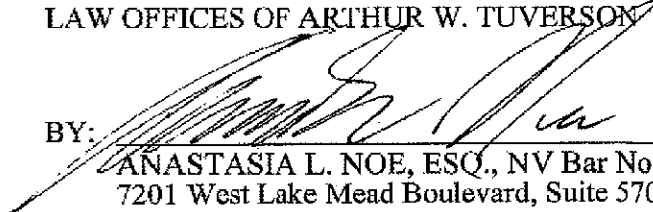
Hearing Date:
Hearing Time:

COMES NOW, Defendant DAVID R. ZIPF, M.D., by and through his counsel of record,
the LAW OFFICES OF ARTHUR W. TUVERTSON, and hereby submits the following Motion to
Re-Title. This Motion is made based upon the attached Memorandum of Points & Authorities,
the papers and pleadings on file, and any evidence and/or argument that may be taken at the time
for hearing on this matter.

DATED: January 29, 2015

LAW OFFICES OF ARTHUR W. TUVERTSON

BY:


ANASTASIA L. NOE, ESQ., NV Bar No. 005442
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Attorneys for Defendant DAVID R. ZIPF, M.D.

NOTICE OF MOTION

TO: Plaintiff, and her Attorney:

TO: All parties, and their respective attorneys:

PLEASE TAKE NOTICE that Defendant DAVID R. ZIPF, M.D.'s MOTION TO RE-TITLE or will be heard in Department III of the above entitled Court on the _____ day of _____, 2013, at _____ m.

DATED: January 29, 2015

LAW OFFICES OF ARTHUR W. TUVERTSON

BY: 

ANASTASIA L. NOE, ESQ.
Nevada State Bar No. 005442
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

ORDER SHORTENING TIME

IT IS HEREBY ORDERED that the hearing on Defendant DAVID R. ZIPF, M.D.'s MOTION TO RE-TITLE ON AN ORDER SHORTENING TIME, be, and the same hereby is, shortened for hearing before the District Court Judge on the 18 day of February, 2015, at 9 o'clock A m.

DATED this 2 day of February, 2015.


DISTRICT COURT JUDGE

Respectfully submitted,

LAW OFFICES OF ARTHUR W. TUVERTSON

By: 

ANASTASIA L. NOE, ESQ.
Nevada State Bar No. 005442
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

**AFFIDAVIT OF ANASTASIA L. NOE, ESQ. IN SUPPORT OF
MOTION TO RE-TITLE ON AN ORDER SHORTENING TIME**

STATE OF NEVADA }
COUNTY OF CLARK } ss

ANASTASIA L. NOE, ESQ. having first been duly sworn states:

1. I am an attorney licensed to practice law in the State of Nevada.
2. I am an Associate at the LAW OFFICES OF ARTHUR W. TUVERTSON.
3. I have been retained to represent Defendant DAVID R. ZIPF, M.D., in Case No.

A-14-708447-C.

4. The instant case is based upon allegations clearly falling within the statutory provisions of NRS 41A. The matter has not been set on calendar for inclusion in the Medical/Dental Malpractice Trial Setting Conferences scheduled to be heard on February 3, 2015, because it has been titled as a general tort action due to a misclassification on the Civil Cover Sheet.

5. Based on the case being assigned in the Court's system with the incorrect title, the instant motion became necessary and emergent.


6. This motion is made in good faith and not merely for purposes of delay.

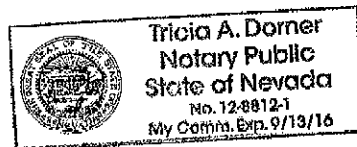
FURTHER, YOUR AFFIANT SAYETH NAUGHT.

DATED this 29 day of January, 2015.


ANASTASIA L. NOE, ESQ.

Subscribed and sworn to before me
this 29th day of January, 2015.


NOTARY PUBLIC in and for said
County and State



MEMORANDUM OF POINTS & AUTHORITIES

I. ARGUMENT

This case was filed October 13, 2014 by Plaintiff, Frank M. Peck in proper person. The Complaint is titled as:

TORT ACTION
Medical Malpractice,
Negligence Complaint
NRS 41A.100 Res Ipsa Loquiter

(See Plaintiff's Complaint attached hereto as Exhibit "A").

The sole allegation contained in the Complaint alleges Defendants deviated from the applicable standard of care during his December 31, 2013 – 1/17/14 Valley Hospital admission by failing to remove a needle from his left hand. There is no question Plaintiff's cause of action is brought under the provisions of N.R.S. 41A, and should be titled as a Medical Malpractice action in the Courts' case management system. Unfortunately the "other tort" box was checked on Plaintiff's Civil Cover sheet and the case has been assigned in the Court's system as a general tort rather than as an action for Medical Malpractice. (A copy of the Civil Cover Sheet is attached hereto as Exhibit "B").

Medical Malpractice actions are governed by Rules and statutes not applicable to general tort actions, and if this case is not re-titled at this time, it will not move through the Court's system in the appropriate manner. For instance, NRS 41A.061 requires that Medical Malpractice actions proceed to trial within two years, as opposed to general tort actions which must be brought to trial within 5 years. Further local Rules include additional Status Checks and Trial Setting Conferences not required in general tort matters to ensure the cases move through the system in accordance with NRS 41A.060. Unless this case is re-titled within the Court's system, it will not be scheduled for Medical Malpractice status and trial setting conferences, and may create a delay in the proceedings of this case. Therefore, Defendant, David Zipf, M.D. respectfully requests this case be re-titled as an action for Medical/Dental Malpractice.

///

///

1 **II. CONCLUSION**

2 Based upon the foregoing, Defendant, David Zipf, M.D. respectfully requests the instant
3 matter be re-titled as a Medical/Dental Malpractice action for all further proceedings.

4 DATED: January 29, 2015

LAW OFFICES OF ARTHUR W. TUVERTSON

6 BY: 

ARTHUR W. TUVERTSON, ESQ.

Nevada State Bar No. 005156

ANASTASIA L. NOE, ESQ.

Nevada State Bar No. 005442

7201 West Lake Mead Boulevard, Suite 570

Las Vegas, Nevada 89128

(702) 631-7855

Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERTSON, and that on this 9th day of February, 2015, I served a copy of DEFENDANT DAVID R. ZIPF, M.D.'S MOTION TO RE-TITLE ON AN ORDER SHORTENING TIME as follows:

☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

☐ By Electronic Service through Eighth Judicial District Court to;

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

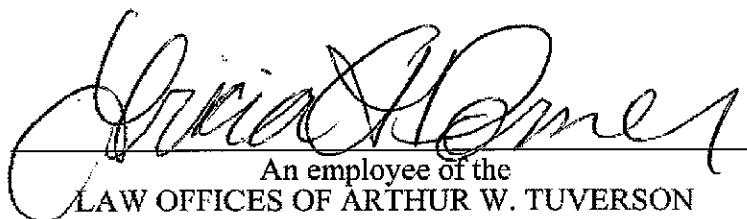
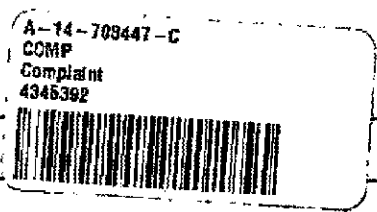

An employee of the
LAW OFFICES OF ARTHUR W. TUVERTSON

EXHIBIT A

EXHIBIT A

NT

*22



Frank M. Peck 57106
HOSP Box 650
Indian Springs, NV. 89070
Plaintiff, pro se.

FILED
OCT 13 2014
CLERK OF COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck, CASE NO. A-14-708447-C
Plaintiff, DEPT NO. III

VS. TORT ACTION
Valley Hospital Medical Center, et al, MEDICAL MALPRACTICE.
David B. Zopf MD, NEGLIGENCE COMPLAINT
Michael D. Barnum MD, NRS 41A.100 RES IPSA
John Does I-V, LOQUITUR
Defendants, JURY TRIAL DEMANDED

Comes Now, the Plaintiff, Frank M. Peck pro se
hereinafter Mr. Peck with his MEDICAL MALPRACTICE
NEGLECT COMPLAINT NRS 41A.009 et seq.

INTRODUCTION

This is a Civil Tort Action Alleging Medical
Malpractice Negligence NRS 41A.100(1)(a).

To wit; Needle or Guide left in Plaintiffs'
left hand.

RECEIVED
SEP 19 2014
CLERK OF THE COURT

5

2.

JURISDICTION

This Honorable court has jurisdiction over the
Plaintiff's STATE TORT claim under NRS 41A.100
res ipsa loquitur.

3.

Parties

Plaintiff Frank M. Peck is a state prisoner
incarcerated at High Desert State Prison:
P.O. Box 650 Indian Springs, NV. 89070.

Defendant Valley Hospital Medical Center
620 Shadow Lane Las Vegas, NV. 89106-4194

Defendant Doctor David R. Zipe MD
620 Shadow Lane Las Vegas, NV. 89106-4194

Defendant Doctor Michael D. Barnum MD
620 Shadow Lane Las Vegas, NV. 89106-4194

Defendant John Does 1-5 unknown Nurses PA's
620 Shadow Lane Las Vegas NV 89106-4194

4.

VENUE

At all times relevant All Defendants worked
and resided in Clark County.

(2)

5.

Facts

1. Plaintiff Peck was admitted to Valley Hospital on December 31st 2013.
2. Plaintiff Peck was discharged from Valley Hospital on January 17th 2014.
3. Plaintiff Peck on February 18th 2014 submitted a MEDICAL NOTE to Prison medical staff alerting them that something possibly a needle is just under the skin in Mr. Peck's left hand.
4. Between Feb 18th 2014 and March 8th 2014 Plaintiff Peck was seen by NDOC Doctor Suwee who confirmed that "something foreign was in in Mr. Peck's hand" and at that time Dr. Suwee ORDERED AN X-RAY of Mr. Peck's hand.
5. On March 8th 2014 AN X-RAY technician employed by Desert Radiology took (3) X-RAYS of Mr. Peck's left hand that clearly showed an object in Mr. Peck's left hand.

(3)

6.

CAUSE of Action

Plaintiff Peck alleges that the Defendants committed medical malpractice by deviating from the accepted standard of medical care or practice by "leaving a foreign substance in Mr. Peck's hand" NRS 41A.100(1)(a) (res ipsa loquitur doctrine) legally causing the injury suffered by Plaintiff. *Fernandez v. Admirand*, 108 Nev 963, 843 P2d 354 (1992).

The above claim is specific in regard to all the Defendants named in this complaint as well as the discoverable names of additional defendants.

Damages

Plaintiff seeks damages in the amount of (\$100,000.00), one hundred thousand dollars for pain and suffering, mental and emotional distress for past, current and future suffering plus punitive damages, costs, fees, expenses for removal of object and reasonable attorneys fees and any other relief the court deems appropriate.

Dated 9-13-14

Frank M. Peck

Frank M. Peck 57106

HDSP Box 650

(4) Indian Springs, NV 89070

State of Nevada ss
County of Clark Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under the penalty of perjury to the following:

1. I Am the Plaintiff in the Attached Civil tort claim for malpractice against Valley Hospital, et al.

2. All assertions in said complaint ARE true based upon personal knowledge and I am over the age of 18 and competent to testify to all matters contained therein.

3. I bring this complaint in good faith and for no improper reason.

Further affiant saith naught

Dated this 13th day of September 2014.

Signed under penalty of perjury NRS 208.165
and 28 U.S.C. 1746.

* Affirmation contains no social security numbers of any person.

Frank M. Peck

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

(5)

EXHIBIT B

EXHIBIT B

DISTRICT COURT CIVIL COVER SHEET

A-14-708447-C

34

County, Nevada

Case No.

(Assigned by Clerk's Office)

III

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Frank M Peck

IN MATE # 57106

H DSP Box 1050

Indian Springs, WV. 89070

Attorney (name/address/phone):

Defendant(s) (name/address/phone):

Valley Hospital Medical Center

DAVID R. ZIPF M.D.

Michael D. Baenum MD

John Doest-V.

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types****Real Property****Landlord/Tenant**☐ Unlawful Detainer☐ Other Landlord/Tenant**Title to Property**☐ Judicial Foreclosure☐ Other Title to Property**Other Real Property**☐ Condemnation/Eminent Domain☐ Other Real Property**Negligence**☐ Auto☐ Premises Liability☐ Other Negligence**Malpractice**☐ Medical/Dental☐ Legal☐ Accounting☐ Other Malpractice**Torts****Other Torts**☐ Product Liability☐ Intentional Misconduct☐ Employment Tort☐ Insurance Tort☒ Other TortA-14-708447-C
CCS
Civil Cover Sheet
4345321**Probate****Probate** (select case type and estate value)☐ Summary Administration☐ General Administration☐ Special Administration☐ Set Aside☐ Trust/Conservatorship☐ Other Probate**Estate Value**☐ Over \$200,000☐ Between \$100,000 and \$200,000☐ Under \$100,000 or Unknown☐ Under \$2,500**Construction Defect & Contract****Construction Defect**☐ Chapter 40☐ Other Construction Defect**Contract Case**☐ Uniform Commercial Code☐ Building and Construction☐ Insurance Carrier☐ Commercial Instrument☐ Collection of Accounts☐ Employment Contract☐ Other Contract**Judicial Review/Appeal****Judicial Review**☐ Foreclosure Mediation Case☐ Petition to Seal Records☐ Mental Competency**Nevada State Agency Appeal**☐ Department of Motor Vehicle☐ Worker's Compensation☐ Other Nevada State Agency**Appeal Other**☐ Appeal from Lower Court☐ Other Judicial Review/Appeal**Civil Writ****Civil Writ**☐ Writ of Habeas Corpus☐ Writ of Mandamus☐ Writ of Quo Warrant☐ Writ of Prohibition☐ Other Civil Writ**Other Civil Filing****Other Civil Filing**☐ Compromise of Minor's Claim☐ Foreign Judgment☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

10-13-14

Date

By Deputy Clerk

See other side for family-related case filings.

A. Belar

OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION

FILED

FEB 10 2015

John J. Blum
CLERK OF COURT

FRANK M PECK

PLAINTIFF

Vs

VALLEY HOSPITAL MEDICAL CENTER

DEFENDANT

CASE No. A-14-708447-C
SHERIFF CIVIL NO.: 15000022

AFFIDAVIT OF SERVICE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on 1/5/2015, at the hour of 2:10 PM, affiant as such Deputy Sheriff served a copy/copies of SUMMONS AND COMPLAINT issued in the above entitled action upon VALLEY HOSPITAL MEDICAL CENTER the defendant VALLEY HOSPITAL MEDICAL CENTER named therein, by delivering to and leaving with said defendant VALLEY HOSPITAL MEDICAL CENTER, personally, at 620 SHADOW LN LAS VEGAS, NV 89106 within the County of Clark, State of Nevada, copy/copies of SUMMONS AND COMPLAINT.

DATED: January 6, 2015.

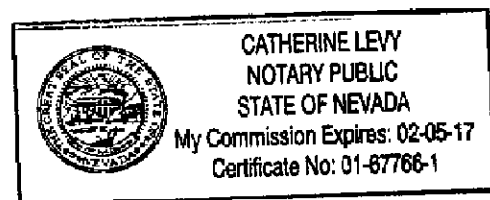
Joseph Lombardo, Sheriff

SUBSCRIBED AND SWORN to me before me this

[Signature]
day of January 2015
NOTARY PUBLIC in and for said County & State

By:

[Signature]
KENNETH ROSS
Deputy Sheriff



A-14-708447-C
A08
Affidavit of Service
4432202



RECEIVED
FEB 10 2015
CLERK OF THE COURT

PO Box 553220 Las Vegas, NV 89155-3220 (702) 671-5822

5

SUMM

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

Plaintiff pro se

DISTRICT COURT

CLARK COUNTY, NEVADA

Frank M. Peck

Plaintiff(s),

-vs-

Valley Hospital
Medical Center, et al,

Defendant(s).

CASE NO. A-14-708447-L

DEPT. NO. 3

SUMMONS - CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:
 - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
 - (b) Serve a copy of your response upon the attorney whose name and address is shown below.

SUMM Civil.doc/3/19/2010

- 1 2. Unless you respond, your default will be entered upon application of the
2 Plaintiff(s) and failure to so respond will result in a judgment of default
3 against you for the relief demanded in the Complaint, which could result in
4 the taking of money or property or other relief requested in the Complaint.
5 3. If you intend to seek the advice of an attorney in this matter, you should do
6 so promptly so that your response may be filed on time.
7 4. The State of Nevada, its political subdivisions, agencies, officers,
8 employees, board members, commission members and legislators each
9 have 45 days after service of this Summons within which to file an Answer
10 or other responsive pleading to the Complaint.

11
12
13 Submitted by:

14 Frank M. Peck
15
16 Frank M. Peck 57106
17 HDSP Box 650
18 Indian Springs, NV 89070
19 Plaintiff, prose.

20
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28
STEVEN D. GRIERSON
CLERK OF COURT

By

Deputy Clerk

ADELINE BELSEY

Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

NOTE: When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure 4(b).

AFFIDAVIT OF SERVICE

STATE OF)
COUNTY OF) ss:

_____ being duly sworn, says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received _____ copy(ies) of the Summons and Complaint, _____ on the _____ day of _____, 20____ and served the same on the _____ day of _____, 20____ by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the Defendant _____ at (state address) _____
2. Serving the Defendant _____ by personally delivering and leaving a copy with _____ a person of suitable age and discretion residing at the Defendant's usual place of abode located at (state address) _____

[Use paragraph 3 for service upon agent, completing (a) or (b)]

3. Serving the Defendant _____ by personally delivering and leaving a copy at (state address) _____
 - (a) With _____ as _____, an agent lawfully designated by statute to accept service of process;
 - (b) With _____ pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):

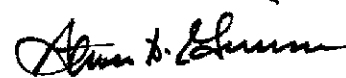
- ☐ Ordinary mail
☐ Certified mail, return receipt requested
☐ Registered mail, return receipt requested

1 addressed to the Defendant _____ at Defendant's last known address which is
2 (state address) _____
3

4 I declare under penalty of perjury under the law of the State of Nevada that the
5 foregoing is true and correct.
6

7 EXECUTED this _____ day of _____, 20____.
8

9 _____
10 Signature of person making service
11
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CLERK OF THE COURT

1 ANS
2 ALVERSON, TAYLOR, MORTENSEN & SANDERS
3 DAVID J. MORTENSEN, ESQ.
4 Nevada Bar No. 002547
5 CHELSEA R. HUETH, ESQ.
6 Nevada Bar No. 010904
7 7401 West Charleston Boulevard
8 Las Vegas, NV 89117-1401
9 702-384-7000
10 702-385-7000 (fax)
11 E-File: efile@alversontaylor.com
12 Attorneys for DEFENDANT
13 Michael D. Barnum, M.D.

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 FRANK M. PECK,

17 Plaintiff,

18 vs.

19 VALLEY HOSPITAL MEDICAL CENTER, et al.,
20 DAVID R. ZIPF, M.D., MICHAEL D. BARNUM,
21 M.D., JOHN DOES I - V,

22 Defendants.

CASE NO: A-14-708447-C
DEPT NO: III

23 **DEFENDANT MICHAEL D. BARNUM, M.D.'S, ANSWER**
24 **TO PLAINTIFF'S COMPLAINT**

25 COMES NOW, Defendant Michael D. Barnum, M.D., by and through his attorneys of
26 record, Alverson, Taylor, Mortensen & Sanders, and for their Answer to Plaintiff's Complaint,
27 admit, deny and allege as follows:

28 / / /

/ / /

/ / /

1 **1. GENERAL ALLEGATIONS**

2 Answering Paragraph 1 of Plaintiff's Complaint, Answering Defendant admits this is a
3 civil tort action alleging medical malpractice negligence NRS 41A.100(1)(a).

4 Answering Defendant denies said allegations in said paragraph.

5 **2. JURISDICTION**

6 Answering Paragraph 2 of Plaintiff's Complaint, Answering Defendant denies said allegations in
7 said paragraph.
8

9 **3. PARTIES**

10 Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendant is without sufficient
11 knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore
12 denies the same.

13 Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendant is without sufficient
14 knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore
15 denies the same.

16 Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendant is without sufficient
17 knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore
18 denies the same.

19 Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendant denies said allegations in
20 said paragraph.

21 Answering Paragraph 3 of Plaintiff's Complaint, Answering Defendant is without sufficient
22 knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore
23 denies the same.

24
25 / / /

26 / / /

27 / / /

1 4. VENUE

2 Answering Paragraph 4 of Plaintiff's Complaint, Answering Defendant is without sufficient
3 knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore
4 denies the same.

5 5. FACTS

6
7 1. Answering Paragraph 5 Line 1 of Plaintiff's Complaint, Answering Defendant is
8 without sufficient knowledge to form a belief as to the truth of the allegations contained in said
9 paragraph and therefore denies the same.

10 2. Answering Paragraph 5 Line 2 of Plaintiff's Complaint, Answering Defendant is
11 without sufficient knowledge to form a belief as to the truth of the allegations contained in said
12 paragraph and therefore denies the same.

13 3. Answering Paragraph 5 Line 3 of Plaintiff's Complaint, Answering Defendant is
14 without sufficient knowledge to form a belief as to the truth of the allegations contained in said
15 paragraph and therefore denies the same.

16 4. Answering Paragraph 5 Line 4 of Plaintiff's Complaint, Answering Defendant is
17 without sufficient knowledge to form a belief as to the truth of the allegations contained in said
18 paragraph and therefore denies the same.

19 5. Answering Paragraph 5 Line 5 of Plaintiff's Complaint, Answering Defendant is
20 without sufficient knowledge to form a belief as to the truth of the allegations contained in said
21 paragraph and therefore denies the same.

22 6. CAUSE OF ACTION

23 Answering Paragraph 6 of Plaintiff's Complaint, Answering Defendant denies said
24 allegations in said paragraph.

25 ///

1 including meeting the requisite standard of care to which Plaintiff was entitled.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 Defendant alleges that at all times mentioned in Plaintiff's Complaint, Plaintiff was
4 suffering from a medical condition(s) which Defendant did not cause, nor were Defendant's
5 responsible for said medical condition(s).
6

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 If Plaintiff has sustained any injuries or damages, such were the result of intervening
9 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
10 Defendants, and for which Defendants are not liable.

11 **NINTH AFFIRMATIVE DEFENSE**

12 Plaintiff is barred from recovering any special damages herein as a result of the failure to
13 comply with the provisions of N.R.C.P. 9(g).
14

15 **TENTH AFFIRMATIVE DEFENSE**

16 Defendant alleges that pursuant to Nevada law, they would not be jointly liable and that if
17 liability is imposed, such liability would be several for that portion of Plaintiff's damages, if any,
18 that represents the percentage attributable to Defendants.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are governed and/or barred pursuant to N.R.S. Chapter 1, N.R.S.
21 Chapter 40, N.R.S. Chapter 41, and N.R.S. Chapter 41A and by the provisions of Question 3
22 passed by the People of the State of Nevada on November 2, 2004.
23

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 Plaintiff's Complaint is void *ab initio* as it does not include an affidavit which meets with
26 requirements of N.R.S. 41A.

27 / / /
28

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff has a duty to mitigate his damages and has failed to do so.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations and/or repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that if they are found negligent, and Defendant denies all allegations of negligence, that they are not jointly liable and would be only severally liable for the portion of the claim that represents the percentage of negligence attributable to Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred and/or diminished by the doctrines of waiver, laches, estoppels, and/or unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend their Answer to allege additional Affirmative Defenses if subsequent investigation so warrants.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiff's Complaint herein.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant alleges it has been necessary for these Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed to Defendants for attorney's fees, together with costs of suit incurred herein.

///

TWENTIETH AFFIRMATIVE DEFENSE

Defendant hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend their Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any facts regarding the physical ramifications necessary to support a claim for negligent infliction of emotional distress.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant did not know that any emotional distress would result from the alleged conduct, if any.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any emotional distress that was so serious as to rise to the level of negligent infliction of emotional distress.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The conduct alleged was not a substantial factor in causing Plaintiff's alleged emotional distress.

TWENTY -FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that recovery of unlimited punitive damages or exemplary damages is barred because N.R.S. Chapter 42, as amended, denies this Defendant equal protection of the law under Article Four, Section Twenty of the Nevada Constitution, and the Fourteenth Amendment to the United States Constitution.

///

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 Defendant alleges that any award of punitive or exemplary damages in this action is
3 barred as excessive, as the product of bias or passion and/or by proceedings lacking sufficient
4 guidelines and/or the basic elements of fundamental fairness, under the Due Process Clause of
5 the Fourteenth Amendment to the United States Constitution and Article One, Section Eighth, of
6 the Nevada Constitution.
7

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

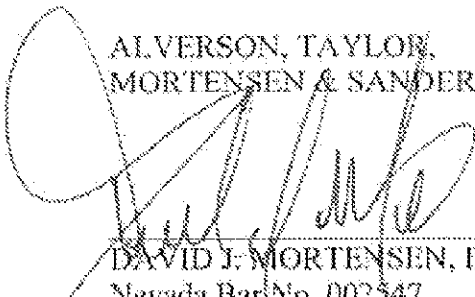
9 Plaintiffs' have failed to plead any acts or omissions of Defendant sufficient to warrant
10 consideration of exemplary or punitive damages.

11 **WHEREFORE**, Defendant prays for relief as follows:

- 12 1. That Plaintiffs take nothing by way of the Complaint on file herein.
13 2. For reasonable attorney's fees and costs incurred in defending this litigation.
14 3. For such other and further relief as this Court deems just and proper in the premises.
15

16 DATED this 12th day of February, 2015.

17 ALVERSON, TAYLOR,
18 MORTENSEN & SANDERS

19
20 
21 DAVID J. MORTENSEN, ESQ.

22 Nevada Bar No. 002547

23 CHELSEA R. HUETH, ESQ.

24 Nevada Bar No. 010904

25 7401 W. Charleston Boulevard

26 Las Vegas, NV 89117-1401

27 702-384-7000

28 E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

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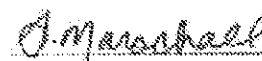
CERTIFICATE OF SERVICE AND MAILING

The undersigned hereby certifies that on the 12 day of February, 2015, the forgoing
DEFENDANT MICHAEL D. BARNUM, M.D.'S, ANSWER TO PLAINTIFF'S
COMPLAINT was served on the following by Electronic Service to All parties on the Wiznet
Service List, addressed as follows:

Arthur W. Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, NV 89128
Attorney for Defendant
David R. Zipf, M.D.

The foregoing DEFENDANT MICHAEL D. BARNUM, M.D.'S, ANSWER TO
PLAINTIFF'S COMPLAINT was also served by First Class Mail, by placing same in a
sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada, addressed
as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT MICHAEL D. BARNUM, M.D.'S, ANSWER TO PLAINTIFF'S COMPLAINT** filed in District Court Case No. A-14-708447-C.

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 12th day of February, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

CHELSEA R. HOETH, ESQ.

Nevada Bar No. 010904

7401 West Charleston Boulevard

Las Vegas, NV 89117-1401

702-384-7000

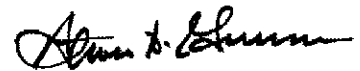
702-385-7000 (fax)

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

m:\david.gp\clients\22098\pleadings\caption.docx



CLERK OF THE COURT

1 **DMJT**
2 **ALVERSON, TAYLOR, MORTENSEN & SANDERS**
3 **DAVID J. MORTENSEN, ESQ.**
4 Nevada Bar No. 002547
5 **CHELSEA R. HUETH, ESQ.**
6 Nevada Bar No. 010904
7 7401 West Charleston Boulevard
8 Las Vegas, NV 89117-1401
9 702-384-7000
10 702-385-7000 (fax)
11 **E-File: efile@alversontaylor.com**
12 Attorneys for DEFENDANT
13 Michael D. Barnum, M.D.

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 FRANK M. PECK,

13 Plaintiff,

14 vs.

15 VALLEY HOSPITAL MEDICAL CENTER, et al.,
16 DAVID R. ZIPF, M.D., MICHAEL D. BARNUM,
17 M.D., JOHN DOES I - V,

18 Defendants.

CASE NO: A-14-708447-C
DEPT NO: III

19
20 **DEFENDANT MICHAEL D. BARNUM, M.D.'S, DEMAND FOR JURY TRIAL**

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COMES NOW, Defendant Michael D. Barnum, M.D., by and through his attorneys of record, Alverson, Taylor, Mortensen & Sanders, and demands a trial by jury of all issues herein,

DATED this 17th day of February, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547

CHELSEA R. MUETH, ESQ.
Nevada Bar No. 010904

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

702-384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

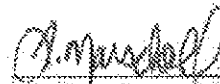
CERTIFICATE OF SERVICE AND MAILING

The undersigned hereby certifies that on the 12 day of February, 2015, the forgoing
DEFENDANT MICHAEL D. BARNUM, M.D.'S, DEMAND FOR JURY TRIAL was
served on the following by Electronic Service to All parties on the Wiznet Service List,
addressed as follows:

Arthur W. Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, NV 89128
Attorney for Defendant
David R. Zipp, M.D.

The foregoing **DEFENDANT MICHAEL D. BARNUM, M.D.'S, DEMAND FOR
JURY TRIAL** was also served by First Class Mail, by placing same in a sealed envelope upon
which first class postage was prepaid in Las Vegas, Nevada, addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per



An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT MICHAEL D. BARNUM, M.D.'S, DEMAND FOR JURY TRIAL** filed in District Court Case No. A-14-708447-C.

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 12 day of February, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

CHELSEA R. HUETH, ESQ.

Nevada Bar No. 010904

7401 West Charleston Boulevard

Las Vegas, NV 89117-1401

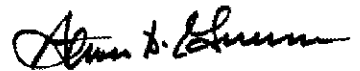
702-384-7000

702-385-7000 (fax)

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.



CLERK OF THE COURT

1 **IAFD**
2 ALVERSON, TAYLOR, MORTENSEN & SANDERS
3 DAVID J. MORTENSEN, ESQ.
4 Nevada Bar No. 002547
5 CHELSEA R. HUETH, ESQ.
6 Nevada Bar No. 010904
7 7401 West Charleston Boulevard
8 Las Vegas, NV 89117-1401
9 702-384-7000
10 702-385-7000 (fax)
11 **E-File: efile@alversontaylor.com**
12 **Attorneys for DEFENDANT**
13 Michael D. Barnum, M.D.

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 FRANK M. PECK,

13 Plaintiff,

14 vs.

15 VALLEY HOSPITAL MEDICAL CENTER, et al.,
16 DAVID R. ZIPF, M.D., MICHAEL D. BARNUM,
17 M.D., JOHN DOES I - V,

18 Defendants.

CASE NO: A-14-708447-C
DEPT NO: III

19
20 **INITIAL APPEARANCE FEE DISCLOSURE**

21 Pursuant to N.R.S. Chapter 19, as amended by Senate Bill 106, filing fees are submitted
22 for the party's appearance in the above-entitled action as indicated below:

23
24 Michael D. Barnum, M.D.

\$223.00

25 / / /

26 / / /

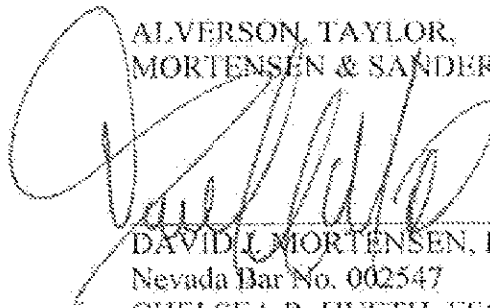
27 / / /

TOTAL REMITTED

\$223.00

DATED this 12 day of February, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID L. MORTENSEN, ESQ.

Nevada Bar No. 002547

CHELSEA R. HUETH, ESQ.

Nevada Bar No. 010904

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

702-384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **INITIAL APPEARANCE FEE DISCLOSURE** filed in District Court Case No. A-14-708447-C.

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 12 day of February, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

CHELSEA R. HUETH, ESQ.

Nevada Bar No. 010904

7401 West Charleston Boulevard

Las Vegas, NV 89117-1401

702-384-7000

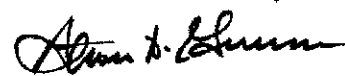
702-385-7000 (fax)

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

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CLERK OF THE COURT

1 **JMOT**
2 ALVERSON, TAYLOR, MORTENSEN & SANDERS
3 DAVID J. MORTENSEN, ESQ.
4 Nevada Bar No. 002547
5 CHELSEA R. HUETH, ESQ.
6 Nevada Bar No. 010904
7 7401 West Charleston Boulevard
8 Las Vegas, NV 89117-1401
9 702-384-7000
10 702-385-7000 (fax)
11 E-File: efile@alversontaylor.com
12 Attorneys for DEFENDANT
13 Michael D. Barnum, M.D.

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 FRANK M. PECK,

13 Plaintiff,

14 vs.

15 VALLEY HOSPITAL MEDICAL CENTER, et al.,
16 DAVID R. ZIPP, M.D., MICHAEL D. BARNUM,
17 M.D., JOHN DOES I - V,

18 Defendants.

CASE NO: A-14-708447-C
DEPT NO: III

Hearing Date: February 18, 2015

Hearing Time: 9:00 a.m.

19
20 **DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO**
21 **DEFENDANT DAVID R. ZIPP, M.D.'S MOTION TO RE-TITLE**
22 **ON AN ORDER SHORTENING TIME**

23 COMES NOW, Defendant MICHAEL D. BARNUM, M.D., through his attorneys of
24 record, Alverson, Taylor, Mortensen & Sanders, and hereby joins in Defendant David R. Zipf,
25 M.D.'s Motion to Re-Title on an Order Shortening Time. By this Joinder, Defendant MICHAEL

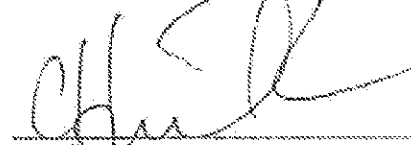
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27 / / /

1 D. BARNUM, M.D., adopts all the arguments made therein as his own and such oral argument
2 as may be entertained by the Court at the time and place of the hearing of this Joinder.

3 DATED this 17 day of February, 2015.
4

5 ALVERSON, TAYLOR,
6 MORTENSEN & SANDERS

7 
8

9 DAVID J. MORTENSEN, ESQ.

10 Nevada Bar No. 002547

11 CHELSEA R. HUETH, ESQ.

12 Nevada Bar No. 010904

13 7401 W. Charleston Boulevard

14 Las Vegas, NV 89117-1401

15 702-384-7000

16 E-File: efile@alversontaylor.com

17 Attorneys for DEFENDANT

18 Michael D. Barnum, M.D.
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT MICHAEL D. BARNUM, M.D.'S JOINDER TO DEFENDANT DAVID R. ZIPE, M.D.'S MOTION TO RE-TITLE ON AN ORDER SHORTENING TIME** filed in District Court Case No. A-14-708447-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 17 day of February, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

CHELSEA R. HUETH, ESQ.

Nevada Bar No. 010904

7401 West Charleston Boulevard

Las Vegas, NV 89117-1401

702-384-7000

702-385-7000 (fax)

E-File: cfile@alversontaylor.com

Attorneys for DEFENDANT

Michael D. Barnum, M.D.

FRANK M. PECK 57106

H.D.S.P. Box 650

Indian Springs, NV. 89070

Plaintiff, prose.

FILED

FEB 18 2015

John L. Williams
CLERK OF COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,

Plaintiff,

CASE NO. A-14-708447-C

DEPT NO. 3

vs.

Valley Hospital, et al,

Defendants.

A-14-708447-C
RSPN
Response
4433927



RESPONSE TO DEFENDANT DAVID R. ZIPE, MD'S

MOTION TO RE-TITLE ON AN ORDER SHORTENING
TIME

Come Now, the Plaintiff, Frank M. Peck prose hereinafter
Mr. Peck with his RESPONSE TO DEFENDANT DAVID R. ZIPE,
MD'S MOTION TO RE-TITLE ON AN ORDER SHORTENING
TIME.

This Response is made and based upon all papers
and pleadings on file in this case as well as the
attached points and authorities.

Dated 2-12-15

Frank M. Peck
Frank M. Peck Pltf, prose.

RECEIVED

FEB 18 2015

CLERK OF THE COURT

3

Points and authorities

The defendants have motioned this court to "RE-TITLE" this case.

Plaintiff objects to any "re-titling" of Plaintiff's case as UN-NECESSARY AS the complaint is properly titled.

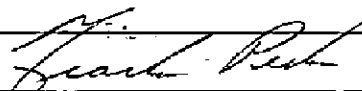
Plaintiff's complaint is specific to MEDICAL MALPRACTICE, NEGLIGENCE and is appropriately designated. (NRS 41A.009 et seq)

Plaintiff will leave to the discretion of this court whether or not the (civil cover sheet) should be changed.

Dated done and mailed this date 2-12-15

A true and correct copy was mailed this date to the Clerk of the Court 200 Lewis Ave 3rd floor LVNV 89155-1160 for filing and "ELECTRONIC SERVICE" on Defts Atty Anastacia L. Noe Esq. & ANOE@ANTLAWOFFICE.COM per NEER rule 9(c).

* Affirmation contains no social security numbers of any person. NRS 239B.030



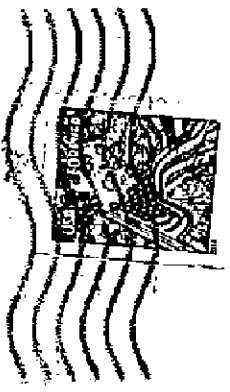
Frank M. Peck Plaintiff pro se

NRS 208.165; 28 USC 1746

(2)

Frank M. Peck 57106
HOSP Box 650
Indian Springs, NV. 89070

LAS VEGAS NV 89000
13 FEB 01 5 PM 41

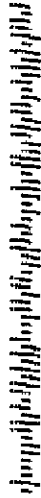


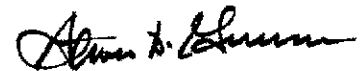
URGENT
Time
SENSITIVE

Clerk of the Court
200 Lewis Ave 3rd floor
LAS VEGAS, NV. 89155-1160
Dept III

Confidential local mail

89101630000





CLERK OF THE COURT

ORDR
ARTHUR W. TUVerson, ESQ.
Nevada State Bar No. 005156
ANASTASIA L. NOE, ESQ.
Nevada State Bar No. 005442
LAW OFFICES OF ARTHUR W. TUVerson
A Limited Liability Partnership
Including Professional Corporations
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
Telephone: (702) 631-7855
Facsimile: (702) 631-5777
anoel@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,
Plaintiff,

CASE NO.: A-14-708447-C
DEPT. NO.: III

v.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I - V,
Defendants.

ORDER

Defendant DAVID R. ZIPF, M.D.'s Motion to Re-Title on an Order Shortening Time and
Defendant MICHAEL D. BARNUM, M.D.'s Joinder to said Motion having come on for hearing
before the Court on February 18, 2015; Anastasia L. Noe, Esq., appeared on behalf of Defendant
DAVID R. ZIPF, M.D., Jared Herling, Esq. appeared on behalf of Defendant MICHAEL D.
BARNUM, M.D. and there being no appearance by Plaintiff. The Court having considered the
pleadings on file, having received no timely opposition, and having heard the oral arguments of
counsel; good cause appearing:

///

///

///

1 IT IS HEREBY ORDERED that Defendant's DAVID R. ZIPF, M.D.'s Motion to Re-
2 Title on an Order Shortening Time and Defendant MICHAEL D. BARNUM, M.D.'s Joinder are
3 GRANTED.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court
5 shall Re-Title this case as a Medical Malpractice case instead of Other Tort.

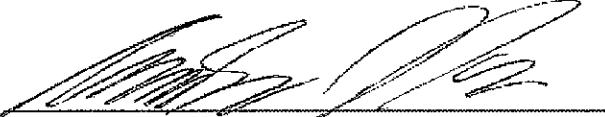
6 IT IS SO ORDERED.

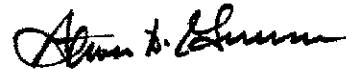
7 DATED this 25 day of February, 2015.

8
9 
DISTRICT COURT JUDGE

10 Submitted By:

11 LAW OFFICES OF ARTHUR W. TUVERTSON

12 
13
14 ARTHUR W. TUVERTSON, ESQ.
Nevada State Bar No. 005156
15 ANASTASIA L. NOE, ESQ.
Nevada State Bar No. 005442
16 7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
17 (702) 631-7855
18 Attorneys for Defendant DAVID R. ZIPF,
M.D.



CLERK OF THE COURT

1 **MQUA**
2 JOHN F. BEMIS, ESQ.
3 Nevada Bar No.: 9509
4 IAN M. HOUSTON, ESQ.
5 Nevada Bar No.: 11815
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 *Attorneys for Defendant*
12 *Valley Hospital Medical Center*

13
14
15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 FRANK M. PECK,

18 Plaintiff,

19 vs.

20 VALLEY HOSPITAL MEDICAL CENTER,
21 et al., DAVID R. ZIPF, M.D., MICHAEL D.
22 BARNUM, M.D., JOHN DOES I-V,

23 Defendants.

CASE NO. : A-14-708447-C
DEPT NO.: III

24
25 **DEFENDANT VALLEY HOSPITAL MEDICAL CENTER'S MOTION TO QUASH**
26 **SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY NRCP 4(d)**
27 **AND TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR**
28 **FAILURE TO TIMELY SERVE**

(DEFENDANT APPEARING SPECIFICALLY FOR THE LIMITED
PURPOSE OF THIS MOTION)

Date of Hearing: _____

Time of Hearing: _____

COMES NOW, Defendant, VALLEY HOSPITAL MEDICAL CENTER (hereinafter
"Valley Hospital"), appearing specially for the limited purpose of this motion, by and through its

1 counsel of record, HALL PRANGLE & SCHOONVELD, LLC and hereby moves for this
2 Honorable Court to: (A) quash service of Plaintiff's Complaint for failure to satisfy Nevada Rule
3 of Civil Procedure (4)(d) resulting in dismissal under Nevada Rule of Civil Procedure 12(b)(4);
4 and (B) dismiss Plaintiff's Complaint pursuant to Nevada Rule of Civil Procedure 4(i) as
5 Plaintiff has clearly failed to timely serve Valley Hospital within 120 days of filing his
6 Complaint.

7
8 DATED this 2nd day of March, 2015.

9 HALL PRANGLE & SCHOONVELD, LLC

10 
11 JOHN F. BEMIS, ESQ.

12 Nevada Bar No. 9509

13 IAN M. HOUSTON, ESQ.

14 Nevada Bar No. 11815

15 1160 North Town Center Drive, Suite 200

16 Las Vegas, NV 89144

17 *Attorneys for Defendant*

18 *Valley Hospital Medical Center*
19
20
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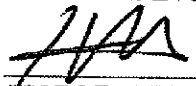
HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION TO QUASH SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY NRCP 4(d) AND TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE TO TIMELY SERVE for hearing before the above entitled court on the 08 APRIL day of March, 2015 at the hour of 9:00 a.m. in Department No. III, or as soon thereafter as counsel can be heard.

DATED this 2nd day of March, 2015.

HALL PRANGLE & SCHOONVELD, LLC

JOHN F. BEMIS, ESQ.
Nevada Bar No. 9509
IAN M. HOUSTON, ESQ.
Nevada Bar No. 11815
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Valley Hospital Medical Center

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

This is an action arising out of care and treatment provided to Plaintiff pro se, Frank M. Peck, at Valley Hospital on or about December 31, 2013 through January 17, 2014. Plaintiff filed his Complaint with the Eighth Judicial District Court on October 13, 2014. However, Valley Hospital has never been properly served with the Summons and Complaint as is required under NRCP 4(d). At some point in January 2015, a uniformed male presented to the Human Resources desk at Valley Hospital, which is located at 620 Shadow Lane, Las Vegas, Nevada

89106. See Affidavit of Tracy Donohue attached hereto as Exhibit "A." According to an "Affidavit of Service" filed by Plaintiff on February 10, 2015, the visit to Valley Hospital was on or about January 5, 2015. The man spoke with an employee at the human resources counter inside the hospital, Tracy Donohue, and handed her a copy of the Summons and Complaint in this matter. See Exhibit "A." At no time did the man request that he be permitted to speak with any officer of Valley Hospital nor did he inquire as to whether Valley Hospital has a resident agent or who that resident agent might be. *Id.* Instead, the man simply handed a copy of the Summons and Complaint to Ms. Donohue, who is not an officer of Valley Hospital. *Id.*

Valley Hospital now appears for the limited purpose of quashing Plaintiff's improper purported service of process, which alone warrants dismissal, and further moves this Court to dismiss Plaintiff's Complaint for failure to timely serve Defendant.

II.

STANDARD OF REVIEW

Nevada Rule of Civil Procedure 12 provides for dismissal of a cause of action for the "insufficiency of service of process" and authorizes a defendant to raise this defense by motion. See NRCP 12(b)(4). The instructions on how to properly complete sufficient service of the summons and complaint are clearly set forth in Nevada Rule of Civil Procedure 4(d) and were not followed in this case. Further, with regard to the timing of the service of process, a plaintiff has 120 days after filing the complaint to serve the summons and complaint on a defendant. NRCP 4(i). The consequence for failure to so serve a defendant within that 120-day period is expressly mandated in the rule: "the action *shall be dismissed* as to that defendant." *Id.* (emphasis added). The term "shall" is "mandatory and does not denote judicial discretion." *Washoe Med. Ctr. V. Second Judicial Dist. Court of State of Nev. Ex rel. County of Washoe*, 122

1 Nev. 1298, 1303, 148 P.3d 790, 793-94 (2006). Accordingly, as set forth fully herein, Plaintiff's
2 failure to timely and properly serve Valley Hospital mandates dismissal of Plaintiff's Complaint.

3
4 **III.**

5 **LEGAL ARGUMENT**

6 **A. Plaintiff Failed to Properly Serve Valley Hospital in Accordance with the**
7 **Mandates of NRCP 4(d) and, Therefore, the Complaint Must be Dismissed**
8 **Pursuant to NRCP 12(b)(4)**

9 Plaintiff failed to properly serve the Summons and Complaint on Valley Hospital, which
10 justifies dismissal of the action. As relevant, Nevada Rule of Civil Procedure 4(d) provides:

11 Service shall be made by delivering a copy of the summons attached to a
12 copy of the complaint as follows:

13 **(1) Service upon a Nevada Corporation.** If the suit is against an
14 entity or association formed under the laws of this state or
15 registered to do business in this state, **to the registered agent**
16 **thereof or, if the entity or association is (i) a corporation, to**
17 **any officer thereof;** (ii) a general partnership, to any partner
18 thereof; (iii) a limited partnership, to any general partner thereof;
19 (iv) a member-managed limited-liability company, to any member
20 thereof; (v) a manager-managed limited-liability company, to any
21 manager thereof; (vi) a business trust, to any trustee thereof; (vii) a
22 miscellaneous organization mentioned in NRS Chapter 81, to any
23 officer or director thereof; provided, when for any reason service
24 cannot be had in the manner hereinabove provided, then service
25 may be made upon such entity by delivering to the secretary of
26 state, or the deputy secretary of state, a copy of said summons
27 attached to a copy of the complaint, and by posting a copy of said
28 process in the office of the clerk of the court in which such action
is brought or pending;

24 **(2) Service Upon Foreign Corporation or Nonresident Entity.**
25 If the suit is against an unregistered foreign entity or association
26 that has an **officer, general partner, member, manager, trustee**
27 **or director within this state, to such officer, general partner,**
28 **member, manager, trustee or director** or, if none, then service
on such unregistered entity or association may be made by delivery
to the secretary of state or the deputy secretary of state, in the

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

manner and after affidavit as provided in subsection (d)(1) of this rule or otherwise as provided by law.

NRCP 4(d)(1) & (2) (emphasis added).

Further, Nevada Revised Statutes § 14.020(1) requires that all artificial persons doing business in Nevada appoint a resident agent that, among other things, may accept legal service:

Every corporation, miscellaneous organization described in Chapter 81 of NRS, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust and municipal corporation created and existing under the laws of this State, any other state, territory or foreign government, or the Government of the United States, doing business in this State shall appoint and keep in this State a registered agent who resides or is located in this State, upon whom all legal process and any demand or notice authorized by law to be served upon it may be served in the manner provided in subsection 2.

Id.

Subsection (2) of Nevada Revised Statute § 14.020 reaffirms that all legal process and any demand or notice authorized by law to be served upon the artificial persons may be served upon the resident agent:

personally or by leaving a true copy thereof with a person of suitable age and discretion at the most recent street address of the registered agent shown on the information filed with the Secretary of State pursuant to chapter 77 of NRS.

Id.

Valley Hospital Medical Center, Inc. is a Nevada corporation. See Entity Details – Secretary of State, Nevada: Valley Hospital Medical Center, Inc., attached hereto as Exhibit “B.” In accordance with Nevada Revised Statute § 14.020, Valley Hospital maintains a resident agent: The Corporation Trust Company of Nevada located at 311 South Division Street, Carson City, NV 89703. See *id.* This information is publicly available through the Secretary of State’s website. However, Plaintiff did not attempt to serve the properly listed resident agent as

1 provided in NRCP 4(d) and NRS 14.020(2). Accordingly, Plaintiff was required to serve an
2 officer of Valley Hospital Medical Center, Inc., which he also failed to do. Furthermore, there is
3 no indication that Plaintiff attempted any alternative means of service, such as providing a copy
4 to the Secretary of State in conjunction with posting a copy of the process in the office of the
5 clerk of the Court. Consequently, Plaintiff failed to serve this Defendant and dismissal is
6 necessary.
7

8 If Plaintiff were to argue that the rules governing service of a foreign corporation apply
9 (as Defendant's parent company, Valley Health System LLC is a foreign limited-liability
10 company organized under the laws of Delaware), this too is a futile argument as Plaintiff failed
11 to follow the provisions of NRCP 4(d)(2) or NRS 14.020(2). Specifically, Plaintiff did not serve
12 any "officer, general partner, member, manager, trustee or director" of Valley Hospital in the
13 state, nor did he make service through the Secretary of State. Again, as previously mentioned,
14 Plaintiff also failed to serve the Defendant through its resident agent as would be permitted by
15 NRS 14.020(2).
16

17 To the contrary, Plaintiff served a human resources representative at Valley Hospital,
18 who lacks any actual or apparent authority to act on behalf of the corporation. This human
19 resources representative does not qualify as an individual upon whom service can be made.
20 Rather, Nevada Rule of Civil Procedure 4(d) and Nevada Revised Statute § 14.020 specifically
21 enumerate those individuals that Plaintiff may serve, and Ms. Donohue, a human resources
22 representative, is not one of them. At no time did Valley Hospital avoid service or attempt to
23 frustrate Plaintiff's attempt to serve the proper entity. Plaintiff failed to properly serve any of the
24 persons enumerated in the rule or the resident agent as permitted by rule and statute.
25
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As shown, Plaintiff has not complied with the appropriate means for service and his purported service should be quashed. Because service was improper and entirely insufficient, Valley Hospital is entitled to dismissal pursuant to Nevada Rule of Civil Procedure 12(b)(4).

B. Plaintiff Failed to Timely Serve Valley Hospital and, Therefore, His Complaint "Shall" be Dismissed Pursuant to NRCP 4(i)

The clear, unmistakable, express requirements set forth in Nevada Rule of Civil Procedure 4(i) require dismissal:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, *the action shall be dismissed* as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made.

Id. (emphasis added).

The term "shall" is "mandatory and does not denote judicial discretion." *Washoe Med. Ctr.*, 122 Nev. at 1303, 148 P.3d at 793-94. The *Washoe* court further explained the effect of the mandatory dismissal language reinforcing that "[t]he Legislature's choice of the words 'shall dismiss' instead of 'subject to dismissal' indicates that the Legislature intended that the court have no discretion with respect to dismissal." *Id.* Thus, Plaintiff was required to serve Valley Hospital within 120 days of the October 13, 2014 filing of his Complaint. He has clearly failed to do so. As discussed in detail above, *to date* Plaintiff has not properly served Valley Hospital in accordance with the requirements set forth in NRCP 4(d) and NRS 14.020(2). The deadline for any such service was February 10, 2015 and has long since passed. Plaintiff has failed to

1 satisfy this clear, unambiguous timing requirement. Consequently, NRCP 4(i) expressly states
2 that upon such failure, "the action *shall* be dismissed." *Id.* (emphasis added).

3 Based on the foregoing, and in light of the clear language of the applicable rule,
4 Defendant Valley Hospital respectfully requests this Honorable Court dismiss the instant action
5 as against this Defendant.
6

7 IV.

8 CONCLUSION

9 Based on the foregoing, Defendant VALLEY HOSPITAL MEDICAL CENTER
10 respectfully requests an order from this Court granting this Motion to quash service and
11 dismissing Plaintiff's Complaint as against this Defendant.
12

13 DATED this 2nd day of March, 2015.

14 HALL PRANGLE & SCHOONVELD, LLC

15 By: 

16 JOHN F. BEMIS, ESQ.

17 Nevada Bar No.: 9509

18 IAN M. HOUSTON, ESQ.

19 Nevada Bar No.: 11815

20 1160 N. Town Center Dr., Ste. 100

21 Las Vegas, NV 89144

22 *Attorneys for Defendant*

23 *Valley Hospital Medical Center*
24
25 ...
26
27
28 ...

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 2 day of March, 2015, I served a true and correct copy of the foregoing **DEFENDANT VALLEY HOSPITAL MEDICAL CENTER'S MOTION TO QUASH SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY NRCP 4(d) AND TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE TO TIMELY SERVE** was served on the following by Electronic Service to all parties on the Wiznet Service List, addressed as follows:

Arthur Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
LAW OFFICES OF ARTHUR W. TUVERSON
7201 W. Lake Mead Blvd., Suite 570
Las Vegas, NV 89128
Attorneys for Defendant
David R. Zlupf, M.D.

The foregoing **DEFENDANT VALLEY HOSPITAL MEDICAL CENTER'S MOTION TO QUASH SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY NRCP 4(d) AND TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE TO TIMELY SERVE** was also served by First Class Mail, by placing same in a sealed envelope upon which first class postage was prepaid and addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per


An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT "A"

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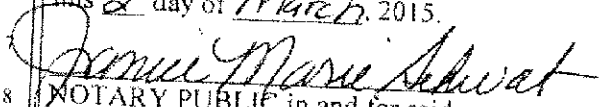
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8. The statements contained herein are true and correct and based upon personal knowledge
except for those matters stated upon information and belief, which I believe to be true.

FURTHER AFFIANT SAYETH NAUGHT.


TRACY DONOHUE

Sworn and subscribed before me
this 2 day of March, 2015.


NOTARY PUBLIC in and for said
County and State

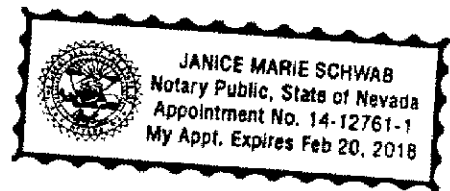


EXHIBIT "B"

VALLEY HOSPITAL MEDICAL CENTER, INC.

Business Entity Information

Status:	Active	File Date:	6/15/1979
Type:	Domestic Corporation	Entity Number:	C3301-1979
Qualifying State:	NV	List of Officers Due:	6/30/2015
Managed By:		Expiration Date:	
NV Business ID:	NV19791005879	Business License Exp:	6/30/2015

Additional Information

Central Index Key:	
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Registered Agent Information

Name:	THE CORPORATION TRUST COMPANY OF NEVADA	Address 1:	311 S DIVISION ST
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89703
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 200.00
Par Share Count:	200.00	Par Share Value:	\$ 1.00

Officers

☐ Include Inactive Officers

Secretary - GEORGE H BRUNNER, JR.

Address 1:	367 SOUTH GULPH ROAD	Address 2:	
City:	KING OF PRUSSIA	State:	PA
Zip Code:	19406	Country:	USA
Status:	Active	Email:	

Director - STEVE FILTON

Address 1:	367 SOUTH GULPH ROAD	Address 2:	
City:	KING OF PRUSSIA	State:	PA
Zip Code:	19406	Country:	USA
Status:	Active	Email:	

President - MARVIN PEMBER

Address 1:	367 SOUTH GULPH ROAD	Address 2:	
City:	KING OF PRUSSIA	State:	PA
Zip Code:	19406	Country:	USA
Status:	Active	Email:	
Treasurer - CHERYL K RAMAGANO			
Address 1:	367 SOUTH GULPH ROAD	Address 2:	
City:	KING OF PRUSSIA	State:	PA
Zip Code:	19406	Country:	USA
Status:	Active	Email:	

Actions\Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C3301-1979-001	# of Pages:	6
File Date:	6/15/1979	Effective Date:	
(No notes for this action)			
Action Type:	Merger		
Document Number:	C3301-1979-003	# of Pages:	13
File Date:	3/26/1981	Effective Date:	
INTO THIS CORP.			
AGREEMENT OF MERGER MERGING UNIVERSAL HEALTH SERVICES OF LAS VEGAS, INC. (A NEVADA CORP-FILE 3948-79)			
Action Type:	Amendment		
Document Number:	C3301-1979-004	# of Pages:	13
File Date:	12/4/1987	Effective Date:	
AGREEMENT OF MERGER: MERGING FLIGHT FOR LIFE, INC., (A NEVADA CORP.), #6796-85, INTO THIS CORP...			
Action Type:	Amendment		
Document Number:	C3301-1979-005	# of Pages:	13
File Date:	2/16/1988	Effective Date:	
AGREEMENT OF MERGER: MERGING 700 SHADOW LANE CORPORATION, (A NEVADA CORP.), #4459-84, INTO THIS CORP...			
Action Type:	Amendment		
Document Number:	C3301-1979-006	# of Pages:	1
File Date:	10/13/1994	Effective Date:	
AMENDING ARTICLE ONE NAME CHANGE (1 PAGE) RAJ			
UNIVERSAL HEALTH SERVICES OF NEVADA, INC. RAJB6! 001			
Action Type:	Annual List		
Document Number:	C3301-1979-012	# of Pages:	1
File Date:	6/16/1998	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		

Document Number:	C3301-1979-009	# of Pages:	1
File Date:	5/25/1999	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	C3301-1979-007	# of Pages:	299
File Date:	10/29/1999	Effective Date:	
CORPORATION TRUST COMPANY OF NEVAD KFA			
ONE EAST FIRST STREET RENO NV 89501 KFA			
Action Type:	Annual List		
Document Number:	C3301-1979-013	# of Pages:	1
File Date:	5/12/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C3301-1979-010	# of Pages:	1
File Date:	5/22/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C3301-1979-011	# of Pages:	1
File Date:	5/28/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C3301-1979-008	# of Pages:	1
File Date:	5/16/2003	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C3301-1979-002	# of Pages:	1
File Date:	5/12/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050254269-25	# of Pages:	1
File Date:	6/28/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060242299-56	# of Pages:	1
File Date:	4/17/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070372345-93	# of Pages:	1
File Date:	5/30/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		

Document Number:	20080276439-01	# of Pages:	1
File Date:	4/21/2008	Effective Date:	
2008-2009			
Action Type:	Annual List		
Document Number:	20090496011-22	# of Pages:	1
File Date:	6/18/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100433306-92	# of Pages:	1
File Date:	6/11/2010	Effective Date:	
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Action Type:	Annual List		
Document Number:	20110330206-28	# of Pages:	1
File Date:	5/2/2011	Effective Date:	
11-12			
Action Type:	Annual List		
Document Number:	20120240860-55	# of Pages:	1
File Date:	4/5/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130287361-91	# of Pages:	1
File Date:	4/23/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140375904-75	# of Pages:	1
File Date:	5/23/2014	Effective Date:	
(No notes for this action)			

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

IAFD

JOHN F. BEMIS, ESQ.
Nevada Bar No.: 9509
IAN M. HOUSTON, ESQ.
Nevada Bar No.: 11815
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Attorneys for Defendant
Valley Hospital Medical Center

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK M. PECK,

Plaintiff,

vs.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I-V,

Defendants.

CASE NO. : A-14-708447-C
DEPT NO.: III

**DEFENDANT VALLEY HOSPITAL MEDICAL CENTER'S
INITIAL APPEARANCE FEE DISCLOSURE**

**(DEFENDANT APPEARING SPECIFICALLY FOR THE LIMITED
PURPOSE OF DEFENDANT VALLEY HOSPITAL'S MOTION TO QUASH
SERVICE OF PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE
TO TIMELY SERVE)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for

...

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

parties appearing in the above-entitled action as indicated below:

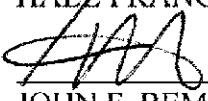
Defendant:

VALLEY HOSPITAL
MEDICAL CENTER, INC. \$ 223.00

TOTAL REMITTED: \$ 223.00

DATED this 2nd day of March, 2015.

HALL PRANGLE & SCHOONVELD, LLC

By: 
JOHN F. BEMIS, ESQ.
Nevada Bar No.: 9509
IAN M. HOUSTON, ESQ.
Nevada Bar No.: 11815
1160 N. Town Center Dr., Ste. 100
Las Vegas, NV 89144
Attorneys for Defendant
Valley Hospital Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 2 day of March, 2015, I served a true and correct copy of the foregoing **DEFENDANT VALLEY HOSPITAL MEDICAL CENTER'S INITIAL APPEARANCE FEE DISCLOSURE** was served on the following by Electronic Service to all parties on the Wiznet Service List, addressed as follows:

Arthur Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
LAW OFFICES OF ARTHUR W. TUVERSON
7201 W. Lake Mead Blvd., Suite 570
Las Vegas, NV 89128
Attorneys for Defendant
David R. Zlpf, M.D.

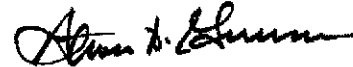
The foregoing **DEFENDANT VALLEY HOSPITAL MEDICAL CENTER'S INITIAL APPEARANCE FEE DISCLOSURE** was also served by First Class Mail, by placing same in a sealed envelope upon which first class postage was prepaid and addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per


An employee of HALL PRANGLE & SCHOONVELD, LLC

NEOJ
 ARTHUR W. TUVERTON, ESQ.
 Nevada State Bar No. 005156
 ANASTASIA L. NOE, ESQ.
 Nevada State Bar No. 005442
 LAW OFFICES OF ARTHUR W. TUVERTON
 A Limited Liability Partnership
 Including Professional Corporations
 7201 West Lake Mead Boulevard, Suite 570
 Las Vegas, Nevada 89128
 Telephone: (702) 631-7855
 Facsimile: (702) 631-5777
anoel@awtlawoffice.com
 Attorney for Defendant DAVID R. ZIPF, M.D.

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CLERK OF THE COURT

DISTRICT COURT
 CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

v.

VALLEY HOSPITAL MEDICAL CENTER,
 et al., DAVID R. ZIPF, M.D., MICHAEL D.
 BARNUM, M.D., JOHN DOES I - V,

Defendants.

CASE NO.: A-14-708447-C
 DEPT. NO.: III

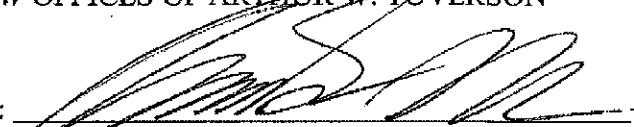
NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Order granting Defendant David R. Zipf, M.D.'s
 Motion to Re-Title on an Order Shortening Time and Defendant Michael D. Barnum, M.D.'s
 Joinder thereto was entered in the above entitled action on the 2nd day of March, 2015, a copy of
 which is attached hereto.

DATED: March 2, 2015

LAW OFFICES OF ARTHUR W. TUVERTON

BY:


 ANASTASIA L. NOE, ESQ.
 Nevada State Bar No. 005442
 7201 West Lake Mead Boulevard, Suite 570
 Las Vegas, Nevada 89128
 Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

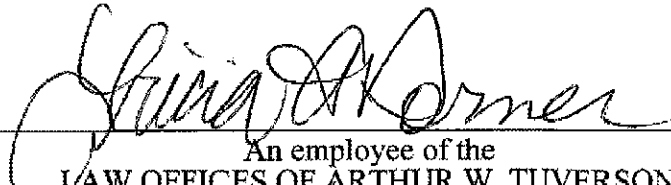
Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERSON, and that on this 3rd day of March, 2015, I served a copy of NOTICE OF ENTRY OF ORDER as follows:

☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

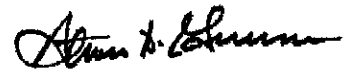
☒ By Electronic Service through Eighth Judicial District Court to;

David J. Mortensen, Esq.
Chelsea R. Hueth, Esq.
ALVERSON TAYLOR MORTENSEN &
SANDERS
7401 W. Charleston Blvd.
Las Vegas, NV 89117
Facsimile (702) 385-7000
Efile@alversontaylor.com
Attorneys for Michael D. Barnum, M.D.


An employee of the
LAW OFFICES OF ARTHUR W. TUVERSON

ORIGINAL

Electronically Filed
03/02/2015 11:11:57 AM


CLERK OF THE COURT

1 **ORDR**
2 ARTHUR W. TUVERSON, ESQ.
3 Nevada State Bar No. 005156
4 ANASTASIA L. NOE, ESQ.
5 Nevada State Bar No. 005442
6 LAW OFFICES OF ARTHUR W. TUVERSON
7 A Limited Liability Partnership
8 Including Professional Corporations
9 7201 West Lake Mead Boulevard, Suite 570
10 Las Vegas, Nevada 89128
11 Telephone: (702) 631-7855
12 Facsimile: (702) 631-5777
13 anoe@awtlawoffice.com
14 Attorney for Defendant DAVID R. ZIPF, M.D.

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

11 *****

12 FRANK M. PECK,

13 Plaintiff,

14 v.

15 VALLEY HOSPITAL MEDICAL CENTER,
16 et al., DAVID R. ZIPF, M.D., MICHAEL D.
17 BARNUM, M.D., JOHN DOES I - V,

18 Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

ORDER

19 Defendant DAVID R. ZIPF, M.D.'s Motion to Re-Title on an Order Shortening Time and
20 Defendant MICHAEL D. BARNUM, M.D.'s Joinder to said Motion having come on for hearing
21 before the Court on February 18, 2015; Anastasia L. Noe, Esq., appeared on behalf of Defendant
22 DAVID R. ZIPF, M.D., Jared Herling, Esq. appeared on behalf of Defendant MICHAEL D.
23 BARNUM, M.D. and there being no appearance by Plaintiff. The Court having considered the
24 pleadings on file, having received no timely opposition, and having heard the oral arguments of
25 counsel; good cause appearing:

26 ///

27 ///

28 ///

1 IT IS HEREBY ORDERED that Defendant's DAVID R. ZIPF, M.D.'s Motion to Re-
2 Title on an Order Shortening Time and Defendant MICHAEL D. BARNUM, M.D.'s Joinder are
3 GRANTED.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court
5 shall Re-Title this case as a Medical Malpractice case instead of Other Tort.


6 IT IS SO ORDERED.

7 DATED this 25 day of February, 2015.

8
9 
DISTRICT COURT JUDGE

10 Submitted By:

11 LAW OFFICES OF ARTHUR W. TUVERTSON

12 
13
14 ARTHUR W. TUVERTSON, ESQ.
Nevada State Bar No. 005156
15 ANASTASIA L. NOE, ESQ.
Nevada State Bar No. 005442
16 7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
17 (702) 631-7855
18 Attorneys for Defendant DAVID R. ZIPF,
M.D.

Tricia Dorner

From: no-reply@tylerhost.net
Sent: Monday, March 02, 2015 2:44 PM
To: Tricia Dorner
Subject: Courtesy Copy Notification of Filing Case(Frank Peck, Plaintiff(s)vs.Valley Hospital Medical Center, Defendant(s)) Document Code:(OGM) Filing Type:(EFS) Repository ID(6706226)

This is a courtesy copy for Case No. A-14-708447-C, Frank Peck, Plaintiff(s)vs.Valley Hospital Medical Center, Defendant(s)

This message was automatically generated; do not reply to this email. Should you have any problems viewing or printing this document, please call (800)297-5377.

Submitted: 03/02/2015 11:11:57 AM

Case title: Frank Peck, Plaintiff(s)vs.Valley Hospital Medical Center, Defendant(s)
Document title: Order
Document code: OGM Filing Type: EFS
Repository ID: 6706226
Number of pages: 2
Filed By: Tuverson Law Offices

To download the document, click on the following link shown below or copy and paste it into your browser's address bar.

<https://wiznet.wiznet.com/clarknv/CDS.do?code=3dddc89f407c9772f4f7c8e24a148246191465622d2246f32df6ce66b45b650b49c808d7807ba8b287a826c1ee7f1ad6>

This link will be active until 03/12/2015 11:11:57 AM.

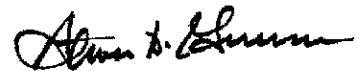
Non Consolidated Cases

EFO \$6.00
EFS \$10.00
SO \$6.00

Consolidated Cases

EFO \$10.00
EFS \$15.00
SO \$10.00

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A10EDCC4A957ABE2C32
mail.tylerhost.net



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Frank Peck, Plaintiff(s)

vs.

Valley Hospital Medical Center, Defendant(s)

CASE NO. A-14-708447-C

Department 3

ARBITRATION FILE



EIGHTH JUDICIAL DISTRICT COURT

330 S. THIRD ST., # 1060
LAS VEGAS, NEVADA 89155-2377
(702) 671-4493 • FAX: (702) 671-4484

CHRIS A. BEECROFT, JR.
ADR COMMISSIONER

January 26, 2015

Frank Peck 57106
HDSP Box 650
Indian Springs, NV 89070

Re: Peck v. Valley Hospital, et al., A-14-708447-c

Dear Mr. Peck:

Upon review of this case, it indicates that you are incarcerated. Pursuant to NAR 3(A), actions in which any of the parties is incarcerated are exempt from arbitration.

I am herewith exempting this case from the Court Annexed Arbitration Program.
There is no need to file a Request for Exemption.

Sincerely,

Chris A. Beecroft, Jr., Esq.
ADR COMMISSIONER

CAB/lk

cc: Thomas R. Slezak, Jr., Esq. (Law Offices of Arthur W. Tuverson)
Bonnie A. Bulla, Esq. (Discovery Commissioner)

FILED²⁶

MAR 16 2015

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

Plaintiff, pro se.

John L. Hines
CLERK OF COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,

CASE NO. A-14-708447-C

Plaintiff,

DEPT NO. 3

vs.

Valley Hospital, et al,

Defendants,

A-14-708447-C

OPPS

Opposition

4441088



OPPOSITION TO DEFENDANT VALLEY HOSPITAL
MEDICAL CENTER'S MOTION TO QUASH SERVICE OF
PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY
NRCP 4(d) AND TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO NRCP 4(i) FOR
FAILURE TO TIMELY SERVE

Comes Now, the Plaintiff, Frank M. Peck pro se
hereinafter Mr Peck with the above entitled OPPOSITION.

This OPPOSITION is made and base upon all papers
and pleadings on file in this case as well as the exhibits,
attached points and authorities and affidavit of Mr. Peck.
Dated 3-7-15

Frank Peck

Frank M. Peck Pltff, pro se.

RECEIVED
MAR 16 2015
CLERK OF THE COURT

16

Points AND Authorities

IN OPPOSITION TO THE DEFENDANT'S MOTION:

1. Mr. Peck can find no statutory provision for a "limited appearance" AN APPEARANCE IS AN APPEARANCE NRCP 4 (f) A voluntary appearance of the defendant "SHALL" be equivalent to personal service of process upon the defendant in this state. The term "shall" is "mandatory and does not denote judicial discretion."
2. Mr. Peck finds "no mandatory language in URS 14.020" Id URS 14.020 5. Subsection 2 provides AN ADDITIONAL MODE AND MANNER of serving process, demand or notice AND DOES NOT AFFECT THE VALIDITY OF ANY OTHER SERVICE AUTHORIZED BY LAW.
3. NRCP 4 (d)(1)(iv) A member managed limited-liability company, to any manager thereof. Clearly, Ms. Donovan is A manager of HR.
4. Service upon manager of foreign corporation VALID. Service upon the manager of a foreign corporation was valid service under section -

29, ch 112, Stats. 1869 (cf. N.R.C.P. 4(d)(2)) which provides that service on a foreign corporation doing business in the State may be made by delivery to an agent, cashier, secretary, president or other head thereof. Daly v. Lahontan Mines Co., 39 Nev 14, 151 Pac 514 158 Pac 285 (1915).

5. Clearly Valley Hospital is a foreign and domestic corporation and competent evidence exists of service.
6. Neither N.R.C.P. 4(d)(1) nor NRS 78.650 requires service upon directors or officers and NRS 78.650 meets the constitutional requirements of notice and opportunity to be heard. State ex rel. Hersh v. First Judicial District Court, 86 Nev 73 464 P2d 783 (1970).
7. Had the Sheriff's Deputy Kenneth Ross promptly served Valley Hospital the first time on November 18 2014 the complained of defect could have been remedied by Plaintiff Peck. As such, this period between Nov 18th 2014 and Jan 6th 2015 49 days should be given to Mr. Peck to effect service;

Lindsay v. U.S. R.R. Retirement Bd., 101 F.3d 444 447-48 (5th Cir 1996) (Good cause is shown when in forma pauperis plaintiff's failure to properly serve a defendant is attributable to government personnel who have improperly performed their duties (SEE attached first attempt NOT FOUND AFFIDAVIT) (EX-1).

8. In addition to the delay caused by the Sheriff's dept. The Carson City Sheriff mailed the Proofs of service to Mr Peck on Dec 18 2014 and were received by HDSP mailroom on Dec 22 2014, but "NOT received by Mr Peck until Jan 30 2015," and is another month delay not attributed to Mr. Peck. (SEE EX-2-3).

Conclusion

Mr. Peck is pro se and should not be held to the same standard as an attorney and for the foregoing reasons, Mr. Peck should at the very least be given 60 days to effect proper service on Valley Hospitals now known CCNV's address.

Dated / Done 3-8-15

Respectfully submitted

Frank Peck

Frank M. Peck Pltff pro se

*

Affidavit, certificate of service and Affirmation

I Frank M. Peck do hereby swear under penalty of perjury:

1. I AM the Plaintiff in CCDC CASE NO A-14-708447-L.
2. All ASSERTIONS in this OPPOSITION are true based on personal knowledge and i am competent to testify to all matters contained therein
3. I bring this OPPOSITION in good faith and for no improper reason.
4. A true and correct copy of said OPPOSITION was mailed this date to the Clerk of the Court 200 Lewis Ave 3rd floor Las Vegas, NV. 89155-1160 for filing and electronic service on defendants Atty: John E. Benis, Esq. pursuant to NEFR rule 9(c).

Further Affiant says the Naught

Dated March 8 2015

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.

* Contains No social security numbers of any person
NRS 239B 030.

Frank Peck

Frank M. Peck #57106

HDSD Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

Index of Exhibits

Exhibit 1

Pages 2

Description: Carson City Sheriff Not found Affidavit
1st attempt. Site dated Nov 18 2011 and Jan 6 2013
Affidavit of Service

Exhibit 2

Pages 4

Description: NDOC informal grievance filed on
1-31-15 re: Withholding of time sensitive (E6N)-
mail.

Exhibit 1

Exhibit 1

7 of

**OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION**

FRANK M PECK

PLAINTIFF

vs

VALLEY HOSPITAL MEDICAL CENTER

DEFENDANT

CASE No. A-14-708447-C
SHERIFF CIVIL NO: 14007602

NOT FOUND AFFIDAVIT

STATE OF NEVADA }

COUNTY OF CLARK }

ss:

KENNETH ROSS, being duly sworn, deposes and says:

That he/she is a regularly appointed, qualified Deputy Sheriff of the said County of Clark, in the State of Nevada and over the age of twenty-one years, not a party to the action or related to either party, nor an attorney for a party, nor in any way interested in the within named action, and authorized to serve civil process by the laws of the State of Nevada, and competent to be a witness therein; that he/she and now is a citizen of the United States of America and of the State of Nevada and that he/she received the within stated civil process: SUMMONS AND COMPLAINT on 11/13/2014 at the hour of 4:14 PM.

That after due search and diligent inquiry throughout Clark County, State of Nevada, I was unable to effect service upon the said **VALLEY HOSPITAL MEDICAL CENTER** Defendant within Clark County, Nevada.

ATTEMPTS TO LOCATE:

Date: 11/17/2014 @ 11:45 AM - 620 SHADOW LANE ATTENTION: PAYROLL DEPARTMENT LAS VEGAS, NV 89106

Attempted By: KENNETH ROSS

Service Type: UNABLE TO SERVE.

Notes: REFUSED SERVICE BY STACY DONAHUE, HR SPEC REP.

Dated: November 18, 2014

Douglas C. Gillespie, Sheriff

SUBSCRIBED AND SWORN to me before me this

18th day of November 2014.

NOTARY PUBLIC in and for said County & State

By:

KENNETH ROSS
Deputy Sheriff



CATHERINE LEVY
NOTARY PUBLIC
STATE OF NEVADA

My Commission Expires: 02-05-17
Certificate No: 01-67766-1

PO Box 553220 Las Vegas, NV 89155-3220 (702) 671-5822

Return file stamp copy

OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION

FILED
FEB 10 2015

John J. Lombardo
CLERK OF COURT

FRANK M PECK

PLAINTIFF

Vs

VALLEY HOSPITAL MEDICAL CENTER

DEFENDANT

CASE No. A-14-708447-C
SHERIFF CIVIL NO.: 15000022

AFFIDAVIT OF SERVICE

STATE OF NEVADA }

COUNTY OF CLARK }

ss:

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on 1/5/2015, at the hour of 2:10 PM. affiant as such Deputy Sheriff served a copy/copies of SUMMONS AND COMPLAINT issued in the above entitled action upon VALLEY HOSPITAL MEDICAL CENTER the defendant VALLEY HOSPITAL MEDICAL CENTER named therein, by delivering to and leaving with said defendant VALLEY HOSPITAL MEDICAL CENTER, personally, at 620 SHADOW LN LAS VEGAS, NV 89106 within the County of Clark, State of Nevada, copy/copies of SUMMONS AND COMPLAINT.

DATED: January 6, 2015.

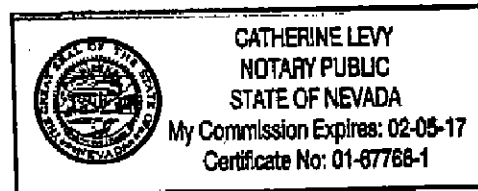
Joseph Lombardo, Sheriff

SUBSCRIBED AND SWORN to me before me this

[Signature] 2015
NOTARY PUBLIC in and for said County & State

By:

[Signature]
KENNETH ROSS
Deputy Sheriff



RECEIVED

FEB 09 2015

CLERK OF THE COURT

PO Box 553220

Las Vegas, NV 89155-3220

(702) 671-5822

Exhibit 2

Exhibit 2

10.6

Log Number _____

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCENAME Frank M. PeckID NUMBER 57116INSTITUTION HOSPUNIT 7A-14

GRIEVANT'S STATEMENT: On 1-30-15 I received 3 pieces of "legal mail," the first piece was postmarked 1-13-15 from US Dist Ct Las Vegas, NV, 89101. The second piece was postmarked 1-13-15 from the Nevada Supreme Court Carson City, NV, 89701 and the third - see continuation and attached copies.

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: Frank PeckDATE 1-31-15 TIME 11:AM

GRIEVANCE COORDINATOR SIGNATURE _____

DATE _____ TIME _____

GRIEVANCE RESPONSE: _____

CASEWORKER SIGNATURE _____

DATE _____

☐ GRIEVANCE UPHOLD ☐ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL _____

DATE _____

☐ INMATE AGREES☐ INMATE DISAGREES

INMATE SIGNATURE _____

DATE _____

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original

To inmate when complete, or attached to formal grievance.

Canary

To Grievance Coordinator.

Pink

Inmate's receipt when formal grievance filed.

Gold

Inmate's initial receipt.

NEVADA DEPARTMENT OF CORRECTIONS
GRIEVANT'S STATEMENT CONTINUATION FORM

NAME Frank M. Peck ID NUMBER 57106

INSTITUTION HDSB UNIT # 7-A-14

GRIEVANCE # _____ GRIEVANCE LEVEL Informal

GRIEVANT'S STATEMENT CONTINUATION PG 2 OF 2

IS POSTMARKED DECEMBER 18th 2014 AND
STAMPED RECEIVED ON DECEMBER 22 2014. THESE
DOCUMENTS WERE RECEIVED "OPENED" AND WAS WITNESSED
BY % C VO OR VU. THESE DOCUMENTS WERE FROM THE
CAYSON CITY SHERIFF'S OFFICE REGARDING SERVICE OF PROCESS
AND WERE "TIME SENSITIVE". IT WOULD SEEM THAT THESE
SPECIFIC DOCUMENTS WERE INTENTIONALLY DELAYED AS OTHER MAIL
HAS BEEN RECEIVED DURING THE INTERIM. THE RESULTING
HARM APPEARS TO HAVE BEEN INTENTIONAL AND IS
ACTIONABLE! EXHAUST WITH REGARD TO CIVIL RIGHT
VIOLATIONS OF MR PECK'S 1st 5th 6th & 14th USCA.

Remedy - Provide equitable remedy

Frank Peck

Original _____
Pink _____
Attached to Grievance _____
Inmate's Copy _____

City Sheriff's Office
Messer St.
City, NV 89701

Frank M. Peck #57100
High Desert State Prison
P.O. Box 6550
Indian Springs, NV. 89070

7-18-14

DEC 22 2014



LEGAL MAIL

知照

07/05

WINN-DIXIE

1

REPORT TO CONFIDENTIAL ADMINS FOR THE FOLLOWING

LEGAL MAIL

CERTIFIED MAIL

REGISTERED MAIL

DATE _____

150

OFFICER

○

INMATESIGNATURE

○

DOGE

DAI

THE

DDOC-3020 (REV 7/01)

Frank M. Peck 57106
H.D.S.P. Box 650
Indian Springs, NV. 89070

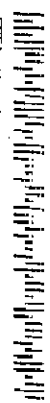
Clerk of the Court
200 Lewis Ave, 3rd floor
LAS VEGAS, NV. 89155-1160

Confidential Legal Mail

CONFIDENTIAL

LEGAL MAIL

Hasler
03/11/2015
FIRST-CLASS MAIL
\$02.03
ZIP: 89101
011D12602451
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2089242



RECEIVED

MAR 08 2015

**HIGH DESERT STATE PRISON
LAW LIBRARY**

CLERK OF COURT

NOT FOUND AFFIDAVIT

127

FRANK M. PECK 57106

H.D.S.P. Box 650

Indian Springs, NV. 89070

Plaintiff prose

2015 MAR 17 P 2:36

Sharon K. Johnson
CLERK OF THE COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Frank M. Peck,

CASE NO. A-14-708447-C

Plaintiff,

DEPT NO. 3

vs.

Valley Hospital, et al,

Date 4-20-15

Defendants,

Time CHAMBERS

NOTICE OF AND

MOTION FOR SUBPOENAS NRS 174.335

Comes Now the Plaintiff Frank M. Peck prose
hereinafter Mr Peck with his MOTION FOR SUBPOENAS.

This Motion is made and based upon all papers
and pleadings on file in this case as well as the
attached points and authorities and affidavit of
Mr. Peck.

Dated 3-6-15

Frank Peck

Frank M. Peck Plaintiff, prose.

RECEIVED

MAR 16 2015

CLERK OF THE COURT

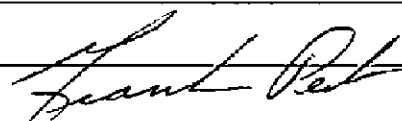
A-14-708447-C
NOTM
Notice of Motion
4441820



Points And Authorities

1. Mr. Peck has been informed by NDOC'S Nurse Wickham at HDSP that the images taken on 3-8-14 ARE in the possession of:
2. Quality imaging 2490 Professional Court Ste 110. Las Vegas, NV. 89128
3. Quality imaging was contacted and states that they have no record of Mr. Peck having any X-Ray on file.
4. Mr. Peck requests a subpoena for High Desert State prison to produce all physician notes and X-RAYS (3) surrounding the 3-8-14 X-RAYS.
5. Mr. Peck requests a subpoena for Quality imaging to produce same supra.
6. The notes and images are to be provided directly to Mr. Peck (2) copies each document and images (2) each for defendants.

Dated 3-6-15



Frank M. Peck Att., prose
(2)

*

Affidavit, certificate of service and Affirmation

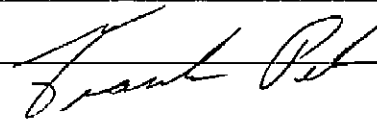
I Frank M. Peck do hereby swear under penalty of perjury that:

1. I AM the Plaintiff in CCDC case NO A-14-708447-C.
2. All assertions in the attached Motion for Subpoenas are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this motion in good faith and for no improper reason.
4. A true and correct copy of said Motion was mailed this date to the Clerk of the Court 2200 Lewis Ave 3rd floor LV, NV. 89155-1160 for filing and Electronic Service on the Defts' respective Attorneys: Arthur W. Tuverson and Alverson, Taylor, Mortensen & Sanders pursuant to NEFR rule 9(c).

Dated and Done 3-8-15

Signed under the penalty of perjury NRS 208.165 AND 28 USC 1746

* Contains no social security numbers of any person.
NRS 239 B.030.



Frank M. Peck # 57106

HDSP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

(3)

Frank M. Peck 57106
HDSF Box 650
Indian Springs, NV. 89070

Hasler
08/11/2015
FIRST-CLASS MAIL
US POSTAGE
\$00.48
3218 93101
011D12602491

Clerk of the Court
200 Lewis Ave, 3rd floor
LAS VEGAS, NV. 89155-1160

Confidential legal mail

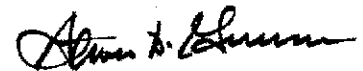
LEGAL MAIL

~~CONFIDENTIAL~~

RECEIVED

MAR 08 2015

**HIGH DESERT STATE PRISON
LAW LIBRARY**



CLERK OF THE COURT

RPLY

JOHN F. BEMIS, ESQ.
Nevada Bar No.: 9509
IAN M. HOUSTON, ESQ.
Nevada Bar No.: 11815
KIRILL V. MIKHAYLOV, ESQ.
Nevada Bar No.: 13538
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendant
Valley Health System, LLC d/b/a
Valley Hospital Medical Center

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK M. PECK,

Plaintiff,

vs.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I-V,

Defendants.

CASE NO. : A-14-708447-C
DEPT NO.: III

**DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a VALLEY HOSPITAL
MEDICAL CENTER'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO QUASH
SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY NRCP 4(d)
AND TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR
FAILURE TO TIMELY SERVE**

**(DEFENDANT APPEARING SPECIFICALLY FOR THE LIMITED
PURPOSE OF THIS MOTION)**

Date of Hearing: April 8, 2015

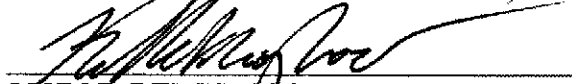
Time of Hearing: 9:00 a.m.

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

COMES NOW, Defendant, VALLEY HEALTH SYSTEM, LLC d/b/a VALLEY HOSPITAL MEDICAL CENTER¹ (hereinafter "Valley Hospital"), appearing specially for the limited purpose of this motion, by and through its counsel of record, HALL PRANGLE & SCHOONVELD, LLC and hereby files its Reply Brief in Support of its Motion to Quash Service of Plaintiff's Complaint for Failure to Satisfy NRCP 4(d) and to Dismiss Plaintiff's Complaint Pursuant to NRCP 4(i) for Failure to Timely Serve.

DATED this 1st day of April, 2015.

HALL PRANGLE & SCHOONVELD, LLC



JOHN F. BEMIS, ESQ.

Nevada Bar No.: 9509

IAN M. HOUSTON, ESQ.

Nevada Bar No.: 11815

KIRILL V. MIKHAYLOV, ESQ.

Nevada Bar No.: 13538

1160 North Town Center Drive, Suite 200

Las Vegas, NV 89144

Attorneys for Defendant

Valley Health System, LLC d/b/a

Valley Hospital Medical Center

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiff filed his Complaint with the Eighth Judicial District Court on October 13, 2014. However, Valley Hospital has never been properly served with the Summons and Complaint as is required under NRCP 4(d). At some point in January 2015, a uniformed male presented to the Human Resources desk at Valley Hospital, which is located at 620 Shadow Lane, Las Vegas,

¹ Incorrectly names as Valley Hospital Medical Center, INC.

1 Nevada 89106. According to an "Affidavit of Service" filed by Plaintiff on February 10, 2015,
2 the visit to Valley Hospital was on or about January 5, 2015. The man spoke with an employee
3 at the human resources counter inside the hospital, Tracy Donohue, and handed her a copy of the
4 Summons and Complaint in this matter. At no time did the man request that he be permitted to
5 speak with any officer of Valley Hospital nor did he inquire as to whether Valley Hospital has a
6 resident agent or who that resident agent might be. Instead, the man simply handed a copy of the
7 Summons and Complaint to Ms. Donohue, who is not an officer of Valley Hospital.
8

9 Valley Hospital now appears for the limited purpose of quashing Plaintiff's improper
10 purported service of process, which alone warrants dismissal, and further moves this Court to
11 dismiss Plaintiff's Complaint for failure to timely serve Defendant.
12

13 II.

14 LEGAL ARGUMENT

15 **A. Plaintiff Failed to Properly Serve Valley Hospital in Accordance with the** 16 **Mandates of NRCP 4(d) and, Therefore, the Complaint Must be Dismissed** 17 **Pursuant to NRCP 12(b)(4)**

18 Simply put, Plaintiff failed to properly serve the Summons and Complaint on Valley
19 Hospital, which justifies dismissal of this action. NRCP 12 provides for dismissal of a cause of
20 action for the "insufficiency of service of process" and authorizes a defendant to raise this
21 defense by motion. See NRCP 12(b)(4). The instructions on how to properly complete
22 sufficient service of the summons and complaint are clearly set forth in NRCP 4(d) and were not
23 followed by Plaintiff in this case.
24

25 In Opposition, Plaintiff maintains that he effectuated valid service of process on Valley
26 Hospital by a Deputy Sheriff who handed a copy of the Summons and Complaint to a human
27 resources employee of the hospital. Valley Hospital is a limited-liability company doing
28

1 business in Nevada. In accordance with NRS 14.020, Valley Hospital maintains a resident
2 agent: The Corporation Trust Company of Nevada located at 311 South Division Street, Carson
3 City, NV 89703. This information is publicly available through the Secretary of State's website.
4 However, Plaintiff did not attempt to serve the properly listed resident agent as provided in
5 NRCp 4(d) and NRS 14.020(2). Accordingly, Plaintiff was required to serve an officer of Valley
6 Hospital which he also failed to do. Furthermore, there is no indication that Plaintiff attempted
7 any alternative means of service, such as providing a copy to the Secretary of State in
8 conjunction with posting a copy of the process in the office of the clerk of the Court.
9 Consequently, Plaintiff failed to serve this Defendant and dismissal is necessary.

11
12 Nevertheless, Plaintiff argues in Opposition that the rules governing service of a foreign
13 corporation apply (as Defendant's parent company, Valley Health System, LLC is a foreign
14 limited-liability company organized under the laws of Delaware). This too is a futile argument
15 as Plaintiff failed to follow the provisions of NRCp 4(d)(2) or NRS 14.020(2) which mandate
16 that service of a foreign corporation shall be made upon its officer, general partner, member,
17 manager, trustee, director or resident agent. Plaintiff has not served any of these people and thus
18 has failed to follow the rules governing service of a foreign corporation.

20 Additionally, Plaintiff improperly cites *Daly v. Lahontan* in support of his argument that
21 service of process was valid by serving Valley Hospital's human resources representative. 39
22 Nev. 14, 151 P.514, 516 (1915). The Court in *Daly* found that service of process upon a
23 manager of a foreign corporation in a mechanic's lien action, not appointed its agent for such
24 purpose, was valid because "one who is intrusted [sic] with the duty of managing the business
25 of a corporation is an agent of the very highest order." *Id.* (emphasis added).

1 The *Daly* decision is not applicable to the instant matter as the Court in that case based its
2 decision on a civil proceedings regulatory act from 1869, which allowed service upon an agent of
3 a foreign corporation. *Id.* The civil proceedings regulatory act that was relied on by the *Daly*
4 Court is no longer in force as the Nevada Supreme Court has prescribed the Nevada Rules of
5 Civil Procedure which became effective in 1953 and now govern service of process of a foreign
6 corporation by NRCP 4(d)(2). Even if this Court found the *Daly* decision applicable, which it
7 clearly is not since the act relevant to that decision is no longer in force, Plaintiff still failed to
8 serve a person who would be regarded as an agent under *Daly*. Plaintiff served Ms. Donohue,
9 who is merely a human resources representative. Ms. Donohue is not "entrusted with the duty of
10 managing the business" of Valley Hospital and therefore cannot be held to the same level as the
11 manager in *Daly*. Accordingly, Plaintiff did not serve an agent as defined in *Daly*.

12
13
14 Further, Plaintiff did not serve any "an officer, general partner, member, manager, trustee
15 or director" of Valley Hospital in the state, nor did he make service through the Secretary of
16 State. Again, as previously mentioned, Plaintiff also failed to serve the Defendant through its
17 resident agent as would be permitted by NRS 14.020(2).

18
19 To the contrary, Plaintiff served a human resources representative at Valley Hospital,
20 who lacks any actual or apparent authority to act on behalf of the corporation. This human
21 resources representative does not qualify as an individual upon whom service can be made.
22 Rather, NRCP 4(d) and NRS 14.020 specifically enumerate those individuals that Plaintiff may
23 serve, and Ms. Donohue, a human resources representative, is not one of them. At no time did
24 Valley Hospital avoid service or attempt to frustrate Plaintiff's attempt to serve the proper entity.
25 Plaintiff failed to properly serve any of the persons enumerated in the rule or the resident agent
26 as permitted by rule and statute.
27
28

1 Additionally, Plaintiff's Opposition erroneously cites *State ex rel. Hersh v. First Judicial*
2 *Dist. Court* for his position that neither NRCP 4(d)(1) nor NRS 78.650 require service upon
3 directors or officers and NRS 78.650 meets the constitutional requirements of notice and
4 opportunity to be heard. 86 Nev. 73, 464 P.2d 783 (1970). Plaintiff is also wholly mistaken in
5 his interpretation of *State ex rel. Hersh* as the Court in that case held that directors were not
6 required to be named as defendants and served with process and that service of resident agent for
7 the purpose of appointment of temporary receiver was sufficient. *Id.* The *State ex re. Hersh* is
8 inapplicable to the instant matter because not only did the Plaintiff fail to serve any of the
9 directors or officers of Valley Hospital but Plaintiff also failed to serve the resident agent of
10 Valley Hospital. Further, the instant case does not involve an appointment of a receiver and
11 there is no issue related to naming directors as defendants. The *State ex rel. Hersh* case shows
12 that service of a registered agent is sufficient; however, Plaintiff did not serve the registered
13 agent for Valley Hospital. Moreover, NRS 78.650 governs stockholders' application for
14 injunction and appointment of receiver when corporation is mismanaged. The instant case does
15 not involve stockholders' application for injunction nor an appointment of a receiver and
16 therefore NRS 78.650 is inapplicable. Accordingly, the *State ex rel. Hersh* case is completely
17 inapplicable to the instant matter.
18
19
20

21 Furthermore, in his Opposition, Plaintiff argues that Valley Health's filing of this Motion
22 alone is equivalent to personal service. Plaintiff cites NRCP 4(f) for this proposition. NRCP 4(f)
23 states:
24

25 **(f) Territorial Limits of Effective Service.**

26 All Process, including subpoenas, may be served anywhere within
27 the territorial limits of the State and, when a statute or rule so
28 provides, beyond the territorial limits of the State. A voluntary

appearance of the defendant shall be equivalent to personal service of process upon the defendant in this State.

NRCP 4(f).

However, NRCP 4(f) does not preclude Valley Hospital from filing its Motion without subjecting itself to establishment of personal service. The Nevada Supreme Court has held that "Now, before a defendant files a responsive pleading such as an answer, that defendant may move to dismiss for lack of personal jurisdiction, insufficiency of process, and/or insufficiency of service of process, and such a defense is not waived by being joined with one or more other defenses." *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000). Additionally, NRCP 12(b)(4) specifically provides for dismissal of a cause of action for the "insufficiency of service of process" and authorizes a defendant to raise this defense by motion. See NRCP 12(b)(4). Given the Nevada Supreme Court's ruling in *Hansen* and the right to move for dismissal pursuant to NRCP 12(b)(4), it would be absurd if the Court held that a motion to quash for insufficiency of service of process is equivalent to personal service. Such a ruling would render the filing of a motion to quash for insufficiency of service of process dispositive of itself. Accordingly, since Valley Health has not filed a responsive pleading it may file the instant Motion for insufficiency of process and insufficiency of service of process without establishing personal service.

As shown, Plaintiff has not complied with the appropriate means for service and his purported service must be quashed. Because service was improper and entirely insufficient, Valley Hospital is entitled to dismissal pursuant to NRCP 12(b)(4).

B. Plaintiff Failed to Timely Serve Valley Hospital and, Therefore, His Complaint "Shall" be Dismissed Pursuant to NRCP 4(i)

The clear, unmistakable, express requirements set forth in NRCP 4(i) mandate dismissal:

1 If a service of the summons and complaint is not made upon a
2 defendant within 120 days after the filing of the complaint, *the*
3 *action shall be dismissed* as to that defendant without prejudice
4 upon the court's own initiative with notice to such party or upon
5 motion, unless the party on whose behalf such service was required
6 files a motion to enlarge the time for service and shows good cause
7 why such service was not made within that period. If the party on
8 whose behalf such service was required fails to file a motion to
9 enlarge the time for service before the 120-day service period
10 expires, the court shall take that failure into consideration in
11 determining good cause for an extension of time. Upon a showing
12 of good cause, the court shall extend the time for service and set a
13 reasonable date by which service should be made.

14 *Id.* (emphasis added).

15 The term "shall" is "mandatory and does not denote judicial discretion." *Washoe Med.*
16 *Ctr.*, 122 Nev. at 1303, 148 P.3d at 793-94. The *Washoe* court further explained the effect of the
17 mandatory dismissal language reinforcing that "[t]he Legislature's choice of the words 'shall
18 dismiss' instead of 'subject to dismissal' indicates that the Legislature intended that the court
19 have no discretion with respect to dismissal." *Id.* Thus, Plaintiff was required to serve Valley
20 Hospital within 120 days of the October 13, 2014 filing of his Complaint. He has clearly failed
21 to do so. As discussed in detail above, *to date* Plaintiff has not properly served Valley Hospital
22 in accordance with the requirements set forth in NRCP 4(d) and NRS 14.020(2). The deadline
23 for any such service was February 10, 2015 and has long since passed. Plaintiff has failed to
24 satisfy this clear, unambiguous timing requirement. Consequently, NRCP 4(i) expressly states
25 that upon such failure, "the action *shall* be dismissed." *Id.* (emphasis added).

26 In Opposition, Plaintiff argues that good cause exists to extend time because had the
27 Sheriff's Deputy promptly served Valley Hospital the first time on November 17, 2014, then the
28 service would have been made within 120 days of filing of the Complaint. This argument is
without merit as Plaintiff purportedly served Valley Hospital on January 5, 2015, at the *same*

1 address he attempted service the first time on November 17, 2014, at 620 Shadow Lane, Las
2 Vegas, Nevada 89106. As indicated above, this is not the address for Valley Hospital's resident
3 agent. Further, the human resources representative Ms. Donahue refused service on November
4 17, 2014. *See Exhibit 1 to Plaintiff's Opposition to Defendant's Motion to Quash.* Nevertheless,
5 Plaintiff again attempted to serve Ms. Donohue on January 6, 2015. At no time did the Sherriff's
6 Deputy request that he be permitted to speak with any officer of Valley Hospital nor did he
7 inquire as to whether Valley Hospital has a resident agent or who that resident agent might be.
8 Instead, the man delivered a copy of the Summons and Complaint to Ms. Donohue, who is not an
9 officer of Valley Hospital. As discussed above, this is improper service which justifies
10 dismissal.
11

12
13 Plaintiff attempts to put the blame on the Sherriff's Deputy and seeks an extension of
14 time for his service of the Summons and Complaint. In support of this argument, Plaintiff cites a
15 Fifth Circuit case, *Lindsey v. U.S.R.R. Retirement Bd.*, for his proposition that good cause is
16 shown when an in forma pauperis plaintiff's failure to properly serve a defendant is attributable
17 to government personnel who have improperly performed their duties. 101 F.3d 444, (5th Cir.
18 1996). Once again, Plaintiff cites authority, this time from an outside state and circuit that is
19 inapplicable to the instant matter. In *Lindsey*, the Court held that the in forma pauperis plaintiff
20 showed good cause for failure to properly effectuate service because the clerk of the court did
21 not provide the in forma pauperis plaintiff with a proper summons form and because no one was
22 appointed or directed to serve process for the in forma pauperis plaintiff. *Id.* The *Lindsey* case is
23 inapplicable to the instant matter because the Plaintiff does not contend that he was not provided
24 a summons form and because he does not content that no one was appointed to serve. The
25 Sherriff's Deputy was appointed to serve the properly issued summons and attempted service of
26
27
28

1 process on two separate occasions to the address supplied by the Plaintiff. This, however, was
2 not proper service, as discussed throughout.

3 Lastly, NRCP 4(i) states that, "If the party on whose behalf such service was required
4 fails to file a motion to enlarge the time for service before the 120-day service period expires, the
5 court shall take that failure into consideration in determining good cause for an extension of
6 time." Plaintiff has not filed a motion to enlarge the time. Instead, Plaintiff seeks to blame the
7 Sherriff's deputy for his delay. As discussed above, Plaintiff's argument is without merit
8 because the summons form was properly issued and a Deputy Sherriff was appointed to serve
9 process. Plaintiff simply failed to direct proper service. Therefore, good cause does not exist for
10 an extension of time.
11

12 Based on the foregoing, and in light of the clear language of the applicable rules,
13 Defendant Valley Hospital respectfully requests this Honorable Court dismiss the instant action
14 as against this Defendant.
15

16 IV.

17 CONCLUSION

18 Based on the foregoing, Defendant VALLEY HEALTH SYSTEM, LLC d/b/a VALLEY
19 HOSPITAL MEDICAL CENTER respectfully requests an order from this Court granting this
20
21
22
23
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25
26
27
28

1 Motion to quash service and dismissing Plaintiff's Complaint as against this Defendant.

2 DATED this 1st day of April, 2015.

3 HALL PRANGLE & SCHOONVELD, LLC

4 By: 

5 JOHN F. BEMIS, ESQ.

6 Nevada Bar No.: 9509

7 IAN M. HOUSTON, ESQ.

8 Nevada Bar No.: 11815

9 KIRILL V. MIKHAYLOV, ESQ.

10 Nevada Bar No.: 13538

11 1160 N. Town Center Dr., Ste. 100

12 Las Vegas, NV 89144

13 Attorneys for Defendant

14 Valley Health System, d/b/a

15 Valley Hospital Medical Center

16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD,
18 LLC; that on the 1 day of April, 2015, I served a true and correct copy of the foregoing
19 DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a VALLEY HOSPITAL
20 MEDICAL CENTER'S REPLY IN SUPPORT OF ITS MOTION TO QUASH SERVICE
21 OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY NRCP 4(d) AND TO
22 DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE TO
23 TIMELY SERVE was served on the following by Electronic Service to all parties on the
24 Wiznet Service List, addressed as follows:

25 Arthur Tuverson, Esq.

26 Thomas R. Slezak, Jr., Esq.

27 LAW OFFICES OF ARTHUR W. TUVERSON

28 7201 W. Lake Mead Blvd., Suite 570

Las Vegas, NV 89128

Attorneys for Defendant

David R. Zipf, M.D.

1 The foregoing **DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a VALLEY**
2 **HOSPITAL MEDICAL CENTER'S REPLY IN SUPPORT OF ITS MOTION TO**
3 **QUASH SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE TO SATISFY**
4 **NRCP 4(d) AND TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP(4)(i)**
5 **FOR FAILURE TO TIMELY SERVE** was also served by First Class Mail, by placing same in
6
7 a sealed envelope upon which first class postage was prepaid and addressed as follows:

8 Frank M. Peck, #57106
9 HDSP Box 650
10 Indian Springs, NV 89070
11 *Plaintiff Pro Per*

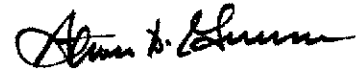
12 
13 An employee of HALL PRANGLE & SCHOONVELD, LLC
14
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27
28

ORIGINAL

OGM

JOHN F. BEMIS, ESQ.
Nevada Bar No.: 9509
IAN M. HOUSTON, ESQ.
Nevada Bar No.: 11815
KIRILL V. MIKHAYLOV, ESQ.
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HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
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(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: efile@hpslaw.com
*Attorneys for Defendant Valley Health System, LLC
d/b/a Valley Hospital Medical Center*

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK M. PECK,

Plaintiff,

vs.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I-V,

Defendants.

CASE NO.: A-14-708447-C
DEPT NO.: III

**ORDER GRANTING DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a
VALLEY HOSPITAL MEDICAL CENTER'S MOTION TO QUASH
SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE
TO SATISFY NRCP 4(d) AND TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE TO TIMELY SERVE**

This matter came before the Honorable Douglas W. Herndon on April 8, 2015, for Defendant Valley Hospital Medical Center's Motion to Quash Service of Plaintiff's Complaint for Failure to Satisfy NRCP 4(d) and To Dismiss Plaintiff's Complaint Pursuant to NRCP (4)(i) For Failure to Timely Serve. Plaintiff, Frank Peck was not present, Kirill V. Mikhaylov, Esq.,


1 appeared as counsel for Defendant Valley Hospital Medical Center, Quincy Jaeger, Esq.,
2 appeared as counsel for Defendant Michael D. Barnum, M.D., and Melanie L. Thomas, Esq.,
3 appeared as counsel for Defendant David R. Zipf, M.D. Based upon the pleadings filed, the oral
4 argument and the cited precedent, this Court finds that Defendant Valley Hospital Medical
5 Center's Motion to Quash Service of Plaintiff's Complaint for Failure to Satisfy NRCP 4(d) and
6 To Dismiss Plaintiff's Complaint Pursuant to NRCP (4)(i) For Failure To Timely Serve is
7 GRANTED.
8

9 **ORDER**

10 Pursuant to the foregoing, and good cause appearing therefore,

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Valley
12 Hospital Medical Center's Motion to Quash Service of Plaintiff's Complaint for Failure to
13 Satisfy NRCP 4(d) and To Dismiss Plaintiff's Complaint Pursuant to NRCP (4)(i) For Failure To
14 Timely Serve is GRANTED.
15

16 **IT IS SO ORDERED.**

17 
18 DISTRICT COURT JUDGE 4-16-15

19 Respectfully submitted:

20 HALL PRANGLE & SCHOONVELD, LLC
21 

22 JOHN F. BEMIS, ESQ.

23 Nevada Bar No.: 9509

24 IAN M. HOUSTON, ESQ.

25 Nevada Bar No.: 11815

26 KIRILL V. MIKHAYLOV, ESQ.

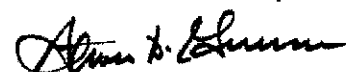
27 Nevada Bar No.: 13538

28 1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant Valley Health System, LLC

d/b/a Valley Hospital Medical Center



CLERK OF THE COURT

NEOJ

JOHN F. BEMIS, ESQ.
Nevada Bar No.: 9509
IAN M. HOUSTON, ESQ.
Nevada Bar No.: 11815
KIRILL V. MIKHAYLOV, ESQ.
Nevada Bar No.: 13538
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 Valley Health System, LLC
d/b/a Valley Hospital Medical Center*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK M. PECK,

Plaintiff,

vs.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I-V,

Defendants.

CASE NO. : A-14-708447-C
DEPT NO.: III

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Defendant Valley Health System, LLC
d/b/a Valley Hospital Medical Center's Motion to Quash Service of Plaintiff's Complaint for
Failure to Satisfy NRCP 4(d) and to Dismiss Plaintiff's Complaint Pursuant to NRCP(4)(i) for

...

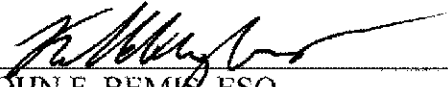
...

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

Failure to Timely Serve was entered in the above-entitled action on April 16, 2015, a copy of which is attached hereto.

DATED this 21st day of April, 2015.

HALL PRANGLE & SCHOONVELD, LLC


JOHN F. BEMIS, ESQ.

Nevada Bar No.: 9509

IAN M. HOUSTON, ESQ.

Nevada Bar No.: 11815

KIRILL V. MIKHAYLOV, ESQ.

Nevada Bar No.: 13538

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

*Attorneys for Defendant Valley Health System, LLC
d/b/a Valley Hospital Medical Center*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 21 day of April, 2015, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER was served on the following by Electronic Service to all parties on the Wiznet Service List, addressed as follows:

Arthur Tuverson, Esq.
Thomas R. Slezak, Jr., Esq.
LAW OFFICES OF ARTHUR W. TUVERSON
7201 W. Lake Mead Blvd., Suite 570
Las Vegas, NV 89128
*Attorneys for Defendant
David R. Zliff, M.D.*

By U.S. Mail to:
Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per


An employee of Hall Prangle & Schoonveld, LLC

ORIGINAL

OGM

JOHN F. BEMIS, ESQ.

Nevada Bar No.: 9509

IAN M. HOUSTON, ESQ.

Nevada Bar No.: 11815

KIRILL V. MIKHAYLOV, ESQ.

Nevada Bar No.: 13538

HALL PRANGLE & SCHOONVELD, LLC

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Las Vegas, NV 89144

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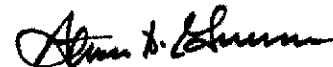
(702) 384-6025 – Facsimile

Email: efile@hpslaw.com

Attorneys for Defendant Valley Health System, LLC

d/b/a Valley Hospital Medical Center

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK M. PECK,

Plaintiff,

vs.

VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
BARNUM, M.D., JOHN DOES I-V,

Defendants.

CASE NO. : A-14-708447-C
DEPT NO.: III

**ORDER GRANTING DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a
VALLEY HOSPITAL MEDICAL CENTER'S MOTION TO QUASH
SERVICE OF PLAINTIFF'S COMPLAINT FOR FAILURE
TO SATISFY NRCP 4(d) AND TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO NRCP(4)(i) FOR FAILURE TO TIMELY SERVE**

This matter came before the Honorable Douglas W. Herndon on April 8, 2015, for Defendant Valley Hospital Medical Center's Motion to Quash Service of Plaintiff's Complaint for Failure to Satisfy NRCP 4(d) and To Dismiss Plaintiff's Complaint Pursuant to NRCP (4)(i) For Failure to Timely Serve. Plaintiff, Frank Peck was not present, Kirill V. Mikhaylov, Esq.

HALL PRANGLE & SCHOONVELD, LLC

1160 NORTH TOWN CENTER DRIVE

SUITE 200

LAS VEGAS, NEVADA 89144

TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

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

1 appeared as counsel for Defendant Valley Hospital Medical Center, Quincy Jaeger, Esq.,
2 appeared as counsel for Defendant Michael D. Barnum, M.D., and Melanie L. Thomas, Esq.,
3 appeared as counsel for Defendant David R. Zipf, M.D. Based upon the pleadings filed, the oral
4 argument and the cited precedent, this Court finds that Defendant Valley Hospital Medical
5 Center's Motion to Quash Service of Plaintiff's Complaint for Failure to Satisfy NRCP 4(d) and
6 To Dismiss Plaintiff's Complaint Pursuant to NRCP (4)(i) For Failure To Timely Serve is
7 GRANTED.
8

9
10 **ORDER**

11 Pursuant to the foregoing, and good cause appearing therefore,

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Valley
13 Hospital Medical Center's Motion to Quash Service of Plaintiff's Complaint for Failure to
14 Satisfy NRCP 4(d) and To Dismiss Plaintiff's Complaint Pursuant to NRCP (4)(i) For Failure To
15 Timely Serve is GRANTED.
16

17 **IT IS SO ORDERED.**

18 
19 DISTRICT COURT JUDGE 4-16-15

20 Respectfully submitted:

21 HALL PRANGLE & SCHOONVELD, LLC

22 
23 JOHN F. BEMIS, ESQ.

24 Nevada Bar No.: 9509

25 IAN M. HOUSTON, ESQ.

26 Nevada Bar No.: 11815

27 KIRILL V. MIKHAYLOV, ESQ.

28 Nevada Bar No.: 13538

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

Attorneys for Defendant Valley Health System, LLC
d/b/a Valley Hospital Medical Center

52

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Plaintiff, pro se.

FILED

2015 APR 28 A 10:14

DISTRICT COURT CLARK COUNTY, NEVADA

Christina M. Williams
CLERK OF THE COURT

Frank M. Peck,

CASE NO. A-14-708447-C

Plaintiff

DEPT. NO. 3

vs.

Valley Hospital et al

Defendants.

A-14-708447-C

MOT
Motion
4452103



NOTICE OF AND

MOTION FOR MEET AND CONFIR TELECONFERENCE

NRC.P rule 16.1(b)

Plaintiff requests an ORDER directing the Department of Corrections HDSP to facilitate teleconferences with the Defendants.

Dated and Mailed to the Clerk of the Court 200 Lewis Ave 3rd floor Las Vegas, NV. 89155-1160 for filing and "ELECTRONIC SERVICE" on the Parties NEFR rule 9(c).

* Affirmation contains NO social security numbers of any person.
NRS 239.3030.

Frank M. Peck

Frank M. Peck Platf, pro se.

RECEIVED
APR 28 2015
CLERK OF THE COURT

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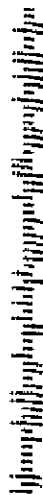
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070

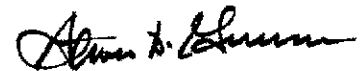
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Clerk of the Court
200 Lewis Ave 3rd floor
Las Vegas, NV. 89155-1160

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CLERK OF THE COURT

1 **MOT**
ARTHUR W. TUVerson, ESQ.
2 Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
3 Nevada State Bar No. 012902
LAW OFFICES OF ARTHUR W. TUVerson
4 A Limited Liability Partnership
Including Professional Corporations
5 7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
6 Telephone: (702) 631-7855
Facsimile: (702) 631-5777
7 dwoodrum@awtlawoffice.com
Attorney for Defendant DAVID R. ZIPF, M.D.

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

11 *****

12 FRANK M. PECK,

13 Plaintiff,

14 v.

15 VALLEY HOSPITAL MEDICAL CENTER,
et al., DAVID R. ZIPF, M.D., MICHAEL D.
16 BARNUM, M.D., JOHN DOES I - V,

17 Defendants.

CASE NO.: A-14-708447-C
DEPT. NO.: III

Hearing Date:

Hearing Time:

18
19 **DEFENDANT DAVID R. ZIPF, M.D.'S MOTION FOR JUDGMENT ON THE**
20 **PLEADINGS AND SUPPORTING AFFIDAVIT OF DANIELLE WOODRUM, ESQ.**

21 COMES NOW, Defendant DAVID R. ZIPF, M.D., by and through his counsel of record,
22 the LAW OFFICES OF ARTHUR W. TUVerson, LLP, and hereby submits this motion for
23 judgment on the pleadings and supporting affidavit of Danielle Woodrum, Esq.

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1 This Motion is made based upon the attached Memorandum of Points & Authorities, the
2 papers and pleadings on file, and any evidence and/or argument that may be taken at the time for
3 hearing on this matter.

4 DATED: June 17, 2015

LAW OFFICES OF ARTHUR W. TUVerson

5
6 BY: 

7 ARTHUR W. TUVerson, ESQ.
8 Nevada State Bar No. 005156
9 DANIELLE WOODRUM, ESQ.
10 Nevada State Bar No. 012902
11 7201 West Lake Mead Boulevard, Suite 570
12 Las Vegas, Nevada 89128
13 (702) 631-7855
14 Attorneys for Defendant DAVID R. ZIPF, M.D.

15 **NOTICE OF MOTION**

16 TO: All parties, and their respective attorneys:

17 PLEASE TAKE NOTICE that Defendant DAVID R. ZIPF, M.D.'s MOTION FOR
18 JUDGMENT ON THE PLEADINGS or will be heard in Department III of the above entitled
19 Court on the 22 day of JULY, 2015, at 9:00A.m.

20 DATED: June 17, 2015

LAW OFFICES OF ARTHUR W. TUVerson

21 BY: 

22 ARTHUR W. TUVerson, ESQ.
23 Nevada State Bar No. 005156
24 DANIELLE WOODRUM, ESQ.
25 Nevada State Bar No. 012902
26 7201 West Lake Mead Boulevard, Suite 570
27 Las Vegas, Nevada 89128
28 (702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

AFFIDAVIT OF DANIELLE WOODRUM, ESQ.
IN SUPPORT OF DEFENDANT DAVID R. ZIPF, M.D.'S
MOTION FOR JUDGMENT ON THE PLEADINGS

STATE OF NEVADA }
COUNTY OF CLARK } ss.

DANIELLE WOODRUM, ESQ., being first duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the state of Nevada, and an attorney with the LAW OFFICES OF ARTHUR W. TUVERSON.

2. I am the attorney of record for Defendant DAVID R. ZIPF, M.D. in this matter.

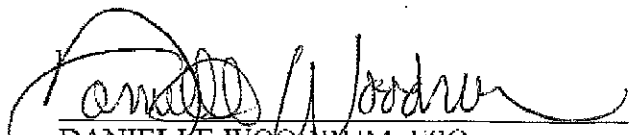
3. I have been involved in the handling of this case and am familiar with the facts testified to herein.

4. Attached to Defendant DAVID R. ZIPF, M.D.'s Motion for Judgment on the Pleadings as Exhibit A is a true and correct copy of Nevada Department of Corrections Medical Kite and/or Service Report.

5. Attached to DAVID R. ZIPF, M.D.'s Motion for Judgment on the Pleadings as Exhibit B is a true and correct copy of the Nevada Department of Corrections Physicians' Orders Form.

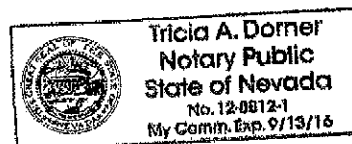
6. Attached to Defendant DAVID R. ZIPF, M.D.'s Motion for Judgment on the Pleadings as Exhibit C is a true and correct copy of the Quality Medical Imaging Radiology Interpretation.

Further your Affiant sayeth naught.


DANIELLE WOODRUM, ESQ.

SWORN and SUBSCRIBED to before me
this 17th day of June, 2015.


NOTARY PUBLIC in and for said
COUNTY and STATE



MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff is a prisoner at High Desert State Prison in Indian Springs. Plaintiff, in proper person, filed the instant "medical malpractice negligence" ("professional negligence") action relying strictly on the doctrine of *res ipsa loquitur* as defined by NRS 41A.100(1)(a). Plaintiff contends NRS 41A.100(1)(a) is applicable because a foreign object, an intravenous ("IV") needle, was inadvertently left in his hand after he was hospitalized at Valley Hospital. However, radiology records referenced in Plaintiff's Complaint, demonstrate that no foreign object was ever found in Plaintiff's hand. Thus, judgment as a matter of law is appropriate as Plaintiff's only basis for alleging professional negligence against Dr. Zipf is the alleged retention of a foreign object.

Moreover, even if the Court were to ignore the radiology records, which demonstrate no foreign object was identified in Plaintiff's hand, NRS 41A.100(1)(a) is still inapplicable as it only applies to cases when a foreign object is **unintentionally** left in a patient during a **surgical procedure**, such as when a surgical sponge or instrument is left in a patient during surgery. It does not apply when a medical device that is supposed to remain in a patient for a period of time, such as an IV access device, is retained. Furthermore, the *res ipsa loquitur* doctrine is inapplicable as to Dr. Zipf, because Plaintiff has failed to allege that Dr. Zipf had exclusive, let alone any, control over the placement or removal of the IV needle and/or catheter.

Plaintiff did not attach to his Complaint an expert affidavit to support his allegations of professional negligence against Dr. Zipf. Ostensibly, Plaintiff failed to do because of his reliance on NRS 41A.100(1)(a) which provides an exception to the expert affidavit requirement embodied in NRS 41A.071. However, as noted above and explained below, the *res ipsa loquitur* exception embodied in NRS 41A.100(1)(a) is inapplicable in this case. Therefore, Plaintiff's Complaint fails as a matter of law because he has failed to comply with the expert affidavit requirement of NRS 41A.071.

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II. STATEMENT OF FACTS

Plaintiff was transferred from High Desert State Prison to Valley Hospital on December 31, 2013 with meningitis. (See Nevada Department of Corrections Medical Kite and/or Service Report, attached as **Exhibit A**; see also Complaint filed on October 13, 2014 ("Compl.") at ¶ 1.) He was discharged from Valley Hospital on January 17, 2014. (Compl. at ¶ 2.) Over a month after his discharge from Valley Hospital, on February 18, 2014, Plaintiff alerted prison staff that there may have been a problem with his left hand, stating "something possibly a needle is just under the skin in my left hand." (See **Exhibit A**; see also Compl. at ¶ 3.) Dr. Suwee, a physician at the High Desert State Prison, ordered an x-ray of Plaintiff's left hand to rule out the presence of a foreign object. (See Nevada Department of Corrections Physicians' Orders Form, attached as **Exhibit B**.) An x-ray of Plaintiff's left hand was taken on March 8, 2014. The x-ray did not identify a foreign object and was read as "negative left hand." (See Quality Medical Imaging Radiology Interpretation, attached as **Exhibit C**.)

III. LEGAL STANDARD

Pursuant to NRCP 12(c), "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." The standard of review is equivalent to a Rule 12(b)(5) motion to dismiss for failure to state a claim upon which relief can be granted. See *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989).

In reviewing such a motion, the Court must determine whether the challenged pleading sets forth allegations sufficient to satisfy the elements of a legally cognizable claim for relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985). Generally, the Court should recognize the factual allegations in Plaintiff's Complaint as true. *Buzz Stew, LLC v. City of N Las Vegas*, 124 Nev. Adv. Rep. 21, 181 P.3d 670, 672 (2008). However, the Complaint should be dismissed if the factual allegations of the Complaint, if accepted as true, are insufficient to establish the essential elements of a claim for relief. *Edgar*, 101 Nev. at 228, 699 P.2d at 112.

Generally, when ruling on a motion for judgment on the pleadings, matters outside the complaint will not be considered. However, "the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint

1 when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.”
2 *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). The
3 *Breliant* court also cited to other cases wherein the pleadings, on file, were referenced and
4 documents that were referenced in the complaint, in determining the sufficiency of a plaintiff’s
5 complaint. *Id.*; citing *Hollymatic Corp. v. Holly Sys., Inc.*, 620 F.Supp. 1366, 1367
6 (D.C.Ill.1985) (court considered contract attached to complaint and admissions in answer and in
7 reply to counterclaim); *Berk v. Ascott Inv. Corp.*, 759 F.Supp. 245, 249 (D.C.Pa.1991) (court may
8 consider document incorporated by reference into the complaint).

9
10 **IV. LEGAL ARGUMENT**

11 **A. THE COMPLAINT DOES NOT MEET THE REQUIREMENTS OF NRS
12 41A.071 AND MUST BE DISMISSED.**

13 The Complaint in this matter alleges Defendants “deviat[ed] from the accepted standard
14 of medical care or practice.” Thus, this action falls within the scope of NRS 41A.071. *See* NRS
15 41A.009. NRS 41A.071 provides:

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

23 The expert affidavit requirement of NRS 41A.071 is designed to ensure that the “parties file
24 malpractice cases in good faith, i.e., to prevent the filing of frivolous lawsuits,” and to ensure that
25 the case is meritorious. *Washoe Medical Center v. Second Judicial District Court*, 122 Nev. Adv.
26 Rep. 110, 148 P.3d 790, 794 (2006); *Borger v. Eighth Judicial District Court* 120 Nev. 1021,
27 1026, 102 P.3d 600, 604 (2004). A medical malpractice complaint that is filed without an expert
28 affidavit is *void ab initio*, shall be dismissed by the District Court without prejudice, and cannot
be amended. *Washoe* at 793-794; *Borger* at 1029-1030. In the instant case, the Complaint was
filed without an expert affidavit and should therefore be dismissed without leave to amend.

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1 B. PLAINTIFF CANNOT SHOW THE ALLEGED ACCIDENT IS ONE THAT
2 DOES NOT ORDINARILY OCCUR ABSENT NEGLIGENCE, THUS *RES*
3 *IPSA LOQUITUR* IS NOT APPLICABLE.

4 Plaintiff contends this case falls within NRS 41A.100(1)(a), which enumerates a *res ipsa*
5 *loquitur* exception to the expert affidavit requirement where "a foreign substance other than
6 medication or a prosthetic device was unintentionally left within the body of a patient following
7 surgery." Plaintiff must meet each element of 41A.100(1)(a) to receive the benefit of the *res ipsa*
8 *loquitur* exception. In fact, Plaintiff's ability to meet these elements must be carefully and
narrowly metered by the Court early in the litigation.

9 ... the plaintiff must present facts and evidence that show the
10 existence of one or more of the situations enumerated in NRS
11 41A.100(1)(a)-(e). While the dissent disapproves this procedure
12 because it is not specifically set forth in the statute, we believe it is
13 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).

14 If Plaintiff cannot meet each element, the *res ipsa loquitur* exception does not apply, the
15 Complaint is *void ab initio*, must be dismissed without prejudice, and cannot be amended.
16 *Washoe* at 793-794.

17 NRS 41A.100(1)(a) clearly enumerates two conditions which must occur for it to be
18 applicable. First, a foreign object must be **unintentionally** left in a patient's body. Second, the
19 foreign body must be left following **surgery**. The classic scenario invoking this exception is
20 when a surgical sponge or instrument is left in a patient following surgery. Courts have not
21 applied the *res ipsa loquitur* doctrine to cases where a foreign object is intentionally left in a
22 patient. For example, in *Gilbert v. Campbell*, multiple Penrose drains (surgical rubber tubes
23 placed in a wound to drain fluid) were inserted several months after the plaintiff, Mr. Gilbert,
24 underwent a surgical colon resection to remove a tumor. 440 So.2d 1048, 1048-1049 (1983).
25 The drains were intended to drain infected material from a pelvic abscess. *Id.* at 1049. Almost a
26 year later, and long after removal of the drains, a piece of a drain was found inside the body of
27 Mr. Gilbert. *Id.* The Supreme Court of Alabama determined that the *res ipsa loquitur* doctrine
28 did not apply because expert medical testimony was required to describe the proper use, purpose,

1 insertion, and removal of a Penrose drain, and without such testimony there was no evidence that
2 the defendant physician was negligent. *Id.*

3 Similarly, in *Scott v. Rayhrer*, the court held the retention and removal of a Penrose drain
4 involved complex medical procedures beyond the comprehension of a layperson. 185
5 Cal.App.4th 1535 (2010). The plaintiff in *Scott* underwent surgery for colorectal cancer in
6 September 2002, and after he experienced postoperative complications, one of the defendant
7 physicians placed two Penrose drains in the wound, located in the presacral space, on September
8 9, 2003. *Id.* at 1538-1539. The second defendant physician removed the drains on September 22,
9 2003. *Id.* at 1539. However, a May 3, 2005 fistulogram showed a drain or a portion of a drain,
10 and the patient underwent surgery that same day to remove it. *Id.* The *Scott* Court noted the
11 presence of the drain in the patient's body was superficially similar to a retained sponge, but, as in
12 the instant case, the drain was not inadvertently left during surgery. *Id.* at 1547. Instead, it was
13 purposely inserted and **was meant to be retained temporarily**. *Id.* Therefore, expert medical
14 testimony was needed to prove the physician who inserted the drains was negligent. *Id.* at 1548.

15 Like *Gilbert* and *Scott*, this case does not involve a foreign object that was
16 **unintentionally** left within the body of a patient following surgery. Similar to the
17 aforementioned cases, Plaintiff alleges a foreign object was left in his body. Just as in the *Gilbert*
18 and *Scott* cases, the foreign object, an IV needle or catheter, was initially **intentionally** left in
19 Plaintiff's hand. Thus, Plaintiff's contention is not that a foreign object was unintentionally left
20 during surgery. Rather, his contention is that Defendants failed to remove a foreign object, an IV
21 needle or catheter, when he was discharged from Valley Hospital. This is analogous to the claims
22 in *Gilbert* and *Scott* wherein the plaintiffs claimed that the Penrose drains were not properly
23 removed. As was the case in *Gilbert* and *Scott*, the doctrine of *res ipsa loquitur*, as codified in
24 NRS 41A.100(1)(a) is inapplicable here and Plaintiff must also use a medical expert to describe
25 the proper use, purpose, insertion, and removal of an IV catheter. Nevertheless, Plaintiff has
26 failed to provide an expert affidavit. Therefore, he has not met the requirement of NRS 41A.071,
27 and dismissal of the Complaint, without leave to amend, is the appropriate remedy.

28

C. RES IPSA LOQUITUR DOES NOT APPLY TO DR. ZIPF.

Nevada's statutory version of the *res ipsa loquitur* doctrine replaces long existing common law theory. At common law, in order for the doctrine to apply, a plaintiff was required to demonstrate that the defendant(s) had "exclusive control" of the instrumentality causing the harm during the period of the injury and was "in a better position to explain the cause of the accident." See, e.g., *Landmark Hotel & Casino*, 104 Nev. 297, 230, 757 P.2d 361, 363 (1988), citing *Otis Elevator Co. v. Reid*, 101 Nev. 515, 518, 706 P.2d 1378, 1380 (1985). For the doctrine to apply fairly, whether at common law or under statute, that element must remain. If not, a defendant can be found responsible for another's injury simply for being in the vicinity of the injury. The requirement of "control" ensures that the defendant was an active participant who was at least a probable reason for the injury. *Id.*

In *Fierle v. Perez*, the Nevada Supreme Court confirmed that the concept of exclusive control remains embedded in the statutory version of *res ipsa loquitur*. 219 P.3d 906, 908 (Nev. 2009). In *Fierle*, the plaintiff underwent a mastectomy and follow-up chemotherapy treatments for breast cancer. *Id.* at 908. The chemotherapy administration was not performed properly, resulting in burns to the plaintiff's skin. *Id.* at 909. Plaintiff brought suit under both traditional negligence and *res ipsa loquitur* theories but failed to attach the affidavit required by statute to support the negligence claim. *Id.* at 903. The Nevada Supreme Court affirmed the trial court's dismissal of the negligence claim based on the absence of an affidavit. *Id.* at 912. The Court, however, allowed plaintiff to proceed with her *res ipsa loquitur* claim, finding that no affidavit was required under that theory. *Id.* at 913. Importantly, however, was the Court's exclusion from the *res ipsa loquitur* claim those medical personnel who did not administer (and therefore had no control over) the medication. As to those individuals, the Plaintiff plead negligent supervision and training. The Court held that such indirect negligence claims were not subsumed within the *res ipsa loquitur* doctrine. *Id.*

Here, Plaintiff has failed to allege what, if any involvement, Dr. Zipf had in the placement or removal of the alleged retained IV needle or catheter. Plaintiff does not allege that Dr. Zipf

1 had exclusive control over the IV needle or catheter. In fact, Plaintiff fails to allege how any
2 Defendant was negligent regarding the alleged retention of the IV catheter. Plaintiff only alleges:

3 . . . that the Defendants' (sic) committed (sic) medical malpractice
4 by deviating from the accepted standard of medical care or practice
5 by "leaving a foreign substance in Mr. Peck's Hand" NRS
6 41A.100(1)(a) (*res ipsa loquitur* doctrine) legally causing the
injury suffered by Plaintiff. Fernandez v. Admirand, 108 Nev.
963, 843 P 2d 354 (1992).

7 The above claim is specific in regard to all the Defendants' named
8 in this complaint as well as the discoverable names of additional
defendants' (sic)

9 Although Plaintiff alleges his claim is specific as to all Defendants, he fails to describe
10 how the claims are specific as to each Defendant. In fact, he fails to describe any role that Dr.
11 Zipf had in his care and treatment at Valley Hospital. As in *Fierle*, Plaintiff has not claimed that
12 Dr. Zipf improperly inserted or removed the IV needle or catheter, so he cannot claim that Dr.
13 Zipf had exclusive control over the instrumentality allegedly responsible for his injuries. *Fierle*
14 unequivocally demonstrates that this type of indirect negligence claim does not fall under the *res*
15 *ipsa loquitur* statute.

16 Not only do Plaintiff's allegations as to Dr. Zipf fail to meet the specificity requirements
17 needed for the *res ipsa loquitur* doctrine to apply, they fail to meet the basic pleading
18 requirements of NRCP 8. A properly pled complaint must provide "a short and plain statement
19 of the claim showing that the pleader is entitled to relief." NRCP 8(a); *see also Bell Atlantic*
20 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (addressing Rule 8 of the Federal Rules of Civil
21 Procedure). While Rule 8 does not require detailed factual allegations, it demands "more than
22 labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft*
23 *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (*citing Papasan v. Aliain*, 478 U.S. 265, 286 (1986)).
24 "Factual allegations must be enough to rise above the speculative level" *Twombly*, 550 U.S. at
25 555. Plaintiff has completely failed to allege how he is entitled to relief based upon any act, or
26 failure to act, of Dr. Zipf and his Complaint must be dismissed as a matter of law.

27 ///

28 ///

1 D. EVEN IF PLAINTIFF'S COMPLAINT IS FOUND TO STATE A VIABLE
2 CAUSE OF ACTION JUDGMENT AS A MATTER OF LAW IS
3 APPROPRIATE.

4 Even assuming *arguendo* that the *res ipsa loquitur* exception applied, Defendant is
5 entitled to judgment as a matter of law because x-rays taken on March 8, 2014 do not show a
6 foreign body was retained in Plaintiff's hand.

7 Generally, when ruling on a motion for judgment on the pleadings or a motion to dismiss,
8 matters outside the complaint will not be considered. However, "the court may take into account
9 matters of public record, orders, items present in the record of the case, and any exhibits attached
10 to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief
11 can be granted." *Breliaut v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261
(1993).

12 Here, Plaintiff references an x-ray taken on March 8, 2014, as confirming the presence of
13 a foreign object in his hand. However, the radiology report and images do not identify a foreign
14 object. Although Plaintiffs' allegations are generally accepted as true, that rule gives way when
15 the allegations are contradicted by the documents on which the Complaint is based, such as the
16 radiology records in this case. *Breliaut*, 109 Nev. at 847, 858 P.2d at 1261 (stating "the court
17 may take into account matters of public record, orders, items present in the record of the case, and
18 any exhibits attached to the Complaint when ruling on a motion to dismiss for failure to state a
19 claim").

20 The documents relied on in Plaintiff's Complaint clearly do not state what he purports
21 they do. The Court is not required to accept Plaintiff's allegations as true. Instead, the Court
22 must consider the record that the Complaint was based on, showing that there was no retained
23 foreign object in Plaintiff's hand. It is axiomatic that if there was no foreign object in Plaintiff's
24 hand, his claim fails as a matter of law because the only allegations that makes against
25 Defendants are that they were negligent because a foreign object was left in his hand. Thus,
26 judgment on the pleadings is appropriate.

27 V. CONCLUSION

28 Based upon the foregoing, Defendant, DAVID R. ZIPF, M.D. respectfully requests the

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Court grant his Motion for Judgment on the Pleadings in its entirety.

DATED: June 17, 2015

LAW OFFICES OF ARTHUR W. TUVERTSON

BY: 

ARTHUR W. TUVERTSON, ESQ.
Nevada State Bar No. 005156
DANIELLE WOODRUM, ESQ.
Nevada State Bar No. 012902
7201 West Lake Mead Boulevard, Suite 570
Las Vegas, Nevada 89128
(702) 631-7855
Attorneys for Defendant DAVID R. ZIPF, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF ARTHUR W. TUVERSON, and that on this 17th day of June, 2015, I served a copy of DEFENDANT DAVID R. ZIPF, M.D.'S MOTION FOR JUDGMENT ON THE PLEADINGS AND SUPPORTING AFFIDAVIT OF DANIELLE WOODRUM, ESQ. as follows:

☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada: and/or

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070
Plaintiff Pro Per

John F. Bemis, Esq.
Ian M. Houston, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144
(702) 889-6400
(702) 384-6025 fax
Attorneys for Defendant Valley Hospital Medical Center

☒ By Electronic Service through Eighth Judicial District Court to;

David J. Mortensen, Esq.
Chelsea R. Hueth, Esq.
ALVERSON TAYLOR MORTENSEN &
SANDERS
7401 W. Charleston Blvd.
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dmortensen@alversontaylor.com
dkurdziel@alversontaylor.com
smasia@alversontaylor.com
Attorneys for Defendant Michael D. Barnum, M.D.


An employee of the
LAW OFFICES OF ARTHUR W. TUVERSON

EXHIBIT “A”

EXHIBIT “A”

Dr. Jim Holmes

Meningitis patient
at Valley Hospital

TOP, UNSHADED PORTION TO BE FILLED OUT BY INMATE PATIENT

Signature

Frank M. Peck

(also print name and DOC # at the bottom of this form)

DOC # 57106

Institution

HDSR

Date Submitted

2-18-14

Unit/House

7-B-2-B

Reason for request:

I was discharged from Valley Hospital on 1-17-14. And something possibly, a needle is just under the skin on my left hand. It appears that I may have permanent nerve damage to both hands possibly from handcuffs.

Per AB 389, there may be a \$4.00 charge for any visit and a \$2.00 charge for any prescription issued.

DO NOT WRITE IN SHADED AREA BELOW

RESPONSE TO KITE:

- ☐ Appointment scheduled for _____ Rescheduled for _____
- ☐ No visit necessary. See type of service or service provided, below.
- ☐ Not entitled to requested care. Reason: _____
- ☐ No show for appointment.
- ☐ Refused to be seen. DOC 2523 Release of Liability... filed.

TYPE OF SERVICE:

- ☐ Medical ☐ Dental ☐ Mental Health ☐ Nursing ☐ Dietetic ☐ Other
- ☐ Inmate requested, charge ☐ Inmate requested, no charge
- ☐ Emergency, Charge ☐ Emergency, no charge
- ☐ Prison required, no charge

IF YOUR NAME COMES
ON THE LIST THE
DOCTOR WILL SEE YOU

Enter ICD-9 code(s) and/or diagnosis(es)

SERVICE(S) PROVIDED: Check all that apply

VISITS

- ☐ New, minimal
- ☐ New, moderate
- ☐ New, high
- ☐ Established, minimal
- ☐ Established, moderate
- ☐ Established, high
- ☐ Consultation visit
- ☐ Intake PE/classification
- ☐ Recurrent PE/classification
- ☐ Re-classification only
- ☐ Nursing assessment

PROCEDURES/
DIAGNOSTICS

- ☐ Biopsy
- ☐ BP
- ☐ Ear Lavage
- ☐ EKG
- ☐ Excision
- ☐ Eye Exam
- ☐ I & D
- ☐ Immunization
- ☐ Hepatitis B
- ☐ Influenza
- ☐ Tetanus
- ☐ Other _____
- ☐ Inhalation Treatment
- ☐ PPD
- ☐ Spirometry
- ☐ Suturing
- ☐ Suture removal
- ☐ Treadmill

PROCEDURES/
DIAGNOSTICS, cont'd

- ☐ Whirlpool
- ☐ X-ray
- ☐ Other _____

CHART REVIEW ONLY

- ☐ By medical personnel
- ☐ By inmate patient

LABORATORY

- ☐ Venipuncture
- ☐ Specimen collection

ITEMS ISSUED

- ☐ Prosthetic
- ☐ Eye glasses

☐ Rx REFILL ONLY

SPECIALTY CLINICS

- ☐ Cardiology
- ☐ Neurology
- ☐ Infectious disease
- ☐ Endocrine
- ☐ Internal Medicine
- ☐ Pulmonary
- ☐ Mental Health
- ☐ Other _____

EMERGENCY SERVICES

- ☐ Mandown
- ☐ Non-mandown
- ☐ Suicide attempt
- ☐ Self-mutilation
- ☐ Altercation
- ☐ Accident
- ☐ Recreational injury

CONTRACT PROVIDERS

- ☐ Physician, gen'l practice
- ☐ Neurology
- ☐ Ophthalmology
- ☐ Orthopedic
- ☐ Physical therapy
- ☐ Other _____

PRESCRIPTIONS:

KOP Medications:

Total # _____

to charge _____

started by nursing _____

Non-KOP Medications:

Total # _____

to charge _____

started by nursing _____

PLAN:

- ☐ Follow-up appointment ordered ☐ Return if needed ☐ Follow-up not required

FEB 18 2014

Name / Title OR Position #

Date

Time

Name / Title OR Position #

Date

Time

Distribution: ORIGINAL to medical record. COPY to date entry, then to inmate patient if necessary

NEVADA DEPARTMENT OF CORRECTIONS
MEDICAL KITE and / or
SERVICE REPORT

NAME

Frank M. Peck

DOC #

57106

DOC 2500 (REV. 7/01)

EXHIBIT “B”

EXHIBIT “B”

DATE ORDERED

ORDERS

Leave no blank lines. Carry over orders must be signed and dated on each page.

1/23/14
10007 fig with Provider after 2 weeks
Dante Fanny / NPC / Dilantin
noted Chas 1/23/141/23/2014
1020

Continued -

Dilantin 300 mg PO at 11:5 X 90 days

Di/hiazem^{ER} 120mg 1 tab PO daily X 90 days

Mevacor 20 mg P.O. daily X 90 days

ASA 81 mg P.O. daily X 90 days

~~Follow to ecc (cc) for error~~
~~error~~

noted Chas

1/23/14

5/6/14
7/5/14
AM

GA per

Claritin 10 mg 1 po QHS X 30 days

noted
2/10/142/26/14
(311)

X-ray (L) hand Re: R/o foreign body

noted
2/23/14

ALLERGIES:

NEVADA DEPARTMENT OF CORRECTIONS

PHYSICIAN'S ORDERS

(Signature of Physician shall follow each order)

NAME:

Zeck, Frank

Last

First

MI

ID#

57104

DOC 2518 (12/11)