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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**

8 TAWNI McCROSKY, individually and as the
9 natural parent of
LYAM McCROSKY, a minor child,

10 Plaintiffs,

11 vs.

12 CARSON TAHOE REGIONAL MEDICAL
13 CENTER, a Nevada business entity; AMY
14 SUE HAYES, M.D., an individual; and DOES
I-X, inclusive,

15 Defendants.

**PLAINTIFF'S OPPOSITION TO
DEFENDANT CARSON TAHOE
REGIONAL MEDICAL CENTER'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

16 Plaintiff Tawni McCrosky opposes Defendant Carson Tahoe Regional Medical Center's
17 ("CTRMC") *Motion for Partial Summary Judgment* ("Motion") and submits the following
18 Memorandum of Points and Authorities and attached exhibits in support of her opposition.
19

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 CTRMC moves for partial summary judgment on the grounds that it cannot be vicariously
23 liable for the care and treatment rendered by Dr. Amy Sue Hayes. Specifically, CTRMC contends
24 that the elements for apparent or ostensible agency are absent in this case. Questions of fact,
25 however, are present as to whether or not an apparent or ostensible agency relationship between
26 CTRMC and Dr. Hayes exists to preclude the entry of partial summary judgment in favor of CTRMC
27 on this issue.
28

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II. STATEMENT OF FACTS

A. Background Facts.

This case involves a traumatic injury suffered by Ms. McCrosky's son, Lyam, during his labor and delivery at CTRMC. Dr. Amy Sue Hayes was the obstetrician on call at CTRMC during the April 24-25, 2012 night shift - the relevant time period.

Ms. McCrosky filed this medical negligence action as a consequence of CTRMC's inadequate and substandard treatment of Ms. McCrosky and her baby. Ms. McCrosky alleges that Dr. Hayes fell below the standards of care in failing to deliver Lyam by a timely C-section. Ms. McCrosky further alleges that the hospital fell below standards of care by failing to monitor properly the patient, by failing to communicate properly the urgent needs of the patient to Dr. Hayes, by abandoning the patient, by making no attempts to initiate a chain of command intervention, by failing to obtain additional physician help and second opinions with regards to an acute emergency, by virtue of numerous charting errors and omissions (some of which were created by Nurse Parkhurst who was not even present when events occurred), and vicariously by virtue of the errors and omissions, if any, of its ostensible agent, Dr. Hayes.

B. Background Facts as to the Question of Apparent or Ostensible Agency.

Dr. Hayes is a physician with Carson Medical Group ("CMG"). Deposition of Dr. Amy Sue Hayes at 9:5-12, **Exhibit 1** hereto. The physicians of CMG donate their time at the MOM's Clinic. *Id.* at 15:5-7.

CTRMC operates the MOM's Clinic. *See Exhibit 4* at 10:7-10 to *Motion*. The MOM's Clinic provides prenatal care, education, planning, and pregnancy care to expecting mothers who would be eligible for Medicaid. *Id.* at 11:13-16, 20-25. Because Ms. McCrosky did not have insurance or financial resources, her primary physician recommended the MOM's Clinic to her. Deposition of Tawni McCrosky at 82:21-25; 83:1-4, **Exhibit 2** hereto. Her primary physician, however, did not recommend a particular physician to Ms. McCrosky. *Id.* at 83:8-11.

While she received prenatal care from the MOM's Clinic, she was not assigned to one specific physician. **Exhibit 2** at 18:2-6. In fact, Ms. McCrosky was seen only by nurses at the MOM's Clinic. *Id.* (patients are seen by nurses unless they have "issues"); *see also id.* at 18:10-13 (Ms. McCrosky's

1 pregnancy was "uneventful" in that she had no "issues"). Ms. McCrosky never received treatment
2 from a physician at the MOM's Clinic. Declaration of Tawni McCrosky, **Exhibit 3** hereto.

3 Specifically, while at the MOM's Clinic, Ms. McCrosky never received care from Dr. Hayes.
4 **Exhibit 2** at 19:5-8; *see also* **Exhibit 1** at 12:14-15. In fact, Ms. McCrosky never had any interactions
5 with Dr. Hayes until April 24-25, 2012. **Exhibit 1** at 12:14-15 and **Exhibit 2** at 18:2-6.

6 It appears that every time Ms. McCrosky presented to the MOM's Clinic or had any lab work
7 done, she was required to sign a document titled "Conditions of Admissions." *See generally* **Exhibits**
8 **7-11 to Motion**. The last "Conditions of Admissions" Ms. McCrosky signed was dated April 2, 2012.
9 **Exhibit 17 to Motion**.

10 While Ms. McCrosky did not present in labor to CTRMC until April 24, 2012, the MOM's
11 Clinic required her to pre-register with CTRMC as opposed to registering on the day she presented
12 in labor. *See* Deposition of Jenny Glover (CTRMC's Admitting Clerk) at 12:6-20 ("when the patients
13 go to the MOM's Clinic, . . . [t]hey are sent over to the main hospital to pre-register for their
14 delivery"), **Exhibit 4** hereto; *see also* **Exhibit 3** (Ms. McCrosky was told she had to register at
15 CTRMC). Expecting mothers from the MOM's Clinic also have no opportunity to choose a specific
16 physician who will delivery their babies. **Exhibit 4** at 17:19; 18:1.

17 III. STANDARDS FOR SUMMARY JUDGMENT

18 CTRMC bears the burden of proving the absence of a triable issue of fact. *See, e.g., Butler*
19 *v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662 (1985). The Nevada Supreme Court has stated that
20 district courts should exercise great caution in granting summary judgment where there is the slightest
21 doubt as to the operative facts. *See, e.g., Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438
22 (1993); *Montgomery v. Ponderosa Constr., Inc.*, 101 Nev. 416, 705 P.2d 652 (1985). Summary
23 judgment is therefore only proper when the moving party is entitled to judgment as a matter of law
24 and no genuine issues of fact remain for trial. *See, e.g., Pacific Pools Constr. Co. v. McClain's*
25 *Concrete, Inc.*, 101 Nev. 557, 706 P.2d 849 (1985).

26 When reviewing a motion for summary judgment, "the evidence, and any reasonable
27 inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood*

28

1 v. *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Under this standard, summary
2 judgment is not warranted in this case.

3 III. DISCUSSION

4 In the area of hospital liability, over the last several decades there has been a movement by
5 courts, including Nevada, to use apparent or ostensible agency as a means by which to hold hospitals
6 vicariously liable for the negligence of independent contractor physicians. This trend is predicated
7 upon "[t]he public's confidence in the modern hospital's portrayal of itself as a full service provider
8 of health care . . ." *Burless v. West Va. Univ. Hosp., Inc.*, 601 S.E.2d 85, 93 (Va. Ct. App. 2004).

9 The public's confidence in the modern hospital's increasing portrayal of itself in this regard
10 is aptly stated by a California court as follows:

11 In an often cited passage, a New York court explained: "*The conception that the*
12 *hospital does not undertake to treat the patient, does not undertake to act through its*
13 *doctors and nurses, but undertakes instead simply to procure them to act upon their*
14 *own responsibility, no longer reflects the fact. Present-day hospitals, as their manner*
15 *of operation plainly demonstrates, do far more than furnish facilities for treatment.*
16 *They regularly employ a large staff of physicians,¹ nurses and interns, as well as*
17 *administrative and manual workers, and they charge patients for medical care and*
treatment, collecting for such services, if necessary, by legal action. Certainly, the
person who avails himself of 'hospital facilities' expects that the hospital will attempt
to cure him, not that its nurses or other employees will act on their own
responsibility.' . . . In light of this modern reality, the overwhelming majority of
jurisdictions employed ostensible or apparent agency to impose liability on hospitals
for the negligence of independent contractor physicians.

18 *Mejia v. Community Hosp. of San Bernardino*, 99 Cal.App.4th 1448, 1453, 122 Cal. Rptr.2d 233, 236
19 (Cal. Ct. App. 2002) (quoting *Binb v. Thunig*, 143 N.E.2d 3, 8 (N.Y. 1957)) (emphasis added).

20 Consistent with this modern reality, the Nevada Supreme Court in *Schlotfeldt v. Charter*
21 *Hosp. of Las Vegas* concluded that the apparent or ostensible agency doctrine can apply to a situation
22 where a patient comes to a hospital and the hospital selects a doctor to serve the patient. 112 Nev.
23 42, 910 P.2d 271 (1996). In that case, the court concluded that the following "are typical questions
24 of fact for the jury" to consider regarding whether apparent or ostensible agency exists:

25 (1) whether a patient entrusted herself to the hospital, (2) whether the hospital
26 selected the doctor to serve the patient, (3) whether a patient reasonably believed the
27 doctor was an employee or agent of the hospital, and (4) whether the patient was put
on notice that a doctor was an independent contractor.

28 ¹ As discussed later, CTRMC paid a monthly salary to CMG to provide obstetrics on-
call coverage at the hospital.

1 *Schlotfeldt*, 112 Nev. at 48, 910 P.2d at 275.

2 These four inquiries can be summed up into two elements:

3 Although the cases discussing ostensible agency use various linguistic formulations
4 to describe the elements of the doctrine . . . [they] require the same two elements: (1)
5 conduct by the hospital that would cause a reasonable person to believe that the
6 physician was an agent of the hospital, and (2) reliance on that apparent agency
7 relationship by the plaintiff.

8 *Mejia*, 99 Cal.App.4th at 1453, 122 Cal. Rptr.2d at 236.

9 In the instant case, it is clear that “conflicting inferences can be drawn from the facts” for the
10 jury to consider whether an apparent or ostensible agency exists between Dr. Hayes and CTRMC.
11 *Schlotfeldt*, 112 Nev. at 48, 910 P.2d at 275 (holding “the jury should have considered the factual
12 determinations necessary in concluding whether Charter and Desmarais had an agency relationship”).
13 Partial summary judgment in favor of CTRMC on this issue is therefore improper.

14 **A. CTRMC, Through Carson Tahoe Health, Holds Itself Out to the Public as a Provider
15 of Healthcare.**

16 CTRMC engages in conduct that would cause a reasonable person to believe that the attending
17 physicians are agents of the hospital. With respect to this factor, “courts generally conclude that it
18 is satisfied when the hospital ‘holds itself out’ to the public as a provider of care.” *Mejia*, 99
19 Cal.App.4th at 1453, 122 Cal. Rptr.2d at 236 (citations omitted).

20 CTRMC holds itself out to the public as a provider of “trusted healthcare”:

21 With two hospitals, three urgent care facilities and several medical support facilities,
22 Carson Tahoe has proudly been committed to the health and well-being of the
23 communities we serve since 1949. Carson Tahoe Health is a comprehensive health
24 provider with 19 locations and 234 licensed beds . . . Our award winning services
25 provide a complete continuum of care from wellness, diagnostics, treatment, surgery,
26 long-term acute care, after-care and support. ***Our state-of-the-art technologies,
27 acclaimed experts and life-changing procedures continue to make us one of the
28 most trusted healthcare providers*** in Northern Nevada and Eastern California.

29 We treat our healthcare system in the same manner we treat our patients – with care,
30 respect and a commitment to do our very best. It’s what drives us every single day,
31 and it’s what separates us from other hospitals. We’ve made every effort to create a
32 safe, positive and convenient healing environment so you can get the care you need
33 and get back to the important things in life.

34 carsontahoe.com (emphasis added). To a reasonable person, the reference to “[o]ur acclaimed
35 experts” can only refer to both nurses and physicians who provide “the most trusted healthcare . . .”
36 at CTRMC. *Id.*

1 In the present case, CTRMC held itself out as being equipped with a state-of-the-art labor and
2 delivery department which could handle the emergency needs of mothers and their newborns:

3 At Carson Tahoe Regional Medical Center, our first priority is you. To us, *care*
4 *means more than just having state-of-the-art medical equipment and well-trained*
5 *professionals*. From an extensive offering of education classes to ongoing support,
our Women & Children Center is designed to meet your needs. Our comprehensive
areas of expertise include:

- 6 * Women's Health Education
- 7 * Obstetrics/Gynecology
- 8 * Pediatrics

carsontahoe.com/women-newborn-services (emphasis added).

9 Under these circumstances, a reasonable person could believe that the physicians at CTRMC
10 are agents of the hospital. It was therefore not unreasonable for Ms. McCrosky to believe that
11 CTRMC provided the "trusted" medical care she and her unborn child required as opposed to acting
12 merely as a situs for physicians to provide medical care as independent contractors.

13 **B. Ms. McCrosky Believed That CTRMC Provided the "Trusted" Medical Care She and**
14 **Her Unborn Child Required as Opposed to Simply Acting as a Situs for the Physician**
to Provide Healthcare as an Independent Contractor.

15 The second element focuses on the patient's reliance by considering the majority of the factors
16 articulated by the Nevada Supreme Court in *Schofeldt*. 112 Nev. at 48, 910 P.2d at 275. Reliance
17 "is established when the plaintiff 'looks to' the hospital for services, rather than to an individual
18 physician." *Mejia*, 99 Cal.App.4th at 1454, 122 Cal. Rptr.2d at 237 (citations omitted). Such was
19 unequivocally the case here.

20 **1. Ms. McCrosky Entrusted Herself to CTRMC.**

21 CTRMC operates the MOM's Clinic where Ms. McCrosky received her prenatal care. *See*
22 **Exhibit 4** at 10:7-10 to *Motion*; **Exhibit 2** at 18:2-6. Because she received her prenatal care from the
23 MOM's Clinic, she was told to pre-register with CTRMC to deliver her baby. **Exhibit 2** at 84-86;
24 **Exhibit 17** to *Motion*.

25 In fact, she entrusted herself to CTRMC because she "believed that [she] was going to be in
26 good hands" and that she "was in the best care there."² **Exhibit 2** at 19:11-12; 84:14-15. Ms.

27
28 ² CTRMC was also convenient because of its proximity since Ms. McCrosky resides
in Gardnerville. **Exhibit 2** at 19:11-12.

1 McCrosky's beliefs are consistent with the representations made by CTRMC as set forth above.
2 Under these circumstances, Ms. McCrosky looked to CTRMC for medical care rather than to a
3 specific physician.

4 **2. CTRMC Selected Dr. Hayes to Serve Ms. McCrosky.**

5 When Ms. McCrosky was admitted to CTRMC April 24, 2012, she did not choose a specific
6 physician to deliver her baby. *Id.* at 19:5-8. Rather, Ms. McCrosky was subject to the choice by
7 CTRMC. Ms. McCrosky had no choice but to accept CTRMC's selection of Dr. Hayes as the
8 obstetrician who delivered her baby.

9 In fact, she had no dealings with Dr. Hayes prior to the evening of April 24th. *Id.* Likewise,
10 Dr. Hayes had never seen Ms. McCrosky prior to April 24th. **Exhibit 1** at 12:14-15. Dr. Hayes saw
11 Ms. McCrosky for the very first time at approximately 6:00 a.m. April 25th. *Id.* at 16:10-13.

12 Faced with analogous facts, the court in *Loaiza v. Lam* held that questions of fact exist as to
13 the hospital's vicarious liability under a theory of apparent or ostensible agency for the conduct of its
14 attending physicians to preclude the entry of summary judgment in favor of the hospital:

15 Here, the record shows that Loaiza did not have a private obstetrician. She came to
16 [the hospital] for her prenatal treatment, and was seen by a different doctor on each
17 visit. When she arrived at [the hospital] on December 11, 2007, in labor, she was
18 seeking care from the hospital rather than from any particular physician. She did not
19 even know who [the obstetrician who delivered her baby] was. She was not referred
20 to [the hospital] or advised or directed to go there by [the obstetrician who delivered
21 her baby], and did not request to be treated by him.

22 107 A.D.3d 951 (N.Y. 2013).

23 The record before this Court shows that Ms. McCrosky did not have a private obstetrician.
24 She came to the MOM's Clinic, operated by CTRMC, for her prenatal treatment and was seen by
25 different nurses for each visit. When Ms. McCrosky arrived at CTRMC April 24, 2012 in labor, she
26 sought care from CTRMC rather than from any particular physician. Ms. McCrosky did not even
27 know who Dr. Hayes was. She was not referred to CTRMC or advised or directed to go there by Dr.
28 Hayes, and did not request to be treated by Dr. Hayes. In fact, she was instructed to pre-register at
CTRMC so that she could deliver her baby there. For these reasons alone, triable issues of fact exist
to preclude the entry of partial summary judgment in this case.

1 CTRMC nevertheless contends that CMG controlled the scheduling of physicians at CTRMC
2 and therefore it cannot be said that the hospital selected Dr. Hayes to serve Ms. McCrosky. This
3 contention is grossly misplaced.

4 Dr. Hayes was the only obstetrician at CTRMC providing on-call coverage April 24-25, 2012,
5 and therefore Dr. Hayes was the only obstetrician who could serve Ms. McCrosky. **Exhibit 1** at 13:6-
6 8. For CTRMC to state that it cannot be said that the hospital selected Dr. Hayes to serve Ms.
7 McCrosky is absurd. Significantly, CTRMC does not state who else could have served Ms.
8 McCrosky April 24-25, 2012. For all intent and purposes, CTRMC selected Dr. Hayes to serve Ms.
9 McCrosky.

10 In any event, whether CTRMC "selected" Dr. Hayes and whether CMG "scheduled" Dr.
11 Hayes are both irrelevant. That is because in analyzing the factors adopted by the court in *Schofeldt*,
12 the focus is on Ms. McCrosky's beliefs and what a patient in similar circumstances would reasonably
13 have believed. 112 Nev. at 48, 910 P.2d at 275; see also *Jennison v. Providence St. Vincent Med.*
14 *Ctr.*, 25 P.3d 358, 364 (Or. Ct. App. 2001) (focus is "on the 'patient's belief that the hospital or its
15 employees were rendering health care'" (quoting *Sword v. NKC Hosp., Inc.*, 714 N.E.2d 142, 152
16 (Ind. 1999)).

17 The fact that CTRMC contracts with an intermediary to hire and schedule physicians is only
18 relevant if Ms. McCrosky had some reason to know about the specific arrangements between
19 CTRMC and CMG. Ms. McCrosky had absolutely no idea that Dr. Hayes was actually employed and
20 scheduled by CMG. **Exhibit 3.**

21 CTRMC's reliance on the "Letter of Agreement to Provide OB/GYN On-Call Coverage"
22 (hereinafter "Letter of Agreement") between CTRMC and CMG, **Exhibit 12** to *Motion*, is therefore
23 misplaced where Ms. McCrosky had absolutely no knowledge of the arrangements between CTRMC
24 and CMG. **Exhibit 3.** In any event, that letter lends CTRMC no support.

25 First, CMG contracted with CTRMC to provide OB/GYN on-call coverage and the schedule
26 for those services is to be determined by CTRMC. **Exhibit 12** ¶ 1 to *Motion*. Second, CMG is
27 required to comply with "CTRMC's Medical Staff Bylaws, Rules, and Regulations, and all other
28 CTRMC's rules, policies and procedures" and has the right to control the conduct of those physicians

1 providing "OB/GYN on-call coverage." *Id.* Third, pursuant to this same agreement, while CMG can
2 bill and collect payments from patients and/or third-party payors directly, CTRMC agreed to pay
3 CMG for its services on the "15th calendar day of the month following CTRMC's receipt of time
4 records and such other information as reasonably requested by CTRMC to document your time spent
5 providing on-call services during the prior month." *Id.* ¶ 2. In other words, CMG receives a salary
6 for the on-call services it provides to CTRMC. Conflicting inferences can be drawn from these facts
7 as to whether Dr. Hayes was truly an independent contractor when providing obstetrics on-call
8 services at CTRMC to Ms. McCrosky.

9 Ms. McCrosky presented in labor to CTRMC and relied on the hospital to provide her with
10 an obstetrician. The obstetrician on-call during the relevant time period was Dr. Hayes. It was
11 CTRMC and not Ms. McCrosky who paid CMG to provide on-call services. It would appear from
12 the Letter of Agreement that CMG is the exclusive provider of obstetrics on-call coverage for
13 CTRMC. Simply put, Ms. McCrosky had no choice but to accept the obstetrician selected by
14 CTRMC when she presented in labor April 24th.

15 CTRMC's expert agrees that under such circumstances, the physician is an "employee" of the
16 hospital. Deposition of Lennard Kessler, M.D. at 60:20-25 and 61:1-5, **Exhibit 5** (Dr. Kessler
17 essentially opined that a physician "who has a contract with the hospital . . . [is] employed by the
18 hospital" and that a physician at a hospital that functions only as a situs for the physician to provide
19 medical care is an independent contractor).³ CTRMC was not a situs for Dr. Hayes to provide
20 medical care to a particular patient of hers when she delivered Ms. McCrosky's baby. When Dr.

21
22 ³ Dr. Kessler, however, was under the mistaken impression that Dr. Hayes had no
23 contract with CTRMC and so therefore was an independent contractor. **Exhibit 5** at 60:20-24. It
24 is undisputed that Dr. Hayes' group has a contract with CTRMC to provide on-call services at the
25 hospital. Dr. Kessler was also under the mistaken impression that Dr. Hayes, in the specific
26 circumstance as it pertained to Ms. McCrosky, was similar to him and therefore an independent
27 contractor because he and Dr. Hayes "have [their] own patients, and [they] just use that facility to
28 deliver my babies." *Id.* at 61:10-21. The record does not support this. It is undisputed that Ms.
McCrosky was not a patient of Dr. Hayes and that she was not using CTRMC as a facility to deliver
Ms. McCrosky's baby. It is further undisputed that on April 24-25, 2012, Dr. Hayes was required
to be there by CTRMC pursuant to the Letter of Agreement and to provide on-call services in the
hospital's labor and delivery department.

1 Hayes delivered Ms. McCrosky's baby, Dr. Hayes acted as an on-call staff obstetrician paid by
2 CTRMC to be on-call.

3 The court in *Cuker v. Hillsborough County Hosp. Auth.* held that similar evidence raised a fact
4 issue for the jury to determine whether physicians who delivered a premature infant were apparent
5 or ostensible agents of the hospital:

6 In the instant case, the hospital contracted with a group of physicians to staff one of
7 its departments full time. When Mrs. Cuker admitted for her Level III hospital needs,
8 a staff physician was provided to her upon her arrival at the hospital. [The hospital]
9 certainly held itself out as being equipped with a labor and delivery department which
10 could handle the emergency needs of her infant. All appearances suggested that the
11 labor and delivery department was an integral part of the institution, and there was
12 nothing which put Mrs. Cuker on notice that various departments of the hospital had
been franchised out to independent contractors. [citation omitted] Furthermore, Mrs.
Cuker came to [the hospital] on the advice of her personal physician because it was
a Level III hospital, capable of treating her baby should it be born prematurely. She
did not attempt to secure physicians on her own, but accepted the physicians that were
provided to her by the hospital. There were no representations made to Mrs. Cuker
concerning the physicians' employment status.⁴

13 605 S.E.2d 998, 1000 (Fla. Ct. App. 1992).

14 In the present case, CTRMC contracted with a group of physicians to provide "OB/GYN on-
15 call services" at CTRMC. When Ms. McCrosky presented in labor to CTRMC, a staff obstetrician,
16 Dr. Hayes, was assigned to her. Ms. McCrosky did not attempt to secure an obstetrician on her own
17 but accepted the one that was provided to her by CTRMC. CTRMC holds itself out as being
18 equipped with a labor and delivery department which could handle the emergency needs that may
19 arise during labor and delivery. The facts as known to Ms. McCrosky suggested that the labor and
20 delivery department was an integral part of CTRMC.

21 Lastly, contrary to CTRMC's contention that it has no control over the physicians, the Medical
22 Staff Bylaws state otherwise. See generally Carson Tahoe Health Medical Staff Bylaws (hereinafter
23 "Bylaws"), the relevant pages of which are Exhibit 6 hereto. By way of example, the Bylaws
24 encourage attendance at meetings of the Medical Staff departments, sections and committees to which
25 the physicians are appointed, as well requiring attendance at staff or departmental educational

26 ⁴ CTRMC contends that representations were made to Ms. McCrosky concerning the
27 status of the physicians at the hospital through the "Conditions of Admissions" she executed. As
28 discussed in more depth later, these representations were vague and ambiguous and inadequate by
themselves as grounds for partial summary judgment on the issue of vicariously liability.

1 programs under certain circumstances. *Id.* §§ 4.15 and 4.16 at 31. CTRMC has the right to take
2 corrective action against physicians. *Id.* §§ 5.2 and 5.3 at 34-35. To a certain extent, CTRMC
3 exercises control over the conduct of physicians at its hospital.

4 **3. Ms. McCrosky Reasonably Believed that Dr. Hayes Was an Employee or Agent**
5 **of CTRMC.**

6 As far Ms. McCrosky understood, Dr. Hayes was assigned to her by CTRMC and employed
7 by CTRMC. **Exhibit 3**; *see also Lam*, 107 A.D.3d at 953 (triable issues of fact exist as to whether
8 hospital can be held vicariously liable under theory of apparent or ostensible agency for malpractice
9 committed by physicians where plaintiff understood that doctors who examined her and delivered
10 baby assigned to her and employed by hospital). This is consistent with Ms. McCrosky's deposition
11 testimony where she stated that it was her understanding that Dr. Hayes was an employee of the
12 hospital, although she did not know for certain one way or the other. **Exhibit 2** at 83:19-21.

13 CTRMC contends that Ms. McCrosky "could not have reasonably believed that Dr. Hayes
14 was an agent of CTRMC because the 'practice of medicine by a general corporation organized under
15 Chapter 78 of the Nevada Revised Statutes is illegal.'" *Motion* at 12. In other words, CTRMC
16 contends that Ms. McCrosky had constructive knowledge of this law and relies upon two Nevada
17 cases. This contention is incorrect and the cases relied upon by CTRMC are inapposite.

18 A reading of the Attorney General Opinion upon which CTRMC relies reveals that the
19 opinion refers to general for profit corporations (NRS 78.030), and not to a non-profit hospital such
20 as CTRMC. 1977 Nev. Op. Atty. Gen. 40, 1977 WL 29108 * 1 ("In Nevada, our general, for profit,
21 corporation statute, NRS 78.030, empowers any number of persons, not less than three, to establish
22 a corporation for the transaction of any lawful business."). As acknowledged by CTRMC, it "was/is
23 a domestic *non-profit corporation*." *Motion* at 3 ¶ 2 (emphasis added). As a matter of law, the
24 Attorney General Opinion has no applicability to CTRMC. Even if it did, the cases relied upon by
25 CTRMC lend it no support.

26 *Smith v. State* is a 1915 Nevada case involving a statute authorizing monetary rewards for the
27 arrest and conviction of murderers. 38 Nev. 477, 151 P. 512 (1915). The issue in that case was
28 whether a citizen who had apprehended murderers, without knowledge of the governor's rewards,

1 were still entitled to receive the rewards. *Id.*, 151 P. at 512. The court held that they were because
2 they are presumed to know the law. *Id.*, 151 P. at 512. Not only is the case significantly outdated,
3 it involved an entirely different fact pattern than those presented to this Court. CTRMC's reliance
4 upon *Smith* is grossly misplaced.

5 *Sengel v. IGT* involved a gambler's petition for judicial review of the Gaming Control Board's
6 decision that he did not have a valid win resulting from the internal malfunction of the machine when
7 playing a progressive slot machine game. 116 Nev. 565, 2 P.3d 258 (2000). The court in *Sengel* held
8 that the gambler was charged with constructive knowledge of state gaming regulation requiring that
9 game result be determined by a random selection process and that any result or apparent result caused
10 by other means, such as a machine malfunction, would be invalid. *Id.*, 2 P.3d at 258. These facts
11 bear no similarities whatsoever to the present case.

12 In any event, even if this Court were to hold that Ms. McCrosky was charged with
13 constructive knowledge that it was illegal for CTRMC, a non-profit, to practice medicine and
14 therefore Ms. McCrosky could not have reasonably believed that Dr. Hayes was an agent or employee
15 of CTRMC, then such a holding would be contrary to the Nevada Supreme Court's decision in
16 *Schofeldt* (a case upon which CTRMC also relies) concluding that the apparent or ostensible agency
17 doctrine can apply to a situation where a patient comes to a hospital and the hospital selects a doctor
18 to serve the patient. 112 Nev. at 42, 910 P.2d at 271. According to CTRMC's contention, no patient
19 could ever recover upon an apparent or ostensible agency doctrine because they are presumed to know
20 the purported "law" that it is illegal for non-profit hospitals to practice medicine. *Schofeldt* simply
21 does not support such a contention by CTRMC.

22 **4. Questions of Fact Exist as to Whether Ms. McCrosky Was Put on Notice That**
23 **Dr. Hayes Was an Independent Contractor.**

24 CTRMC erroneously contends that because Ms. McCrosky signed a number of "Conditions
25 of Admissions," that fact alone entitles CTRMC to partial summary judgment because Ms. McCrosky
26 must have known that Dr. Hayes was an independent contractor and that a reasonable person would
27 have known as such. Questions of fact, however, exist as to whether Ms. McCrosky was properly and
28 adequately notified as to the employment status of Dr. Hayes.

1 While Ms. McCrosky acknowledges that she signed and initialed the "Conditions of
2 Admissions," she has no independent recollection of signing any of them. **Exhibit 3.** What Ms.
3 McCrosky recalls is that on a number of different occasions, she was handed paperwork and
4 instructed to sign them without any explanation. *Id.* Ms. McCrosky does not recall reading the
5 paperwork she signed. *Id.*

6 CTRMC will most likely contend that the "Conditions of Admissions" were explained to Ms.
7 McCrosky. The nurse who had Ms. McCrosky execute the "Conditions of Admissions" April 2, 2012
8 was Jenny Glover. **Exhibit 4** at 13:18-20 and 15:13-16. While Ms. Glover does not have an
9 independent recollection of Ms. McCrosky, she testified that it was her custom and practice in 2012
10 to explain the terms of the "Conditions of Admissions." *Id.* at 16:15-23. If someone had a question
11 regarding what is an "independent contractor," Ms. Glover would provide an explanation. *Id.* at 18:9-
12 14. It, however, appears that Ms. Glover is not entirely clear as to the differences between an "agent"
13 and an "independent contractor." *Id.* at 22:6-7 ("the agent is not part of the hospital, that they were
14 coming in do the job that they were hired for . . .").

15 Questions of fact exist as to whether Ms. McCrosky was properly and adequately notified of
16 the status of the obstetrician who delivered her baby. Even assuming for argument sake that Ms.
17 McCrosky recalls reading the "Conditions to Admissions," the operative paragraph in that document
18 is vague and ambiguous. Paragraph 6 of the "Conditions to Admission" reads as follows:

19 All physicians and surgeons furnishing healthcare services to me/the patient, including
20 the radiologist, pathologist, anesthesiologist, emergency room physicians, hospitalists,
21 etc., are independent contractors and are NOT employees or agents of the hospital.
I am advised that I will receive separate bills for these services.

22 **Exhibit 17 ¶ 6 to Motion.**

23 While the radiologist, pathologist, anesthesiologist, emergency room physicians, and
24 hospitalists are specifically enumerated, "obstetrician" is not. *Id.* This is peculiar considering the fact
25 that CTRMC operates the MOM's Clinic and expecting mothers who receive treatment at the MOM's
26 Clinic are required to pre-register at CTRMC. It is particularly odd that a "hospitalist" is specifically
27 referenced but not an "obstetrician." Paragraph 6 of the "Conditions of Admissions" is therefore
28 vague and ambiguous.

1 In any event, even assuming for argument sake that paragraph 6 of the "Conditions of
2 Admissions" is not vague and ambiguous, the document is nothing more than a contract of adhesion
3 under the specific facts of this case. The Nevada Supreme Court defines a contract of adhesion "as
4 a standardized contract form offered to consumers of goods and services essentially on a take it or
5 leave it basis, without affording the consumer a realistic opportunity to bargain, and under such
6 conditions that the consumer cannot obtain the desired product or service except by acquiescing to
7 the form of the contract." *Obstetrics and Gynecologists v. Pepper*, 101 Nev. 105, 107, 693 P.2d
8 1259, 1260 (1985) (citation omitted). The "Conditions of Admissions" falls within this definition.

9 "The distinctive feature of an adhesion contract is that the weaker party has no choice as to
10 its terms." *Id.*, 693 P.2d at 1260. The "Conditions of Admissions" was prepared by CTRMC "and
11 presented to [Ms. McCrosky] as a condition of treatment." *Id.*, 693 P.2d at 1260. Ms. McCrosky
12 "had no opportunity to modify any of its terms; her choices were to sign the agreement as it stood or
13 to forego [delivering her baby at CTRMC]." *Id.*, 693 P.2d at 1261. Hospital admissions forms,
14 therefore, generally constitute an adhesion contract because a patient being admitted to a hospital is
15 in no position to debate his or her terms of admission. *See, e.g., Wheeler v. St. Joseph Hosp.*, 63
16 Cal.App.3d 345, 357, 133 Cal. Rptr. 775 (Cal. Ct. App. 1976).

17 It is further questionable whether a lay person, such as Ms. McCrosky, can be expected to
18 understand and appreciate the legal significance between an employee and an independent contractor
19 (even CTRMC's own employee expressed confusion over this). Under these circumstances, this
20 Court should be loathe to enforce "a provision limiting the duties and liabilities of the stronger party
21 absent plain and clear notification of the terms and an understanding of the consent" against Ms.
22 McCrosky. *Id.* at 108, 693 P.2d at 1261 (citation omitted). Questions of fact clearly abound as to
23 whether CTRMC provided plain and clear notification of paragraph 6.

24 The cases relied upon by CTRMC urging this Court to conclude that paragraph 6 of the
25 "Conditions of Admissions" entitles it to partial summary judgment on the issue of apparent or
26 ostensible agency is misplaced. Those cases are significantly distinguishable from the facts of the
27 present case and are therefore inapplicable.

28

1 In *Baptist Mem. Hosp. Sys. v. Sampson*, there were multiple signs posted in the emergency
2 room notifying patients that the emergency room physicians were independent contractors. 969
3 S.W.2d 945, 950 (Tex. 1998). There is no evidence of any similar signs posted in the labor and
4 delivery department of CTRMC. Additionally, the form in *Sampson* is markedly different from the
5 “Conditions of Admissions” where it specifically explained in the document itself that the hospital
6 “is not responsible for the judgment or conduct of any physicians who treats or provides a
7 professional service to [the patient], but rather each physician is an independent contractor who is
8 self-employed and is not the agent, servant, or employee of the hospital.” *Id.* In stark comparison,
9 paragraph 6 of the “Conditions of Admissions” fails to inform Ms. McCrosky that CTRMC is not
10 responsible for the judgment or conduct of Dr. Hayes and further fails to explain to her that an
11 independent contractor is not an employee or agent of the hospital. *Sampson*, therefore, is inapposite.

12 *Fletcher v. So. Peninsula Hosp.* is also distinguishable. 71 P.3d 833 (Ala. 2003). The
13 plaintiff in that case saw her personal physician for the procedures. *Id.* For all of the procedures that
14 were performed at the hospital, they were performed by the plaintiff’s chosen and personal physician.
15 *Id.* In other words, the hospital in *Fletcher* did not select the physician. *Id.* The hospital was merely
16 a situs where the plaintiff’s chosen physician performed the four procedures. *Id.* *Fletcher*, therefore,
17 lends CTRMC no support.

18 The form at issue in *James v. Ingalls Mem. Hosp.* contained a statement providing that the
19 signatory party had the opportunity to discuss the contents of the form and understood it. 701 N.E.2d
20 207 (Ill. Ct. App. 1999). In comparison, the “Conditions of Admissions” contain no such statements.
21 See generally **Exhibit 17** to *Motion*. *James*, therefore, is inapplicable.

22 In *Churkey v. Sherman Hosp.*, the consent form at issue specified the physician’s practice
23 group by name. 768 N.E.2d 842 (Ill. Ct. App. 2002). In contrast, the “Conditions of Admissions”
24 did not even specify “obstetrician,” let alone Dr. Hayes’ practice group by name.

25 The court in *Churkey* further noted that the court in *James* did not hold that the independent
26 contractor disclaimer in the consent form is always dispositive on the issue of notice. *Id.* The
27 “Conditions of Admissions” constitutes only one of many factors for the jury to consider in
28

1 determining whether Dr. Hayes is an apparent or ostensible agent of CTRMC. Questions of fact
2 clearly exist as to whether Ms. McCrosky was put on notice that Dr. Hayes was an independent
3 contractor.

4 IV. CONCLUSION

5 There are too many questions of fact regarding whether an apparent or ostensible agency exists
6 between Dr. Hayes and CTRMC for this Court to grant partial summary judgment in favor of
7 CTRMC on this issue.

8 Effectively, all a patient needs to show is that he or she sought treatment at the
9 hospital, which is precisely what plaintiff alleged in this case. *Unless the evidence*
10 *conclusively indicates that the patient should have known that the treating*
11 *physician was not the hospital's agent, such as when the patient is treated by his or*
12 *her personal physician, the issue of ostensible agency must be left to the trier of*
13 *fact.*

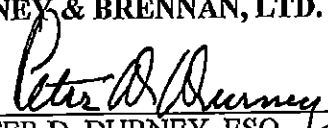
14 *Mejia*, 99 Cal. App.4th at 1458, 122 Cal.Rptr.2d at 240 (emphasis added). The evidence in this case
15 does not conclusively indicate that Ms. McCrosky should have known that Dr. Hayes was not
16 CTRMC's agent. Dr. Hayes was not Ms. McCrosky's personal physician.

17 In drawing all reasonable inferences from the evidence presented to this Court and viewing
18 the evidence in the light most favorable to Ms. McCrosky, this Court must leave the issue of
19 ostensible agency to the jury. *See Renown Health v. Vanderford*, __ Nev. __, 235 P.3d 614 (2010)
20 (reversing district court's grant of partial summary judgment in favor of hospital holding that issue
21 of ostensible agency presented factual questions for the jury where patient did not choose physician
22 but was subject to hospital's choice of physician and questions as to patient's reasonable beliefs and
23 notice also subject to jury's fact finding).

24 The undersigned affirms that the preceding document does not contain the social security
25 number of any person.

26 DATED this 25th day of August, 2015.

27 DURNEY & BRENNAN, LTD.

28 By: 
PETER D. DURNEY, ESQ.
6900 S. McCarran Blvd., Ste. 2060
Reno, Nevada 89509

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CERTIFICATE OF SERVICE

I certify that I am an employee of Durney & Brennan, Ltd., and that on the date shown below, pursuant to NRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the foregoing document, addressed to:

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DATED this 25th day of August, 2015.


ANDREA UMANA

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EXHIBIT "1"

	1	City?
	2	A Once my youngest child was six weeks old, I had
	3	it down to the day, I started my practice here.
	4	Q Did you join a group?
03:29:34	5	A Yes.
	6	Q What was the name of the group that you joined?
	7	A Carson Medical Group.
	8	Q Is that the group that you're with now?
	9	A Yes, it is.
03:29:34	10	Q Have you been with Carson Medical continuously
	11	since --
	12	A Yes, I have been.
	13	Q You'll have to forgive me, sometimes I slow
	14	down in the middle and speed up at the end.
03:29:34	15	How many members do you currently have in the
	16	group?
	17	A We are -- right now, I believe we're at 26.
	18	I'd have to count on my fingers because we just had a
	19	partner retire and another one is leaving tomorrow, so
03:29:35	20	if you'll give me a minute.
	21	There's nine, five, and five is 19, plus pain,
	22	plus ENT, so 21. Plus, we have five nurse
	23	practitioners, so currently 21 docs and five nurse
	24	practitioners.
03:29:35	25	Q And do you offer services in fields other than

1 I have on my computer.

2 Q And you'll have to forgive me, but I don't know
3 what Up-to-Date is. Can you tell me?

4 A It's a medical education site, so it's a
03:29:36 5 reference site.

6 Q Very well. How did Tawni McCrosky become a
7 patient of yours?

8 A I was on call the night she came in.

9 Q She came in on the 24th of April?

03:29:43 10 A Correct.

11 Q She was delivered by C-section on the 25th of
12 April, and we're talking about 2012?

13 A Correct.

14 Q Had you ever seen her before the 24th of April?

03:29:57 15 A No.

16 Q When you say you were on call, what type of
17 call list were you on?

18 A Our group rotates call in 24-hour increments,
19 so my call was from the 24th to the 25th.

03:30:14 20 Q What do you mean when you say your group
21 rotates call?

22 A The OB-GYN's in Carson Medical Group share
23 call, so we have a rotating call schedule.

24 Q How many OB-GYN's were in the group back in
03:30:30 25 April of 2012?

1 A There were six of us taking call.

2 Q And do you remember their names?

3 A Yes. Do you want me to -- Ruth Tomita, Sandra

4 Koch, Tim McFarren, Steve Arcangeli, myself, and Shannon

03:30:56 5 Hess.

6 Q And were you the only one on call from the

7 group on the night of April 24th, April 25th, 2012?

8 A Yes.

9 Q Was there any other type of call list that you

03:31:14 10 understood the hospital to have at that time?

11 A No.

12 Q For example, an emergency call list?

13 A We are the emergency call list.

14 Q And so when did you first become aware of Tawni

03:31:37 15 McCrosky and her presence at the hospital?

16 A The nurses called me when she was admitted. I

17 believe that was 11:30, I think.

18 Q And what did they tell you?

19 A That it was her first pregnancy, she was full

03:31:58 20 term, she was in active labor.

21 Q Did they tell you anything else that you can

22 remember?

23 A The strip looked fine and she -- I don't

24 remember exactly when she was going to get an epidural,

03:32:15 25 but that she wanted an epidural.

1 Q When you say all the time, do you mean at the
2 Mom's clinic, or once they arrive at the hospital in
3 labor?

4 A In both settings.

03:33:48 5 Q And when you give your time to the clinic, is
6 that donated time, or are you compensated?

7 A It's donated.

8 Q And how frequently and over what period of time
9 have you done that?

03:33:59 10 A Every time I'm on call for the weekend, I will
11 do the Monday clinic, so it averages out about five to
12 six times a year.

13 Q Does the Mom's program have clinic on any day
14 other than Monday?

03:34:16 15 A They did not then.

16 Q Do they now?

17 A They now -- the nurses have clinic on Tuesday.

18 Q And when you say then and now, what's the
19 cut-off date, approximately?

03:34:27 20 A About a year ago, maybe a year-and-a-half ago
21 they started adding a second day.

22 Q So in Tawni's case, it would have been a Monday
23 clinic only?

24 A Correct.

03:34:36 25 Q Based upon your review of those Mom's clinic

1 records and, of course, the care that you provided to
2 this lady while she was in the hospital, was there
3 anything unusual or abnormal about her pregnancy?

4 A Not that I noticed.

03:35:04 5 Q I'm sure you've had an opportunity now to
6 review more records. Have you seen anything, up to and
7 including today, that would suggest to you that there
8 was anything abnormal about her pregnancy?

9 A No.

03:35:19 10 Q When did you first see Tawni?

11 MR. LEMONS: You can refer to the records.

12 THE WITNESS: The records said it was 6:00.

13 BY MR. DURNEY:

14 Q Let's go ahead and look at the records, and I
03:36:01 15 think that if you look at Page 94 of our Exhibit 2, and
16 I may not be correct in that assessment, but you'll see
17 that our Exhibit 2 is paginated in the lower right-hand
18 corner and if you turn to Page 94, and I'll help you out
19 a little bit. I'm not saying it is at 94, but at some
03:36:31 20 point close to Page 94, there's a reference to you
21 actually seeing the patient.

22 A It's on 93 and it's at 6:02.

23 Q On Page Mom 93, we see at 6:02 a note that
24 reads, "Physician at bedside." Tell us what you can
03:37:16 25 recall about the patient when you visited at that time.

EXHIBIT "2"

1 A Yes, through Carson Tahoe.

2 Q Tell me about that clinic. Are you assigned to
3 a specific doctor or an APN or how does that work?

4 A They have a group of doctors that rotate
5 through. You're seen by a nurse unless you have issues
6 and then you can see a doctor.

7 Q During the term of your pregnancy, were you
8 aware of any complications?

9 A No, I was not.

10 Q So it sounds like, from what you're telling me,
11 it sounds like it was a pretty uneventful pregnancy up
12 until the date of the birth.

13 A Very uneventful.

14 Q Okay. Just to make sure, so the pregnancy was
15 uneventful, but were there any red flags raised about
16 Lyam's health condition or developmental abilities during
17 the pregnancy?

18 A No, there were not.

19 Q Were there any tests that you're aware of that
20 were taken to see if he's going to be --

21 A The standard blood tests, that's all I remember
22 that they did. Obviously, they did their wellness checks
23 every month.

24 Q And again, no red flags?

25 A Nothing.

1 Q Okay. Tell me how it is you came to see
2 Dr. Hayes. How did you fall under her care?

3 A She was just the doctor that was on shift that
4 evening.

5 Q Okay. So you had never had any dealings with
6 Dr. Hayes prior to the evening that you checked into the
7 emergency room?

8 A No, I had not.

9 Q What was it that caused you to check into the
10 Carson Tahoe emergency room on, I believe, April 24th?

11 A Carson Tahoe is the closest hospital. I also --
12 you know, I assumed I was in the best care there. I had
13 been in labor all day, so I was just to the point where
14 they told me I could come in.

15 Q Okay. And how did you get to the hospital?

16 A My sister drove me.

17 Q That's Casey?

18 A Yes, Casey.

19 Q When did your parents come to the hospital?

20 A They followed us.

21 Q Okay. So --

22 A All at the same time.

23 Q The same time. Do you remember approximately
24 what time you got to the hospital on I believe it was the
25 24th of April? Let me double-check.

1 (Recess.)

2 EXAMINATION

3 BY MR. McBRIDE:

4 Q All right. Good morning, Ms. McCrosky. My name
5 is Robert McBride. I introduced myself before the
6 deposition. I represent Carson Tahoe in this case. I
7 just have a few questions to ask you. Mr. Brown did a
8 great job of asking most of the questions, however, I
9 have just a few follow-up questions.

10 A Okay.

11 Q Prior to today, do you recall if you reviewed
12 any documents in preparation for your deposition?

13 A No, I did not.

14 Q At any time, have you kept a diary of any of the
15 events that occurred with regard to Lyam's birth or any
16 aspects of his daily care since up until today?

17 A No, I haven't.

18 Q Okay. Do you know if your parents might've kept
19 a diary of any sort?

20 A No, they haven't.

21 Q Okay. Now, I think earlier you testified that
22 you began seeing a physician, an OB, after you found out
23 you were pregnant through the MOM's Clinic at Carson
24 Tahoe, is that correct?

25 A It's group of them, yes.

1 Q Okay. How did you hear about that group?

2 A The doctor who told me that I was pregnant, she
3 recommended that I go there. I didn't have insurance or
4 anything at the time.

5 Q And did she give you any sort of pamphlets or
6 materials to read before going to that group?

7 A I think she just gave me the name of it.

8 Q And did she tell you any one physician that she
9 wanted you to see or be seen by?

10 A No, because they rotated out. It wasn't just
11 one specific doctor there.

12 Q Okay. Do you have any understanding as to
13 whether or not that clinic or those physicians, if
14 they're affiliated with Carson Tahoe in some way?

15 A Yes, they are.

16 Q Okay. Do you know, did anyone ever tell you
17 they were employees of the hospital?

18 A No. I don't believe so.

19 Q Was it your understanding they were not
20 employees of the hospital?

21 A No.

22 Q You just don't know one way or another?

23 A Yeah.

24 Q Okay. What was the reason why you made the
25 decision to have Lyam at Carson Tahoe as opposed to any

1 other hospital?

2 A Well, one, it was the closest hospital from
3 where I live. I mean, it's 45 to 50 minutes away from
4 where I live, and I just felt that I was probably in good
5 hands there.

6 Q Did you investigate any other hospitals to
7 possibly deliver Lyam at?

8 A No. I mean Carson Tahoe was the closest, so
9 that was just -- I mean when I knew it was time, that
10 was -- you know, that would be where I would be going.

11 Q Okay. So is it safe to say the location was the
12 primary reason you chose to deliver it at Carson Tahoe?

13 MR. DURNEY: Object to the form of the question.

14 THE WITNESS: Yes. And, you know, I believed
15 that I was going to be in good hands.

16 BY MR. McBRIDE:

17 Q What made you think you were going to be in good
18 hands?

19 A I had never heard anything bad about them.

20 Q That's always good.

21 A Yeah.

22 Q Have you seen any sort of advertisements or any
23 publications about Carson Tahoe prior to going to deliver
24 Lyam?

25 A The MOM's program had given me information

1 basically on Carson Tahoe and kind of how like their
2 whole Labor and Delivery, you know, upstairs works and
3 everything. And then I had done -- you know, I had made
4 my birth plan and everything, 'cause they tell you, okay,
5 you can go there, get a tour, do your birth plan, to
6 basically just get everything set up there.

7 Q Did you go on a tour?

8 A I don't remember if I ever got around to the
9 tour, actually.

10 Q Okay. You said you were given some materials by
11 the MOM's Clinic. Do you still have those materials?

12 A I don't know.

13 Q If I were to ask if you could research your
14 house where those might be, if you could possibly provide
15 any materials that you might have to your attorney, and
16 then, in turn, he can produce those to us, would that be
17 all right?

18 A Yeah.

19 Q Okay. Do you remember specifically reading
20 materials, though, that were provided to you?

21 A I don't remember any specifics.

22 Q Okay. You don't remember anything that was
23 mentioned or discussed in those materials then as you sit
24 here?

25 A No.

1 Q Did anyone at the MOM's Clinic tell you anything
2 specifically about the nursing care or any about the
3 Labor and Delivery Department, what to expect?

4 A I'm sure that they did, but I don't really
5 recall.

6 Q As you sit here, you don't remember anything
7 that was said in that respect?

8 A No. It's been a while.

9 Q Again, I think you testified you didn't review
10 or investigate any other facilities to deliver Lyam at,
11 correct?

12 A Correct.

13 Q Did you ever go online to look at anything
14 online about the hospital or do any research like that?

15 A No. When I went to go do my birth plan, they
16 gave me a packet with information, but I don't remember
17 what it consisted of.

18 Q When you said you went to do your birth plan,
19 tell me what you mean by that.

20 A I went downstairs, there's like -- I don't know,
21 there's an area that provided you -- you know, you have
22 to sit and talk to somebody for a second. They give you
23 information basically so that you can make out your birth
24 plan as to, you know, what you want for yourself and your
25 child.

EXHIBIT "3"

DECLARATION OF TAWNI McCROSKY

I, Tawni McCrosky, declare under the penalty of perjury that the assertions of this declaration are true, that I have personal knowledge of the matters stated in this declaration, except as to those matters stated on information and belief, and as to those matters I believe them to be true, and that if called as a witness, I could competently testify to the matters contained herein.

1. I am the mother of Lyam McCrosky.
2. During my pregnancy, I received my prenatal care from the MOM's Clinic in Carson City, Nevada. I never received any treatment or care from a physician at the MOM's Clinic. I was only seen by nurses there.
3. In or about April of 2012, a representative from the MOM's Clinic told me that I had to pre-register at Carson Tahoe Regional Medical Center ("CTRMC") to deliver my baby.
4. When I delivered Lyam, I did not know that Dr. Amy Sue Hayes was employed by Carson Medical Group. I also did not know of any arrangements Carson Medical Group had with CTRMC. Nor did I know that Carson Medical Group scheduled Dr. Hayes for on-call service for April 24-25, 2012 at CTRMC.
5. When I delivered Lyam, it was my understanding that Dr. Hayes was assigned to me by CTRMC and employed by CTRMC.
6. I have no independent recollection of signing any of the "Conditions of Admissions." What I do recall is that on a number of different occasions, I was handed paperwork and instructed to sign them without any explanation. I have no independent recollection of reading the paperwork I signed.

DATED this 25th day of August, 2015.

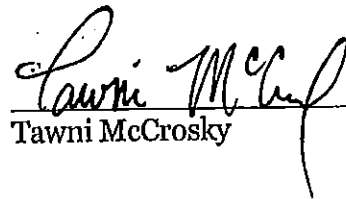

Tawni McCrosky

EXHIBIT "4"

Tawni McCrosky v. Carson Tahoe Regional Medical Center
Jenny Glover, on 4/6/2015

12

1 McCrosky to Carson Tahoe Regional Medical Center?

2 A: I do not.

3 Q: So, would it be fair for me to say that you have
4 no specific recollection of going through any documents with Ms.
5 McCrosky prior to her admission?

6 A: I do not, her, specifically, because we - when the
7 patients go to the MOM's Clinic, then they are sent over and
8 that's at the old hospital over on Fleischmann. They are sent
9 over to the main hospital to pre-register for their delivery.
10 And at that point, we give them a paper that asks them all their
11 questions that I just described, the name, address, phone, and
12 when they are finished with that paper, then we have them sign
13 the papers.

14 Q: So, let me see if I understand you. If it's a
15 patient who is being cared for through the MOM's Clinic--

16 A: Hmm-hmm.

17 Q: --then in that event, you would have that patient
18 pre-register as opposed to registering on the date that she
19 presents to the hospital in labor?

20 A: That's correct.

21 Q: All right. And typically, when do you ask these
22 prospective moms to pre-register?

23 A: Within three months of their delivery and that
24 also includes like the doctors' offices. Any of the physicians'
25 offices will also send their patients within three months of

Tawni McCrosky v. Carson Tahoe Regional Medical Center
Jenny Glover, on 4/6/2015

13

1 delivery, to pre-register. Because that way, when OB calls and
2 they say, you know, "We have whoever here," we already have them
3 in the computer, name, birthday. If it's through the MOM's
4 Clinic, we ask for the doctor who's going to be admitting them,
5 whoever is on-call that day for MOM's Clinic, work with them and
6 then, we put them in their room in the computer.

7 Q: Did you ever work at the MOM's Clinic?

8 A: I did not.

9 Q: Okay. So, all the pre-registration work that you
10 did, say, in the year 2012, would have been at the hospital
11 itself, the main hospital?

12 A: Yes.

13 Q: All right. I'd like to show you a document that
14 we're going to mark as Exhibit 1 to your deposition.

15 A: Okay. Thank you.

16 Q: And if you'd look at page two.

17 A: Okay.

18 Q: In the lower left-hand corner, there appears to be
19 your signature. Is it in fact your signature?

20 A: Yes, it is.

21 Q: And looking at this document, does it refresh your
22 recollection at all about obtaining Ms. McCrosky's signature on
23 the document? In other words, does it enable you to remember
24 this lady?

25 A: The only thing, when I was called and told I was

Tawni McCrosky v. Carson Tahoe Regional Medical Center
Jenny Glover, on 4/6/2015

15

1 so, they sign, you know, we do the Conditions and then, we have
2 one for baby. They'll put on the top line, the second line, and
3 they sign their name and then, we sign in ours.

4 Q: Okay.

5 A: And that's all individual. We don't ever do it in
6 a group because of the HIPAA.

7 Q: You indicated a moment ago in response to a
8 question, something to the effect, "When I was asked to do
9 this." Did I hear you correctly?

10 A: When I was told that I was going to be called for
11 a deposition, I was asked if I could have, you know, if this
12 date worked for me and I said, "Yes."

13 Q: I see. What I'm talking about is, this document
14 that we marked as Exhibit A, appears to be dated April 2nd,
15 2012, agree?

16 A: Hmm-hmm, yes.

17 Q: I'm just wondering if, now, having had an
18 opportunity to look at this document, this refreshes your
19 recollection all about this specific lady?

20 A: It does not.

21 Q: How many prospective moms would you pre-register
22 back in 2012 in, say, a typical week?

23 A: I don't even have a good answer for that. I don't
24 know. Probably, 10 to 15. We have a, you know, a drawer that
25 we keep everybody's file in after we've completed their

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16

1 registration. I would say, probably, at least, 10 to 15 a week.
2 That might be a -

3 MR. KELLY: That's your best estimate?

4 A: That's my best estimate.

5 Q: Sure. That's all I'm asking for is your best
6 estimate. Roughly, 15 a week? "Yes"?

7 A: Yes.

8 Q: All right. And then, since you don't have a
9 specific recollection of securing Ms. McCrosky's signature to
10 our Exhibit 1, can you tell us what your custom and practice was
11 back in April of 2012 when you presented a document like this
12 one called, "The Conditions of Admission" to a prospective
13 patient for signature? Would you, for example, go through it
14 paragraph by paragraph, beginning with the first paragraph?

15 A: How we describe this is, we ask them if they'd
16 like to read what they're signing and if they say, "No," then we
17 tell them, "This is permission to treat you and to bill your
18 insurance company. We ask you to sign or to initial this side
19 saying that the doctor sends a separate statement, everyone that
20 sees you, other than the hospital, that they are private
21 contractors, they are not employed by the hospital. And so,
22 this says that they each send a separate statement," and we turn
23 it over and we have them sign this top line.

24 Q: Sign on the second page?

25 A: Yes.

Tawni McCrosky v. Carson Tahoe Regional Medical Center
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17

1 Q: Let's assume, somebody says, "I do want to read
2 it." How much time do you give them to read it?

3 A: They somehow have sat down and actually sat on a
4 chair and read the entire thing. So, we let them take their
5 time. We have some who will go through and, you know, cross out
6 a line that they don't agree with.

7 Q: Okay.

8 A: So--

9 Q: And do you answer questions if they have questions
10 about a particular paragraph?

11 A: We do.

12 Q: Are you trained to answer questions concerning
13 each of the paragraphs in the Conditions of Admission?

14 A: I would not say that we're trained. I would say
15 that we, you know, if we have questions, they have, they have a
16 specific question about a paragraph, we tell them, if we don't
17 know the answer, we can find that out for them, and we find
18 someone who can answer that question.

19 Q: When you pre-register someone who comes out of the
20 MOM's program--

21 A: Hmm-hmm.

22 Q: --or through the MOM's program for her prenatal
23 care, do those patients, based upon your understanding, have an
24 opportunity to choose the physician who will deliver their baby?

25 A: As far as I know, no. They have whoever is on-

Tawni McCrosky v. Carson Tahoe Regional Medical Center
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18

1 call that day for the MOM's Clinic.

2 Q: Do you explain that to them at any time during the
3 process of securing the paperwork?

4 A: We do not at our Admitting Desk.

5 Q: All right. And do you understand what an
6 independent contractor is?

7 A: It's somebody that is not employed by the
8 hospital.

9 Q: And if somebody asked you that question, "What is
10 an independent contractor," would that be your definition?

11 A: I would say, "Somebody that is not employed by the
12 hospital. They are through their own, you know, they have their
13 own group. They're contracted by the hospital to provide
14 services at the hospital."

15 Q: Now, paragraph six on this document requires the
16 signature of the prospective patient; correct?

17 A: Hmm-hmm.

18 Q: "Yes"?

19 A: Yes.

20 Q: And do you know how long the hospital has been
21 requiring that?

22 A: I know it was after I came, in 2009. Sorry.
23 Originally, when I first started in 2009, that was not - we
24 didn't have to get that initial, when I first started. I don't
25 remember if that started in 2010. I would have to go back and

Tawni McCrosky v. Carson Tahoe Regional Medical Center
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22

1 A: I would just say that they are not employees of
2 the hospital. They are contracted by an outside group.

3 Q: But my question was, if a patient asked you about
4 the difference, if any, between an employee or an agent, what
5 would you tell them?

6 A: That the agent is not part of the hospital, that
7 they are coming in to do the job that they were hired for. And
8 this form is signed over at the MOM's Clinic every time they go
9 in also. It's not just at our hospital. When they go in to the
10 MOM's Clinic to be seen, they are also asked to sign this.
11 Every time they have lab work, they're asked to sign this paper.
12 So, this was probably explained more than just by me, but
13 explained whenever--

14 Q: Very well.

15 A: --she went to the MOM's or her lab.

16 Q: So, based upon your understanding of standard
17 practice and procedure, you would have expected a form identical
18 to this Conditions of Admission, marked as Exhibit 1, to have
19 been presented to Ms. McCrosky at each prenatal visit?

20 A: They should have been presented at each visit,
21 yes.

22 Q: And each of those documents would be identical in
23 wording to the one that we've marked as Exhibit 1 to your
24 deposition?

25 A: Yes.

EXHIBIT "5"

	1	she was an independent contractor or an agent of the
	2	hospital?
	3	MR. MC BRIDE: Objection. Calls for a legal
	4	conclusion.
03:14	5	BY MR. DURNEY:
	6	Q. My question was: Has anybody asked to you do
	7	that?
	8	A. No one asked me to do it. They told me that there
	9	was -- there was a question about that, and I looked at the
03:14	10	consent that the patient signed, and in my opinion, she's no
	11	different than I am working at my hospital. She's different
	12	than a radiologist or an in-house anesthesiologist, than an
	13	independent obstetrician providing a service at the
	14	hospital.
03:15	15	Q. I didn't understand your answer. I'm sorry, Doctor.
	16	We can have it read back, unless you want to tell me again.
	17	A. No. No. She asked me my -- the status, and I said
	18	that her status based on my training, experience, and --
	19	and -- and -- and practice is that she's no different than I
03:15	20	am at our hospital where I'm an independent contractor. And
	21	I'm different than, say, a radiologist or an anesthesiologist
	22	who has a contract with the hospital. So she's actually an
	23	independent contractor. Not really employed by the
	24	hospital.
03:15	25	Q. And in your setting the radiologist would -- would

	1	be a hospital employee?
	2	A. Yes.
	3	Q. And in your setting, the anesthesiologist would be
	4	an employee?
03:15	5	A. Yes.
	6	MR. MC BRIDE: Object to form. Calls for
	7	speculation. Lacks foundation.
	8	Go ahead.
	9	BY MR. DURNEY:
03:16	10	Q. And -- and in your setting, you describe yourself as
	11	an independent contractor. How do you define that term?
	12	A. I have my own patients, and I just happen to use
	13	that facility to deliver my babies.
	14	Q. In other words, when you see a patient in your
03:16	15	clinical practice, you tell them to go to the hospital and
	16	you meet them there, and --
	17	A. I tell them that's the hospital that I work at. I
	18	only work at Saint John's Hospital.
	19	Q. And you tell your patients to go to that hospital
03:16	20	because of that fact?
	21	A. Correct.
	22	Q. Is it your understanding that -- strike that.
	23	Who do you believe inserted the fetal scalp
	24	electrode?
03:17	25	A. Dr. Hayes.

EXHIBIT "6"

Carson Tahoe Health
Medical Staff Bylaws

DEFINITIONS

The following definitions apply to the provisions of these Medical Staff Bylaws and its Related Manuals.

1. **ADVERSE RECOMMENDATION OR ADVERSE ACTION** - means a recommendation of the Medical Executive Committee or action of the Board of Trustees which denies, limits, or otherwise restricts a Medical Staff appointment or requested or existing Clinical Privileges.
2. **ALLIED HEALTH PRACTITIONER, ALLIED HEALTH PROFESSIONAL or AHP** - An individual other than a licensed Physician, Podiatrist or Dentist who is qualified by training, experience, and current competence in a discipline which the Board has determined by policy to allow to practice in the Hospital and either (a) is licensed by the State of Nevada and permitted by the Hospital to provide services in the Hospital without the direction or immediate supervision of a Practitioner; or (b) functions in a medical support role to and under the direction and supervision of a Practitioner.
3. **APPLICANT** -- means any practitioner who seeks either appointment to the Medical Staff or Clinical Privileges in the Hospital or an increase in the category of appointment or an increase in clinical privileges.
4. **APPOINTMENT** -- means approval for membership granted by the Board of Trustees.
5. **BOARD or BOARD OF HOSPITAL TRUSTEES** - means the Governing Body of the Hospital, or, as appropriate to the context, any committee or individual authorized by the Board to act on its behalf on certain matters..
6. **BOARD CERTIFIED** - means the designation conferred by one of the affiliated specialties of the American Board of Medical Specialties ("ABMS"), the American Osteopathic Association ("AOA"), the American Board of Oral and Maxillofacial Surgery, or the American Board of Podiatric Surgery, upon an individual, as applicable, who has successfully completed an approved educational training program and an evaluation process, including passing an examination, in the individual's area of clinical practice.
7. **BOARD ADMISSIBLE** - means that a Practitioner has completed a training program required by an organization formed for the purpose of specialty certification recognized for such purpose which utilized standards and criteria or training, experience, and professional proficiency that is commensurate and comparable with delineation of training as set forth by the American Board of Medical Specialties.
8. **CLINICAL PRIVILEGES OR PRIVILEGES** - means the permission granted by the Board to a Practitioner to render specific diagnostic, therapeutic, medical, dental, surgical or psychological services in the Hospital-based upon the individual's professional license and the individual's experience, competence, ability and judgment. This includes access to hospital resources (equipment, facilities, personnel) which are necessary to effectively exercise those privileges.
9. **CONSTRUCTION, TERMS and HEADINGS** - words used in these Bylaws and related manuals will be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these Bylaws and related manuals are for convenience only and are not intended to limit or define the scope or effect or any provision of these Bylaws and related manuals.
10. **DENTIST** - means an individual with a doctor of dental surgery degree or its equivalent who is fully licensed to practice dentistry.

3. Vacancies - Unless otherwise specifically provided, vacancies on any committee shall be filled in the same manner in which an original appointment to such committee is made.
4. Executive Session - The chairperson of any standing, special or ad hoc committee of the Medical Staff, including departments and sections, may call an executive session meeting. The chairperson, at his or her discretion, may request other individuals to attend the meeting in an informational capacity.
5. Addition, Deletion or Modifications of Standing Committee(s) - The Medical Executive Committee may recommend to the Board the addition, deletion or modification of any standing committee of the Medical Staff as described in these Bylaws with the exception of the Medical Executive Committee. Modification of the Medical Executive Committee requires a vote of the General Medical Staff pursuant to the Bylaws modification requirement.
6. Representation on Hospital Committees: Active members of the Medical Staff shall be appointed by the Chief of Staff to serve on Hospital committees as necessary and/or required by state, federal and/or the Accrediting Organization regulations, including but not limited to the Safety Committee, the Radiation Safety Committee, and/or the Institutional Review Board.

4.14 Reporting

Reports shall be submitted as defined in the description and/or to the Department(s) and committees to which the members report.

4.15 Attendance

All members of the Medical Staff, as well as specifically appointed ex officio members are encouraged to attend all meetings of the Medical Staff departments, sections and committees to which they are appointed. Meeting attendance will not, however, be used as a criteria for reappointment evaluation.

Any Medical Staff member may attend meetings of other departments, sections or committee of which they are not assigned members by giving prior notice to and receiving approval from, the respective Chair of that department, section or committee.

Whenever special or ad hoc committees are appointed, only those physicians and other individuals appointed to serve are permitted to attend. However, if a request is made for a physician to attend for the purpose of addressing a specific issue(s), that physician is expected to attend.

At no time, unless a request is made and approved by the respective chairperson prior to the meeting date, will non members be permitted to attend Medical Staff meetings.

4.16 Special Attendance Requirements

Whenever a staff or departmental educational program is prompted by the findings of quality assessment / improvement activities, the practitioner whose performance prompted the program will be notified by Special Notice of the time, date and place of the program, the subject matter to be covered, and its special applicability to the practitioner's practice. Except in unusual circumstances, the practitioner shall be required to be present. Failing to appear without good cause may result in corrective action.

If the Practitioner fails to attend and has not requested an extension based upon justifiable cause, the Practitioner's clinical performance will be presented, discussed and acted upon as scheduled. In no case shall postponement be granted beyond the next regular meeting.

4.17 Minutes

SECTION FIVE: MEMBER RIGHTS, CORRECTIVE ACTION AND FAIR HEARINGS

8.1 Practitioner Rights

- a. Each practitioner on the Medical Staff has the right to an audience with the MEC. In the event a practitioner is unable to resolve a difficulty in working with his/her respective department chair, that practitioner may, upon presentation of a written notice, meet with the MEC to discuss the issue.
- b. Any practitioner has the right to initiate a recall election of a Medical Staff Officer and/or department chair. A petition for such recall must be presented, signed by at least 25% of the members of the Active Staff. Upon presentation of such valid petition, the MEC will schedule a special general staff meeting for the purposes of discussing the issue and (if appropriate) entertain a no-confidence vote.
- c. Any practitioner may initiate the scheduling of a general staff meeting. Upon presentation of a petition signed by 25% of the members of the Active Staff, the MEC will schedule a general staff meeting for the specific purpose addressed by the petitioners. No business other than that in the petition may be transacted.
- d. Any practitioner may raise a challenge to any rule or policy established by the MEC. In the event that a rule, regulation or policy is felt to be inappropriate, any practitioner may submit a petition signed by 25% of the members of the Active Staff. When such petition has been received by the MEC, it will either: (1) provide the petitioners with information clarifying the intent of such rule, regulation or policy and/or (2) schedule a meeting with the petitioners to discuss the issue.
- e. Any section/sub-specialty group may request a department meeting when a majority of the members/sub-specialists believe that the department has not acted appropriately.
- f. This section is common to Sections 8.1 through 8.6 above. These sections do not pertain to issues involving disciplinary action, denial of request for appointment or clinical privileges, or any other matter relating to individual "credentialing" actions. The Medical Staff Fair Hearing Plan provide recourse in these matters.
- g. Any practitioner has a right to a hearing/appeal pursuant to the Institution's Medical Staff Fair Hearing Plan.

8.2 Corrective Action

Informal corrective action should be used when appropriate in accordance with CTRMC Policy #MS0035. Proper documentation is necessary in the provider's credentials folder to facilitate identification of behavior or activity trends.

8.3 Criteria for Initiating a Formal Investigation for Possible Corrective Action Other than Summary or Automatic Relinquishment

Basis for Correction Action

- A. Whenever the activities or professional conduct of any practitioner with clinical privileges are considered to be lower than the standards of the Medical Staff or are considered to be disruptive to the operations of the Hospital, to the extent that formal corrective action against such practitioner may be warranted. Such corrective action may be requested by any officer of the Medical Staff, by the Chair of any Department, by the Chair of any standing Committee of the Medical Staff, by the CEO or his/her designee or by the Board of Trustees.

All requests for corrective action shall be in writing, shall be forwarded to the MEC, and shall be supported by reference to the specific activities or conduct which constitutes the

COPY

1 CASE NO. 13TRT000281B

2 DEPT. NO. I

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6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY
8

9 TAWNI McCROSKY, individually and as the
10 natural parent of
11 LYAM McCROSKY, a minor child,

12 Plaintiffs,

13 vs.

14 CARSON TAHOE REGIONAL MEDICAL
15 CENTER, a Nevada business entity; AMY
16 SUE HAYES, M.D., an individual; and DOES
I-X, inclusive,

17 Defendants.

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PLAINTIFF'S OPPOSITION TO
DEFENDANT CARSON TAHOE
REGIONAL MEDICAL CENTER'S
MOTION TO INCLUDE CO-
DEFENDANT, AMY HAYES, M.D., ON
THE VERDICT FORM

19 Plaintiff Tawni McCrosky opposes Defendant Carson Tahoe Regional Medical Center's
20 ("CTRMC") *Motion to Include Co-defendant, Amy Hayes, M.D., on the Verdict Form* ("*Motion*
21 *to Include Co-defendant*") and submits the following Memorandum of Points and Authorities
22 and attached exhibits in support of her opposition.¹

23 //

24 //

25 //

26
27
28 ¹ CTRMC's *Motion to Include Co-defendant* is terse. In the event CTRMC raises new arguments not set forth in its
initial motion, Ms. McCrosky reserves the right to supplement the instant opposition to address any such new
arguments.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In its motion, CRTMC relies solely upon NRS 41A.045 as grounds for its request to include Dr. Hayes on the verdict form. This reliance is grossly misplaced.

In addressing the narrow issue of whether Dr. Hayes can properly be included on the verdict form after she has entered into a good faith settlement with Ms. McCrosky and has been dismissed from this action, this Court cannot consider NRS 41A.045 in isolation. This Court must also consider NRS 17.245, NRS 41.141, and case law interpreting these two statutes. In considering all the applicable statutes and case law, the only conclusion this Court can arrive at is that the inclusion of Dr. Hayes on the verdict form is improper and would amount to reversible error.

II. STATEMENT OF FACTS

This case involves a traumatic injury suffered by Ms. McCrosky's son, Lyam, during his labor and delivery at CTRMC. Dr. Amy Sue Hayes was the obstetrician on call at CTRMC during the April 24-25, 2012 night shift - the relevant time period.

Ms. McCrosky filed this medical negligence action as a consequence of CTRMC's inadequate and substandard treatment of Ms. McCrosky and her baby. Ms. McCrosky alleges that Dr. Hayes fell below the standards of care in failing to deliver Lyam by a timely C-section. Ms. McCrosky further alleges that the hospital fell below standards of care by failing to monitor properly the patient, by failing to communicate properly the urgent needs of the patient to Dr. Hayes, by abandoning the patient, by making no attempts to initiate a chain of command intervention, by failing to obtain additional physician help and second opinions with regards to an acute emergency, by virtue of numerous charting errors and omissions (some of which were created by Nurse Parkhurst who was not even present when events occurred), and vicariously by virtue of the errors and omissions, if any, of its ostensible agent, Dr. Hayes.

Ms. McCrosky settled with Dr. Hayes. On June 18, 2015, Dr. Hayes filed a *Motion for Determination of Good Faith Settlement* ("*Motion for Good Faith Settlement*") under seal. CTRMC did not oppose Dr. Hayes' *Motion for Good Faith Settlement*. This Court subsequently

1 granted Dr. Hayes *Motion for Good Faith Settlement*. Consistent with the good faith settlement,
2 the parties dismissed Dr. Hayes. Dr. Hayes is no longer a named defendant in this action.

3 II. DISCUSSION

4 A. NRS 41A.045.

5 In 2004 by initiative petition, Nevada voters passed NRS 41A.045 titled "Several
6 Liability of Defendants for Damages; Abrogation of Joint and Several Liability."² NRS 41A.045
7 provides as follows:

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

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

13 NRS 41A.045 (emphasis added).³

14 When "the language of a statute is plain and unambiguous, and its meaning clear and
15 unmistakable, there is no room for construction, and the courts are not permitted to search for its
16 meaning beyond the statute itself." *Attorney General v. Nevada Tax Comm'n*, 124, 232, 240,
17 181 P.3d 675, 680 (2008) (quotations omitted). The plain language of NRS 41A.045 applies to
18 only "defendants".

19 In the present case, Dr. Hayes is no longer a "defendant" in this case where she has been
20 dismissed as a party. Pursuant to the plain and unambiguous language of NRS 41A.045, it
21

22
23
24 ² During the 18th Special Legislative Session in 2002, the Legislature enacted the following measure: "In an action for damages
25 for medical malpractice, each defendant is liable for noneconomic damages severally only, and not jointly, to the plaintiff only
26 for that portion of the judgment which represents the percentage of negligence attributable to the defendant." Assembly Bill No.
27 1 Sec. 6 July 30, 2002 ("A.B. 1"), Exhibit 1; see also *State of Nevada Statewide Ballot Questions 2004* at 15 ("Current law
provides that each one of multiple defendants in medical malpractice actions is severally, but not jointly liable for noneconomic
damages. . . However, the current law treats economic damages differently, and provides that each defendant is not only severally
liable but jointly liable for payment of economic damages . . ."), Exhibit 2. The legislative history from A.B. 1, therefore, will
provide insight in regards to the current version of NRS 41A.045.

28 ³ Under this statute, if Ms. McCrosky proceeded to trial with both Dr. Hayes and CTRMC, they would only be severally liable.

1 cannot have any applicability as a matter of law. For this reason alone, CRTMC's reliance upon
2 NRS 41A.045 is misplaced.

3 NRS 41A.045 is silent as to non-parties, such as Dr. Hayes. What CTRMC failed to note
4 is that NRS 41.141(2) and (3) address the issue of the comparative fault of non-parties who have
5 settled and no longer remain in the action. In fact, NRS 41.141 is the only statute that speaks to
6 the issue of whether this Court can properly include Dr. Hayes on the verdict form after she has
7 entered into a good faith settlement with Ms. McCrosky and has been dismissed from the case.

8 **B. NRS 41.141 Precludes the Inclusion of Dr. Hayes on the Verdict Form.**

9 Even if this Court concludes that NRS 41A.045 is ambiguous, NRS 41.141 and Nevada
10 case law interpreting that statute provides that a settling defendant cannot be included on the
11 verdict form. It is the only statute that speaks to the very issue posed to this Court.

12 NRS 41.141 provides in pertinent part:

13 1. In any action to recover damages for death or injury to persons or for injury to
14 property in which comparative negligence is asserted as a defense, the comparative
15 negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that
16 negligence was not greater than the negligence or gross negligence of the parties to
the action against whom recovery is sought.

17 2. In those cases, the judge shall instruct the jury that:

18 (a) The plaintiff may not recover if the plaintiff's comparative negligence or that of
the plaintiff's decedent is greater than the negligence of the defendant or the
combined negligence of multiple defendants.

19 (b) *If the jury determines the plaintiff is entitled to recover, it shall return:*

20 (1) By general verdict the total amount of damages the plaintiff would be entitled to
recover without regard to the plaintiff's comparative negligence; and

21 (2) *A special verdict indicating the percentage of negligence attributable to each
party remaining in the action.*

22
23 *3. If a defendant in such an action settles with the plaintiff before the entry of
judgment, the comparative negligence of that defendant and the amount of the
24 settlement must not thereafter be admitted into evidence nor considered by the
jury.* The judge shall deduct the amount of the settlement from the net sum
25 otherwise recoverable by the plaintiff pursuant to the general and special verdicts.

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

1 5. This section does not affect the joint and several liability, if any, of the
2 defendants in an action based upon:

- 3 (a) Strict liability;
4 (b) An intentional tort;
5 (c) The emission, disposal or spillage of a toxic or hazardous substance;
6 (d) The concerted acts of the defendants; or
7 (e) An injury to any person or property resulting from a product which is
8 manufactured, distributed, sold or used in this State.

9 6. As used in this section:

- 10 (a) "Concerted acts of the defendants" does not include negligent acts committed by
11 providers of health care while working together to provide treatment to a patient.
12 (b) "Provider of health care" has the meaning ascribed to it in NRS 629.031.

13 NRS 41.141(1) - (4) (emphasis added). This statute must be read in its entirety.

14 Pursuant to subsections 1 and 4, defendants are jointly and severally liable in a multi-
15 defendant tort action where the comparative negligence of the plaintiff may not be asserted as a
16 defense. NRS 41.141(1) and (4). Where, however, the comparative negligence of a plaintiff
17 may be asserted as a defense, the defendants are only severally liable unless the exceptions of
18 subsection 5 apply. *Id.* In essence, NRS 41.141 abrogated joint and several liability in situations
19 where the plaintiff's comparative negligence may be asserted as a defense. *Id.* With NRS
20 41A.045, even if a plaintiff's comparative negligence may not be asserted as a defense in a
21 medical malpractice action, defendants are still only severally liable. NRS 41A.045. This
22 constitutes the only change to NRS 41.141 effected by NRS 41A.045.⁴

23 NRS 41.141(2) clearly states that in an action for personal injury and the jury determines
24 that the plaintiff is entitled to damages, the jury "shall return . . . [a] *special verdict indicating*
25 *the percentage of the negligence attributable to each party remaining in the action.*" NRS
26 41.141(2) (emphasis added). The plain meaning of subsection 2 is clear on its face. The jury is

27 ⁴ The legislative history to NRS 41A.045's predecessor supports this conclusion. In response to a question as to how
28 A.B. 1 section 6 would change comparative negligence, the Principal Deputy Legislative Counsel stated that this
 was the only change effected by the proposed measure, and other than this change, "[i]t will not have any impact on
 comparative negligence." See *Excerpts from the Senate Journal Remarks and Testimony the Second Day at 57-58,*
 Exhibit 3. The legislative history of A.B. 1 is devoid of any evidence that NRS 41A.045's predecessor was intended
 to abrogate the provisions of NRS 41.141(2) and (3). *Estate of Smith v. Mahoney's Silver Nugget*, __ Nev. __, 265
 P.3d 688 (2011) (when interpreting ambiguous statute, court will review legislative history to determine legislative
 intent).

1 to consider only "the percentage of the negligence attributable to *each party remaining in the*
2 *action.*" *Id.* (emphasis added). A party who has settled is no longer a "party remaining in the
3 action."

4 NRS 41.141(3) is consistent with NRS 41.141(2). NRS 41.141(3) unambiguously
5 provides that if a co-defendant settles with the plaintiff in a case in which the remaining
6 defendant asserts a comparative negligence defense against other remaining defendants in the
7 case, the jury may not consider the co-defendant's comparative negligence or the settlement
8 amount. NRS 41.141(3); *see also Warmbrodt v. Blanchard*, 100 Nev. 793, 692 P.2d 1282 (1984)
9 (holding error to submit question of attorney's negligence to jury under applicable comparative
10 negligence statute where attorney prevailed on summary judgment). Subsection 3 further
11 provides that after a jury returns its verdict, the settlement amount shall be deducted from the net
12 sum recoverable by the plaintiff. NRS 41.141(3).

13 It is abundantly clear from the language in subsections 2 and 3 that the Legislature did
14 not intend for the jury to consider the co-defendant's comparative negligence or the settlement
15 amount in comparison to the parties remaining in the action. "Where the legislative intent can be
16 clearly discerned from the plain language of the statute, it is the duty of the court to give effect to
17 that intent and to effectuate, rather than nullify, the legislative purpose." *Sparks v. State*, 121
18 Nev. 107, 100-111, 110 P.3d 486, 488 (2005).

19 A cardinal rule of statutory construction is that a statute should be read as a harmonious
20 whole with its various parts interpreted within their broader statutory context in a manner that
21 furthers statutory purposes.

22 Statutory construction . . . is a holistic endeavor. A provision that may seem
23 ambiguous in isolation is often clarified by the remainder of the statutory scheme –
24 because the same terminology is used elsewhere in a context that makes its meaning
25 clear, or because only one of the permissible meanings produces a substantive
effect that is compatible with rest of the law.

26 *United Savings Ass'n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988)
27 (citations omitted).

1 Consistent with this cardinal rule of statutory construction, the Nevada Supreme Court
2 recognizes the following salient principles: (1) in interpreting a statute, courts should consider
3 the statute's multiple provisions as a whole and (2) "statutory interpretation should not render
4 any part of a statute meaningless, and a statute's language 'should not be read to produce absurd
5 or unreasonable results.'" *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (quoting
6 *Harris Associates v. Clark County School Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003)).
7 Further consistent with the cardinal rule of statutory interpretation, the Nevada Supreme Court
8 also recognizes the principle that when construing two statutes, the goal is to harmonize the two
9 statutes in such a way that does not render them meaningless. *Hernandez v. Bennet-Haron*, ___
10 Nev. ___, ___, 287 P.3d 305, 316 (2012) ("This court construes 'statutes to preserve harmony
11 among them.'" (quoting *Canarelli v. Dist. Ct.*, ___, Nev. ___, 265 P.3d 673, 677 (2011))).

12 Under this rubric, this Court should construe NRS 41.141 and 41A.045 in the manner the
13 Legislature intended and not attempt to rewrite the law. If the Legislature wanted to depart from
14 NRS 41.141(2) and (3), it could have amended these two subsections when it enacted the
15 predecessor to NRS 41A.045. The Legislature, however, did not do so. In interpreting NRS
16 41A.045 with NRS 41.141(2) and (3), the only interpretation that would not render NRS
17 41.141(2) and (3) meaningless is that only those defendants remaining in the action are severally
18 liable. In other words, NRS 41A.045 was never intended to abrogate NRS 41.141(2) and (3) but
19 to work harmoniously with it. There is absolutely nothing in NRS 41A.045 that conflicts with or
20 supersedes the comparative fault scheme set forth in NRS 41.141(2) and (3). Simply put, these
21 two statutes are not at odds with each other so as to suggest that the Legislature intended one
22 statute to supersede the other.

23 The Nevada Supreme Court's opinion in *Banks v. Sunrise Hosp.* supports this conclusion:
24 *NRS 41.141 only prevents admission of evidence in support of a "comparative*
25 *fault" or apportionment analysis of the case as to nonparties*, and a jury may only
26 "compare" the negligence as between parties and nonparties. Nothing in NRS
27 41.141 prohibits a party defendant from attempting to establish that either no
28 negligence occurred or that the entire responsibility for a plaintiff's injuries rests
with nonparties, including those who have separately settled their liabilities with the
plaintiff.

1 120 Nev. 822, 844-845, 102 P.3d 52, 67 (2004) (emphasis added). This opinion makes it clear
2 that in Nevada, CTRMC is not permitted to allocate a percentage of fault to Dr. Hayes at trial.
3 They are, however, permitted to argue that they did not act negligently or that Dr. Hayes (now a
4 non-party) is 100% or solely responsible for Lyam's injuries (i.e. the "empty chair defense" or
5 the "sole proximate cause defense").⁵ *Banks* and NRS 41.141 make it patently pellucid that
6 when CTRMC attempts to allocate/compare its fault to a non-party, NRS 41.141(2) and (3)
7 apply and specifically prohibit CTRMC from allocating or comparing its fault to Dr. Hayes at
8 trial where she settled with Ms. McCrosky before trial.

9 **C. The Legislature Had the Opportunity During the 78th Legislative Session to Amend**
10 **NRS 41A.045 to Allow the Jury to Consider the Comparative Fault of Non-parties**
11 **Who Have Settled and No Longer Remain in the Action, and the Legislature**
12 **Declined to Enact the Proposed Amendments.**

13 Further consistent with the undisputed facts that (1) "defendant" as contemplated by NRS
14 41A.045 includes only those defendants remaining in the action and (2) NRS 41.141 is the only

15 ⁵The empty chair defense is also known as the sole proximate cause defense. *See, e.g., Jones v. Beck*, 16 N.E.3d
16 289, 297 (Ill. Ct. App. 2014). It is defined as a defense in which a defendant shifts the entire blame to a party as
17 being the sole responsible cause for the injury. *Id.*

18 By definition, "[s]ole proximate cause means the *only* proximate cause," *Johnson v. Interstate Power Co.*,
19 481 N.W.3d 310, 323 (Iowa 1992). The defense, therefore, "is incompatible with the doctrine of comparative fault
20 because, where it applies, the defendant is effectively insulated from liability." *Baker v. City of Ottumwa*, 560
21 N.W.2d 578, 583 (Iowa 1997). The Nevada Supreme Court in *Banks* recognized the sole proximate cause defense
22 and its incompatibility with the doctrine of comparative negligence. 120 Nev. at 822, 102 P.3d at 52; *see also*
23 *Johnson*, 481 N.W.2d at 323-24 ("Sole proximate cause is not a comparative fault defense because proof of sole
24 proximate cause insulates a defendant from liability. In these circumstances, the fault of a defendant cannot be a
25 proximate cause of plaintiff's injuries.").

26 While there can be more than one proximate cause for comparative negligence, "there can be only one sole
27 proximate cause." *Chumbley v. Drels and Krump Mfg. Co.*, 521 N.W.2d (Iowa Ct. App. 1993). A defendant who
28 seeks to assert the empty chair defense or the sole proximate cause defense bears the burden of proving it. *Baker*,
560 N.W.2d at 583.

29 A defendant carries his burden of proof and the defense of sole proximate can properly be given "only
30 when a reasonable fact finder could conclude that a cause other than a defendant's negligence was the sole cause of
31 the damage." *Kuta v. Newberg*, 600 N.W.2d 280 (Iowa 1999); *see also Jones*, 16 N.E.3d at 297 (rejecting sole
32 proximate cause defense in medical malpractice case on grounds that "it is nonsensical to claim that identical
33 courses of medical conduct by two different physicians occurring at two distinct time periods could lead to the legal
34 conclusion that the later of the two doctors would be the sole proximate cause of the injury"). While a defendant is
35 entitled to have the jury instructed on his theory of the case, there must be sufficient evidence to support the
36 requested instruction. *See Beattie v. Thomas*, 99 Nev. 579, 583, 668 P.2d 268, 271 (1983). Under this rubric, it is
37 clear that CTRMC has no cognizable claim that Dr. Hayes is the sole proximate cause of Lyam's injuries.

1 statute that speaks to the narrow issue posed to this Court is the significant fact that the
2 Legislature during this last legislative session had the opportunity to amend NRS 41A.045 to
3 permit the jury to consider the comparative fault of non-parties who have settled and no longer
4 remain in the action, and the Legislature failed to pass the proposed amendments. On March 16,
5 2015, S.B. 292 was introduced and the following amendments were proposed for NRS 41A.045:

6 NRS 41A.045 is hereby amended to read as follows:

- 7 2. In an action described in subsection 1, the trier of fact shall determine the
8 percentage of responsibility assigned to all persons relating to the harm
9 caused for which recover is being sought. The trier of fact shall consider the
10 percentage of responsibility of any person who could have contributed to the
11 alleged injury or death, regardless of whether the person was, or could have
12 been, named as a party to the action. A determination of the percentage of
13 responsibility for any nonparty:
14 (a) May only be used as a vehicle for accurately determining the fault of⁶ the
15 named parties;
16 (b) Does not subject the nonparty to liability in the action or in any other
17 action; and
18 (c) May be introduced as evidence of liability in any action.
19 3. To establish the percentage of responsibility of any party or nonparty, a
20 defendant may present to the trier of fact:
21 (a) An affidavit produced pursuant to NRS 41A.071;
22 (b) A report prepared by an expert pursuant to the Nevada Rules of Civil
23 Procedure; and
24 (c) Testimony of an expert designated by any party, at any time, pursuant to
25 the Nevada Rules of Civil Procedure.

19 Section 4 of Senate Bill No. 292 March 16, 2015 at 3, **Exhibit 4**. These proposed amendments
20 would have allowed a court to include a settling tortfeasor, who has been dismissed from the
21 case in a medical malpractice action, on the verdict form. The Legislature rejected these
22 proposed amendments.⁶ See A SB292 881 at 4, **Exhibit 5**. The final version of S.B. 292 did not
23

24
25
26 ⁶ This is for good reason. First, it would have allowed the jury to blame a non-party who had no opportunity to
27 defend herself. Regardless of the proposed statutory language, would this non-party have been obligated to report
28 an adverse result to the National Practitioners Data Bank? Would she have been obligated to report the adverse
result when she applied for or reapplied for staff privileges at a hospital? Or upon an application for E & O
insurance? And the same can be said for a Defendant, as here, who became a non-party by taking the responsible
position of settling the claims against her in good faith before trial. To be sure, Dr. Hayes is obligated to report the
amount of settlement to the National Practitioners Data Bank. But what if the verdict in this case is 20 million

1 include the proposed amendments. See Senate Bill No.-Senator Roberson, Exhibit 6. Under
2 these circumstances, it is patently pellucid that "defendant" as contemplated by NRS 41A.045
3 does not include a settling tortfeasor who has been dismissed from the case. It is further
4 abundantly clear that NRS 41.141 precludes the inclusion of Dr. Hayes on the verdict form. This
5 Court should decline to rewrite NRS 41A.045 and 41.141 as urged by CTRMC.

6 **D. The Purpose and Intent of NRS 17.245 Would Be Eroded If This Court Granted**
7 **CTRMC's Request to Include Dr. Hayes on the Verdict Form.**

8 NRS 17.245 provides:

9 1. When a release or a covenant not to sue or not to enforce judgment is given in
10 good faith to one of two or more persons liable in tort for the same injury or the
11 same wrongful death:

12 (a) It does not discharge any of the other tortfeasors from liability for the injury or
13 wrongful death unless its terms so provide, but it reduces the claim against the
14 others to the extent of any amount stipulated by the release or the covenant, or in
15 the amount of the consideration paid for it, whichever is the greater; and

16 (b) It discharges the tortfeasor to whom it is given from all liability for contribution
and for equitable indemnity to any other tortfeasor.

17 2. As used in this section, "equitable indemnity" means a right of indemnity that is
created by the court rather than expressly provided for in a written agreement.

18 NRS 17.245. Once a trial court determines that a defendant has settled in good faith, NRS
19 17.245 provides that the settling defendant cannot be liable to co-defendants in a tort action for
20 contribution or equitable indemnity if the defendant settles with the plaintiff in good faith. *Otak*
21 *Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, __ Nev. __, 312 P.3d 491 (2013); see also *The Doctors*
22 *Co. v. Vincent*, 2004, 98 P.3d 681, 120 Nev. 644 (2004) (any defendant in multi-defendant tort
23 action may obtain protection from claims of contribution and implied indemnity by settling with
the tort claimant in good faith).

24 The purpose of Nevada's good faith settlement statute is to encourage settlements by
25 discharging all liability for contribution by a settling tortfeasor to others upon a finding that the
26

27
28 dollars and Dr. Hayes, without the opportunity to present a defense, is assessed 10% of the fault. Does did mean that
she would have been required to re-report a greater amount to the National Practitioners Data Bank?

1 settlement was entered in good faith. *Kerr v. Wanderer & Wanderer*, 211 F.R.D. 625 (D. Nev.
2 2002).

3 The Nevada Supreme Court recognizes that “public policy favors the settlement of disputes . . .”
4 *Redrock Valley Ranch, LLC v. Washoe County*, __ Nev. __, 254 P.3d 641, 648 (2011).

5 NRS 17.245 provides the non-settling tortfeasors with a mechanism by which to
6 challenge the proposed settlement if the non-settling tortfeasors believe that the proposed
7 settlement amount is disproportionate to the “percentage of negligence attributable to the
8 [settling] defendant.” NRS 41A.045. In other words, CTRMC was at liberty to assert the lack of
9 good faith with respect to the settlement entered into between Dr. Hayes and Ms. McCrosky on
10 this ground.

11 While NRS 17.245 does not define “good faith,” there are several Nevada Supreme Court
12 cases discussing what constitutes “good faith.” In *Velsicol Chemical Corp. v. Davidson*, the
13 court held that “determination of good faith should be left to the discretion of the trial court
14 based upon all relevant facts available, and that, in the absence of an abuse of that discretion, the
15 trial court’s findings should not be disturbed.” 107 Nev. 356, 357, 811 P.2d 561, 563 (1991).

16 Similarly, in *The Doctors Co.*, the court held that “the district court’s discretion in
17 determining good or bad faith of a particular settlement is not talismanic, but rather, must be
18 exercised based upon a myriad of considerations.” 120 Nev. at 647, 98 P.3d at 683. The court
19 ruled that although the factors set forth in *In re MGM Grand Hotel Fire Litigation*, 570 F. Supp.
20 913, 927 (D. Nev. 1983), may be relevant in determining good faith, the court does not adopt the
21 factors as exclusive criteria for determinations of good or bad faith. *Id.*, 98 P.3d at 686. “In
22 determining whether a settlement was made in good faith, ‘practical considerations obviously
23 require the evaluation be made on the basis of the information available at the time of
24 settlement.’” *Carpenter v. U.S.*, 710 F. Supp. 747, 751 (D. Nev. 1988) (quoting *Tech-Bilt, Inc. v.*
25 *Woodward-Clyde & assoc.*, 698 P.2d 159, 167 (Cal. Ct. App. 1985)).

26 The information relied upon by CTRMC as support for its request to include Dr. Hayes
27 on the verdict was available in June when Dr. Hayes filed her *Motion for Good Faith Settlement*.
28 See generally **Exhibits 1 - 2** to *Motion to Include Co-defendant*. If CTRMC required additional

1 time to oppose the *Motion for Good Faith Settlement*, it could have requested an extension in
2 which to do so. Significantly, CTRMC failed to avail itself of the opportunity to oppose the
3 *Motion for Good Faith Settlement* on the grounds that the proposed settlement is
4 disproportionate to the “percentage of negligence attributable to [Dr. Hayes].” NRS 41A.045.

5 Permitting the inclusion of settling-tortfeasors on the verdict form after a determination
6 that the settlement between the settling-tortfeasor and the plaintiff was entered into in good faith
7 would discourage plaintiffs from settling with any tortfeasors in a multi-defendant action. That
8 is because the inclusion of settling-tortfeasors on the verdict form could have the effect of
9 reducing the judgment the plaintiff can recover overall.

10 This Court should consider the following hypothetical by way of example. Assume that a
11 settling-tortfeasor enters into a good faith settlement with a plaintiff for \$1 million and proceeds
12 to trial with the remaining non-settling defendant and the court permits the inclusion of the
13 settling-tortfeasor on the verdict form. The jury returns a verdict for \$10 million and apportions
14 10% liability to the non-settling defendant and 90% liability to the settling-tortfeasor. This
15 apportionment would mean that the jury has effectively concluded the plaintiff is entitled to
16 recover \$9 million from the settling-tortfeasor and \$1 million from the non-settling defendant.
17 But where the plaintiff has already settled with the settling-tortfeasor for \$1 million, in reality the
18 plaintiff will recover absolutely nothing after the court deducts the \$1 million settlement amount
19 from the net sum recoverable by the plaintiff. The end result is that the plaintiff would not
20 recover the damages actually awarded by the jury. In fact, in this scenario the plaintiff recovers
21 nothing despite a jury award of \$10 million. Why would any plaintiff choose to settle with one
22 or more defendants in a multi-defendant tort action?

23 This perverse and absurd result cannot be what the Legislature intended with NRS
24 17.245, 41.141, and 41A.045. *See, e.g., Leven*, 123 Nev. at 399, 168 P.3d at 712 (statutes should
25 not be read to produce absurd or unreasonable results). Under Nevada law the non-settling
26 defendant is only entitled to an offset of the settlement amount paid by the settling tortfeasor. In
27 the hypothetical, such an unreasonable result would also provide the non-settling defendant with
28 multiple unintended benefits: (1) a complete shift of the risks of litigation to the plaintiff and (2)

1 impunity for its negligent and/or culpable conduct. In other words, a non-settling defendant will
2 be entitled to "double dip" by being able to include a settling tortfeasor on the verdict form who
3 has been dismissed from the case and receiving an offset pursuant to NRS 41.141.

4 In this same hypothetical, the plaintiff is egregiously penalized for settling with one
5 defendant and proceeding to trial with the other. This simply does not promote the public policy
6 of favoring settlement of disputes. It is difficult to fathom that this is what the Legislature
7 intended with these three statutes.

8 In light of NRS 17.245, 41.141, and 41A.045, the Legislature has determined that the
9 public policy in this state is to encourage and not to discourage settlement of disputes. If a
10 defendant in a multi-defendant tort action chooses to proceed to trial rather than settle, then the
11 Legislature has determined that the non-settling defendant is the party who should bear some of
12 the risks attendant with taking the case to trial (the plaintiff will also bear some of the risks too
13 where he/she could potentially recover nothing against the non-settling defendant). The
14 inclusion of a settling-tortfeasor on the verdict form would completely eviscerate the purpose
15 and intent of statutes specifically drafted to encourage settlement of disputes.

16 If plaintiffs in multi-defendant tort actions are discouraged from settling with any
17 tortfeasors, there will be more trials on the courts' dockets and the costs of taking more cases to
18 trial will increase significantly for all involved. This is clearly not what the Legislature intended
19 with NRS 17.245, 41.141, and 41A.045. This Court cannot rule on the instant motion without
20 considering all the applicable and relevant statutes, including NRS 17.245.

21 **E. CTRMC's Reliance on Case Law from Other Jurisdictions Is Misplaced.**

22 While CTRMC failed to cite this Court to applicable Nevada statutes and case law,
23 CTRMC cited two cases from other jurisdictions. Where the Nevada Supreme Court and the
24 Legislature has unambiguously spoken on the very issue posed by CTRMC's *Motion to Include*
25 *Co-defendant*, there is no need for this Court to consider those two decisions and apply law
26 contradicting and undermining Nevada law and the intent of the Legislature.

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III. CONCLUSION

In Nevada, CTRMC is not permitted to allocate a percentage of fault to Dr. Hayes at trial. Permitting CTRMC to do so would be in violation of Nevada's statutes and cases interpreting them. It would also constitute reversible error. Ms. McCrosky therefore respectfully requests that this Court deny CTRMC's request to include Dr. Hayes on the verdict form.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 21st day of August, 2015.

DURNEY & BRENNAN, LTD.

By: 
PETER D. DURNEY, ESQ.
6900 S. McCarran Blvd., Ste. 2060
Reno, Nevada 89509
ATTORNEYS FOR PLAINTIFFS

1 CERTIFICATE OF SERVICE

2
3 I certify that I am an employee of Durney & Brennan, Ltd., and that on the date shown
4 below, pursuant to NRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true
5 copy of the foregoing document, addressed to:
6

7 Edward J. Lemons, Esq.
8 LEMONS, GRUNDY & EISENBERG
9 6005 Plumas St., Ste. 300
Reno, NV 89509

10 John C. Kelly, Esq.
11 CARROLL, KELLY, TROTTER
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13 111 W. Ocean Blvd., 14th Fl.
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15 CARROLL, KELLY, TROTTER
16 FRANZEN, McKENNA & PEABODY
8329 W. Sunset Rd., Ste. 260
Las Vegas, NV 89113

17 DATED this 21st day of August, 2015.
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20 ANDREA UMANA
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Index of Exhibits

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EXHIBIT "1"

EXHIBIT "1"

BILLS

ASSEMBLY BILL NO. 1—ASSEMBLYMEN PERKINS, BUCKLEY, ANDERSON, HETTRICK, CEGAVSKE, ANGLE, ARBERRY, BACHE, BEERS, BERMAN, BROWN, CARPENTER, CHOWNING, CLABORN, COLLINS, DE BRAGA, DINI, FREEMAN, GIBBONS, GIUNCHIOLIANI, GOLDWATER, GUSTAVSON, HUMKE, KOIVISTO, LEE, LESLIE, MANENDO, MARTIN, MARVEL, MCCLAIN, MORTENSON, NEIGHBORS, NOLAN, OCEGUERA, OHRENSCHALL, PARKS, PARNELL, PRICE, SMITH, TIFFANY AND WILLIAMS

JULY 30, 2002

Referred to Committee on Medical Malpractice Issues

SUMMARY—Makes various changes related to medical and dental malpractice. (BDR 3-17)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.



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

AN ACT relating to malpractice; limiting the liability of certain medical providers for negligent acts under certain circumstances; establishing a limitation on the amount of noneconomic damages that may be awarded in an action for medical malpractice or dental malpractice; providing for several liability of a defendant for noneconomic damages in an action for medical malpractice; making various changes concerning the payment of future economic damages in actions for medical malpractice; providing for the mandatory dismissal of an action for medical malpractice or dental malpractice under certain circumstances; repealing the provisions pertaining to the use of screening panels for an action for medical malpractice or dental malpractice; revising the statute of limitations for filing an action for medical malpractice or dental malpractice; making various other changes concerning actions for medical malpractice or dental malpractice; requiring certain district judges to receive training concerning the complex issues involved in medical malpractice litigation; requiring courts to impose certain sanctions on attorneys in certain circumstances; making various changes relating to the reporting of claims of malpractice or negligence; and providing other matters properly relating thereto.

- 1 WHEREAS, The State of Nevada is experiencing extreme difficulties
- 2 attracting and maintaining a sufficient network of physicians to meet the
- 3 needs of the residents of this state; and
- 4 WHEREAS, The Nevada Legislature has determined that the shortage of
- 5 physicians and the inability to attract new physicians to this state pose a
- 6 serious threat to the health, welfare and safety of the residents of the State
- 7 of Nevada; now, therefore,



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

3 (b) "Organic brain damage" means the person has documented
4 organically caused, permanently impaired cognitive capacity rendering
5 him incapable of making independent, responsible life decisions or
6 permanently incapable of independently conducting the activities of the
7 person's normal daily living.

8 (c) "Total blindness" means a person's visual acuity with correcting
9 lenses does not exceed 20/200 in the better eye, or whose vision in the
10 better eye is restricted to a field which subtends an angle of not greater
11 than 20°.

12 Sec. 6. In an action for damages for medical malpractice, each
13 defendant is liable for noneconomic damages severally only, and not
14 jointly, to the plaintiff only for that portion of the judgment which
15 represents the percentage of negligence attributable to the defendant.

16 Sec. 7. 1. Upon the motion of any party or upon its own motion,
17 unless good cause is shown for the delay, the court shall, after due notice
18 to the parties, dismiss an action involving medical malpractice or dental
19 malpractice if the action is not brought to trial within:

20 (a) Three years after the date on which the action is filed, if the action
21 is filed on or after October 1, 2002, but before October 1, 2005.

22 (b) Two years after the date on which the action is filed, if the action
23 is filed on or after October 1, 2005.

24 2. Dismissal of an action pursuant to subsection 1 is a bar to the
25 filing of another action upon the same claim for relief against the same
26 defendants.

27 3. Each district court shall adopt court rules to expedite the
28 resolution of an action involving medical malpractice or dental
29 malpractice.

30 Sec. 8. If an action for medical malpractice or dental malpractice is
31 filed in the district court, the district court shall dismiss the action,
32 without prejudice, if the action is filed without an affidavit, supporting
33 the allegations contained in the action, submitted by a medical expert
34 who practices in an area that is substantially similar to the type of
35 practice engaged in at the time of the alleged malpractice.

36 Sec. 9. 1. In an action for medical malpractice or dental
37 malpractice, the plaintiff, the defendant, the representative of the
38 physician's or dentist's insurer and their respective attorneys shall attend
39 and participate in a settlement conference before a district judge, other
40 than the judge assigned to the action, to ascertain whether the action
41 may be settled by the parties before trial.

42 2. The judge before whom the settlement conference is held:

43 (a) May, for good cause shown, waive the attendance of any party.

44 (b) Shall decide what information the parties may submit at the
45 settlement conference.

46 3. The judge shall notify the parties of the time and place of the
47 settlement conference.



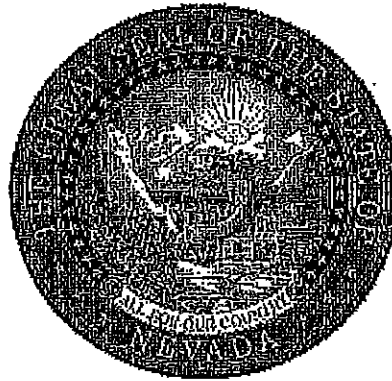
EXHIBIT "2"

EXHIBIT "2"

State of Nevada

**Statewide
Ballot Questions**

2004



**To Appear on the November 2, 2004
General Election Ballot**

**Issued by
Dean Heller
Secretary of State**

DEAN HELLER
Secretary of State

RENEE L. PARKER
*Chief Deputy Secretary
of State*

PAMELA A. RUCKEL
*Deputy Secretary for
Southern Nevada*

STATE OF NEVADA



**OFFICE OF THE
SECRETARY OF STATE**

CHARLES E. MOORE
Securities Administrator

SCOTT W. ANDERSON
*Deputy Secretary
for Commercial Recordings*

RONDA L. MOORE
*Deputy Secretary
for Elections*

Dear Fellow Nevadan:

You will soon be taking advantage of one of your most important rights as an American citizen: the right to vote! As Secretary of State and the state's Chief Election Officer, I take the job of informing the public about various statewide ballot questions very seriously. An informed and knowledgeable electorate is a cornerstone to fair and just elections.

With that in mind, the Secretary of State's office has prepared this booklet detailing the statewide questions that will appear on the 2004 General Election Ballot. The booklet contains "Notes to Voters," a complete listing of the exact wording of each question, along with a summary, arguments for and against each question's passage, and, where applicable, a fiscal note. Any fiscal note included in this booklet explains only adverse impacts and does not note any possible cost savings.

I encourage you to carefully and thoughtfully review the ballot questions listed in the booklet. As a voter, your actions on these ballot questions can create new laws, amend existing laws or amend the Nevada Constitution.

On the 2004 General Election Ballot, there are eight statewide questions. Ballot Question Numbers 7 and 8 appear on the ballot through the actions of the Nevada State Legislature. Ballot Question Numbers 1 through 6 qualified for this year's ballot through the initiative petition process.

You can also view these ballot questions on the Secretary of State's web site at www.secretaryofstate.biz. If you require further assistance or information, please feel free to contact my office at 775/684-5705.

Respectfully,

A handwritten signature in cursive script that reads "Dean Heller".

DEAN HELLER
Secretary of State

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effect of this provision could be an increased burden on the state Medical fund, which consists of taxpayer dollars.

Current law provides that each one of multiple defendants in medical malpractice actions is severally, but not jointly liable for noneconomic damages. This means that a single defendant among multiple defendants in a medical malpractice action is required to pay the injured person only the share of noneconomic damages attributable to that defendant's wrongful conduct and would not have to pay the share attributable to the wrongful conduct of another defendant. However, the current law treats economic damages differently, and provides that each defendant is not only severally liable, but also jointly liable for payment of economic damages; a defendant that is jointly liable could be required to pay the injured person for not only his wrongful conduct, but also for the wrongful conduct of all other defendants. The proposal, if passed, would change the current law by repealing joint and several liability for economic damages and treat liability for recovery of economic damages in medical malpractice cases the same as for noneconomic damages, such that defendants are only severally, but not jointly liable. This imposes the risk of nonpayment to the injured party if a defendant is not able to pay his percentage of damages, such as when that defendant has insufficient insurance or assets to pay his share.

The proposal also revises the statute of limitations for the filing of actions. The current law that requires an injured person to file a medical malpractice lawsuit within 3 years of the date of injury remains unchanged. The current law also provides that if the injury was not immediately apparent, the injured person has 2 years from the time the person discovers or should have discovered the injury to file the lawsuit. The proposal would reduce this time from 2 years to 1 year.

Finally, the proposal would make changes to how certain damages are paid by health care providers who have been found negligent, and provides for other matters properly related thereto. It requires that when an award equals or exceeds \$50,000 in future damages, the court must allow the same to be paid in periodic payments instead of a lump sum, if requested by either party.

The following arguments for and against and rebuttals for Question No. 3 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 3

Physicians continue to leave Nevada, and medical malpractice insurers continue to pull out of the Nevada market, at an alarming rate despite the medical malpractice litigation reforms passed by the Nevada legislature in 2002. Why? Because the 2002 legislation does not provide enough specific protection for doctors and their insurers from astronomical jury verdicts, making it impossible to plan for the challenges associated with practicing medicine. As a result, some Nevada doctors pay more than double for liability insurance compared to doctors in Los Angeles. (AMA press release, March 17, 2004). What does this mean to your doctors? They are having difficulty keeping their practices open. What does this mean to you? When you need a doctor, you may have difficulty finding one.

EXHIBIT "3"

EXHIBIT "3"

Excerpts from the Senate Journal

Remarks and testimony

-- selections by Research Library staff

THE SECOND DAY

CARSON CITY(Tuesday), July 30, 2002

Senator Raggio moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Senate Bill No. 2.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 8:11 a.m.

Senator Raggio presiding.

Senate Bill No. 2 considered.

The Committee of the Whole was addressed by Senator Raggio; Governor Kenny Guinn; Jan Needham, Principal Deputy Legislative Counsel; Bradley A. Wilkinson, Principal Deputy Legislative Counsel; Scott Young, Principal Research Analyst; Maury Astley, Executive Director, Nevada Dental Association; Robert Byrd, Chairman, Medical Liability Association of Nevada; J. R. Crockett, Jr., Nevada Trial Lawyers Association; Michael Daubs, M.D., Concerned Physicians of Nevada, Nevada Orthopedic Society; Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association; Gus W. Flangas, Attorney, Physicians Task Force; Gerald Gillock, Nevada Trial Lawyers Association; David P. Haefner, Nevada Association of Nurse Anesthetists; Lonnie Hammergren, M.D., Neurosurgical Associates of Nevada; Ron Kendall, Patient, Carson City; Richard J. Legarza, General Counsel, Nevada State Board of Medical Examiners; Larry E. Lessly, Executive Director, Nevada State Board of Medical Examiners; Dan McBride, M.D., Nevada Mutual Liability Company; Robert McBeath, M.D., Nevada Medical Liability Physicians Task Force; Alice Molaky-Arman, Commission of Insurance; Jerry H. Mowbray, Attorney; Nancy Peverini, Legislative Counsel, Consumer Attorneys of California; Janice Pine, Saint Mary's Health Network; Jim Wadhams, American Insurance Association; Charles (Chip) Wallace, Nevada Mutual Insurance Company, Communications Director/cofounder; Bill M. Welch, President, CEO, Nevada Hospital Association.

Senator Raggio requested that all remarks on Senate Bill No. 2 be entered in the Journal.

SENATOR RAGGIO:

This committee will come to order. This is the Committee of the Whole, all Senate members participating, and today, the committee will continue its deliberations on Senate Bill No. 2. Our first order of business is to complete our discussion of sections 3, 4 and 5 addressing the caps on

SENATOR RAGGIO:

Mr. Echeverria, can you quickly tell us whether we are on track here.

JOHN ECHEVERRIA (Nevada Trial Lawyers Association):

The abrogation of joint and several liability in California was not part of the MICRA package.

SENATOR RAGGIO:

I misspoke. What is the situation there?

MR. ECHEVERRIA:

It was done by a proposition or an initiative. This states, as I understand it, the California version of joint and several liability.

SENATOR RAGGIO:

On noneconomic damages as well as economic damages?

MR. ECHEVERRIA:

There is several liability as to noneconomic damages and joint liability as to economic damages in California and under this bill.

SENATOR RAGGIO:

This will bring us in line with current law in California.

MR. ECHEVERRIA:

Yes.

SENATOR RAGGIO:

That is what I was asking.

MR. ECHEVERRIA:

As to medical negligence cases.

SENATOR RAGGIO:

Medical malpractice. Is that your understanding of this, Mr. Flangas?

MR. FLANGAS:

That is correct, Mr. Chairman. It is not part of the original MICRA package in California. It was a separate proposition. This is on line.

SENATOR RAGGIO:

Does either group have anything further to present on this?

MR. FLANGAS:

No, thank you, Mr. Chairman.

SENATOR RAGGIO:

Are there any statements or questions from the committee?

SENATOR CARE:

In reviewing case law, I have three questions.

1. How would comparative negligence play into this?
2. What do you do when you have joint tortfeasors, and there is a settlement agreement, and one of the defendants agrees to, in essence, pay a greater figure in a settlement agreement than, down the road, there is a judgment that is much smaller?
3. What does this do to vicarious liability? That is to say, when one of the defendants is an employee of the hospital and the jury says, 25 percent is the fault of the employee, 25 percent is the hospital, this, that, and the other. Would the hospital still be liable for the 25 percent portion of the judgment that goes to the employee?

Those are the three issues I see here.

MR. CROCKETT:

The three points you raised were comparative negligence, settlements with multiple defendants and vicarious liability.

1. It will not have any impact on comparative negligence. There will be a change in the law because it used to be that joint and several liability only existed in medical malpractice cases where the plaintiff was completely blame free. If you had an unconscious plaintiff on the operating table and negligence was performed, everybody understood the plaintiff could not be negligent because he was unconscious, he was asleep. Under those circumstances, liability was joint and several. The proposed change would say that from now on it is only several as to noneconomic and joint as to economic. Under existing law, if a plaintiff was in a circumstance where they could be comparatively negligent, joint and several went out the window and liability was proportioned based upon the plaintiff's contributory negligence and everybody else's contribution. This changes the law in that respect. Old law, comparative negligence did away with joint and several; new law, whether the plaintiff was comparatively negligent or not, does not alter the joint and several responsibility. Does that answer your question?

2. On settlements with joint tortfeasors, I know you are an attorney, and you see all the multiple layers that this creates, and it does, and the permutations are way too numerous to even begin to discuss here. All I can say is, if you settle with one defendant in a multiple defendant situation, negotiations always completely reopen when you come to the second defendant to talk because everybody wants to talk about what effect the previous settlement had upon the second settlement.

SENATOR RAGGIO:

We are going to have a discussion on collateral torts soon.

MR. CROCKETT:

You are right. Mr. Gillock reminded me of one thing that must be done in order for a defendant to be given a complete release from a settlement when they have multiple defendants. You have to go to court and get what is called a good-faith settlement approval to make sure the court sees that one defendant did not quickly settle out under the pretense they were paying their full and fair share. The court guards against that being a sham or a ruse. You cannot get a complete release unless the court approves that it was what they call a good-faith settlement. That will remain. Nothing is done to change that. Does that answer the question?

The third point about vicarious liability, the employer of a negligent employee is always responsible for that employee's negligence as long as the negligence was in the course and scope of the employment. There may be a circumstance where, on top of that, the employer could be negligent for something they did directly, separate and apart from their employment. In that case, they would have responsibility for the employee's negligence, and they would have responsibility for their own negligence. An example would be, if a nurse were negligent in something she did which fell below standard that caused injury or death to a patient. If she was working in the course and scope of her employment, her employer is vicariously liable for her actions. But if her employer supplied her with a negligently maintained piece of equipment that was not properly cared for by a different department of the hospital and also contributed to the problem, the employer would be directly responsible to the injured party for the employer's direct negligence on that equipment. This deals with the question you posed: What if the employer is responsible for the employee's negligence and their own direct negligence? In which case they would be responsible for both.

SENATOR CARE:

We are just trying to get some legislative intent here. That is the way I read it, and if the doctor's read it that way, as well, I am satisfied.

MR. FLANGAS:

I agree with his definitions.

SENATOR RAGGIO:

Are there any other questions or statements on this?

SENATOR WIENER:

EXHIBIT "4"

EXHIBIT "4"

SENATE BILL NO. 292—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to civil actions; revising the applicability of certain provisions of existing law pertaining to certain civil actions involving negligence; revising provisions governing the limitation on the amount of noneconomic damages that may be awarded in certain civil actions; requiring a trier of fact to determine the percentage of responsibility for a plaintiff's harm assigned to various parties in certain civil actions; making various other changes relating to certain actions involving negligence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law defines "medical malpractice," "dental malpractice" and
- 2 "professional negligence" and contains various provisions relating to civil actions
- 3 involving claims of medical malpractice, dental malpractice and professional
- 4 negligence. (Chapter 41A of NRS) This bill removes references in existing law to
- 5 medical malpractice and dental malpractice and replaces those references with
- 6 references to professional negligence.
- 7 Existing law defines the term "provider of healthcare" for the purposes of
- 8 certain civil actions involving professional negligence. (NRS 41A.017) Section 2
- 9 of this bill revises that definition to include certain other professionals who provide
- 10 health care and to include clinics, surgery centers and other entities that employ
- 11 physicians and other such persons.
- 12 Existing law limits the amount of noneconomic damages that may be awarded
- 13 in an action for injury or death against a provider of health care based upon
- 14 professional negligence. (NRS 41A.035) Section 3 of this bill limits the total
- 15 noneconomic damages that may be awarded in such an action to \$350,000,
- 16 regardless of the number of plaintiffs, defendants or theories of liability.
- 17 Existing law provides that in an action for injury or death against a provider of
- 18 health care based upon professional negligence, each defendant is liable to the



19 plaintiff for certain damages severally only, and not jointly. (NRS 41A.045)
20 Section 4 of this bill: (1) requires the trier of fact in an action for professional
21 negligence to determine the percentage of responsibility assigned to each person;
22 and (2) authorizes a defendant to present certain evidence to establish the
23 percentage of responsibility of any party or nonparty to such an action.

24 Existing law establishes a rebuttable presumption in actions for negligence
25 against providers of medical care that the personal injury or death was caused by
26 negligence when certain injuries are sustained. (NRS 41A.100) Section 9 of this
27 bill provides that the rebuttable presumption does not apply in an action in which:
28 (1) a plaintiff submits an affidavit or designates an expert witness to establish that a
29 provider of health care deviated from the accepted standard of care; or (2) expert
30 medical testimony is used to establish a claim of professional negligence.

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

1 Section 1. NRS 41A.003 is hereby amended to read as
2 follows:

3 41A.003 As used in this chapter, unless the context otherwise
4 requires, the words and terms defined in NRS ~~{41A.004}~~ 41A.007 to
5 41A.017, inclusive, have the meanings ascribed to them in those
6 sections.

7 Sec. 2. NRS 41A.017 is hereby amended to read as follows:

8 41A.017 "Provider of health care" means a physician licensed
9 ~~{under}~~ pursuant to chapter 630, 630A or 633 of NRS, *physician*
10 *assistant*, dentist, licensed nurse, dispensing optician, optometrist,
11 *practitioner of respiratory care*, registered physical therapist,
12 *occupational therapist*, podiatric physician, licensed psychologist,
13 *licensed marriage and family therapist*, *licensed clinical*
14 *professional counselor*, *music therapist*, chiropractor, *athletic*
15 *trainer*, *perfusionist*, doctor of Oriental medicine ~~{}~~ *in any form*,
16 medical laboratory director or technician, *pharmacist* or licensed
17 dietitian or a licensed hospital, *clinic*, *surgery center* or *other*
18 *entity that employs any such person* and its employees.

19 Sec. 3. NRS 41A.035 is hereby amended to read as follows:

20 41A.035 In an action for injury or death against a provider of
21 health care based upon professional negligence, the injured plaintiff
22 may recover noneconomic damages, but the amount of
23 noneconomic damages awarded in such an action must not exceed
24 \$350,000 ~~{}~~, *regardless of the number of plaintiffs, defendants or*
25 *theories upon which liability may be based.*

26 Sec. 4. NRS 41A.045 is hereby amended to read as follows:

27 41A.045 1. In an action for injury or death against a provider
28 of health care based upon professional negligence, each defendant is
29 liable to the plaintiff for economic damages and noneconomic
30 damages severally only, and not jointly, for that portion of the



1 judgment which represents the percentage of {negligence} fault
2 attributable to the defendant.

3 2. In an action described in subsection 1, the trier of fact
4 shall determine the percentage of responsibility assigned to all
5 persons relating to the harm caused for which recovery is being
6 sought. The trier of fact shall consider the percentage of
7 responsibility of any person who could have contributed to the
8 alleged injury or death, regardless of whether the person was, or
9 could have been, named as a party to the action. A determination
10 of the percentage of responsibility for any nonparty:

11 (a) May only be used as a vehicle for accurately determining
12 the fault of the named parties;

13 (b) Does not subject the nonparty to liability in the action or in
14 any other action; and

15 (c) May be introduced as evidence of liability in any action.

16 3. To establish the percentage of responsibility of any party or
17 nonparty, a defendant may present to the trier of fact:

18 (a) An affidavit produced pursuant to NRS 41A.071;

19 (b) A report prepared by an expert pursuant to the Nevada
20 Rules of Civil Procedure; and

21 (c) Testimony of an expert designated by any party, at any
22 time, pursuant to the Nevada Rules of Civil Procedure.

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

26 Sec. 5. NRS 41A.061 is hereby amended to read as follows:

27 41A.061 1. Upon the motion of any party or upon its own
28 motion, unless good cause is shown for the delay, the court shall,
29 after due notice to the parties, dismiss an action involving {medical
30 malpractice or dental malpractice} professional negligence if the
31 action is not brought to trial within {

32 (a) Three years after the date on which the action is filed, if the
33 action is filed on or after October 1, 2002, but before October 1,
34 2005.

35 (b) Two} 2 years after the date on which the action is filed . {if
36 the action is filed on or after October 1, 2005.}

37 2. Dismissal of an action pursuant to subsection 1 is a bar to
38 the filing of another action upon the same claim for relief against the
39 same defendants.

40 3. Each district court shall adopt court rules to expedite the
41 resolution of an action involving {medical malpractice or dental
42 malpractice} professional negligence.

43 Sec. 6. NRS 41A.071 is hereby amended to read as follows:

44 41A.071 If an action for {medical malpractice or dental
45 malpractice} professional negligence is filed in the district court,



1 the district court shall dismiss the action, without prejudice, if the
2 action is filed without an affidavit ~~[- supporting]~~ *that:*

3 1. *Supports* the allegations contained in the action ~~[-]~~;

4 2. *Is* submitted by a medical expert who practices or has
5 practiced in an area that is substantially similar to the type of
6 practice engaged in at the time of the alleged ~~[-malpractice-]~~
7 *professional negligence*;

8 3. *Identifies by name, or describes by conduct, each alleged*
9 *provider of health care; and*

10 4. *Complies with any written report required pursuant to Rule*
11 *16.1 of the Nevada Rules of Civil Procedure.*

12 Sec. 7. NRS 41A.081 is hereby amended to read as follows:

13 41A.081 1. In an action for ~~[-medical-malpractice-or-dental~~
14 ~~malpractice-]~~ *professional negligence*, all the parties to the action,
15 the insurers of the respective parties and the attorneys of the
16 respective parties shall attend and participate in a settlement
17 conference before a district judge, other than the judge assigned to
18 the action, to ascertain whether the action may be settled by the
19 parties before trial.

20 2. The judge before whom the settlement conference is held:

21 (a) May, for good cause shown, waive the attendance of any
22 party.

23 (b) Shall decide what information the parties may submit at the
24 settlement conference.

25 3. The judge shall notify the parties of the time and place of the
26 settlement conference.

27 4. The failure of any party, the party's insurer or the party's
28 attorney to participate in good faith in the settlement conference is
29 grounds for sanctions, including, without limitation, monetary
30 sanctions, against the party or the party's attorney, or both. The
31 judges of the district courts shall liberally construe the provisions of
32 this subsection in favor of imposing sanctions in all appropriate
33 situations. It is the intent of the Legislature that the judges of the
34 district courts impose sanctions pursuant to this subsection in all
35 appropriate situations to punish for and deter conduct which is not
36 undertaken in good faith because such conduct overburdens limited
37 judicial resources, hinders the timely resolution of meritorious
38 claims and increases the costs of engaging in business and providing
39 professional services to the public.

40 Sec. 8. NRS 41A.085 is hereby amended to read as follows:

41 41A.085 1. In an action for damages for ~~[-medical-malpractice~~
42 ~~or-dental-malpractice-]~~ *professional negligence* in which the
43 defendant is insured pursuant to a policy of insurance covering the
44 liability of the defendant for a breach of the defendant's professional
45 duty toward a patient:



1 (a) At any settlement conference, the judge may recommend that
2 the action be settled for the limits of the policy of insurance.

3 (b) If the judge makes the recommendation described in
4 paragraph (a), the defendant is entitled to obtain from independent
5 counsel an opinion letter explaining the rights of, obligations of and
6 potential consequences to the defendant with regard to the
7 recommendation. The insurer shall pay the independent counsel to
8 provide the opinion letter described in this paragraph, except that the
9 insurer is not required to pay more than \$1,500 to the independent
10 counsel to provide the opinion letter.

11 2. The section does not:

12 (a) Prohibit the plaintiff from making any offer of settlement.

13 (b) Require an insurer to provide or pay for independent counsel
14 for a defendant except as expressly provided in this section.

15 Sec. 9. NRS 41A.100 is hereby amended to read as follows:

16 41A.100 1. Liability for personal injury or death is not
17 imposed upon any provider of ~~medical~~ *health* care based on
18 alleged negligence in the performance of that care unless evidence
19 consisting of expert medical testimony, material from recognized
20 medical texts or treatises or the regulations of the licensed medical
21 facility wherein the alleged negligence occurred is presented to
22 demonstrate the alleged deviation from the accepted standard of care
23 in the specific circumstances of the case and to prove causation of
24 the alleged personal injury or death, except that such evidence is not
25 required and a rebuttable presumption that the personal injury or
26 death was caused by negligence arises where evidence is presented
27 that the *provider of health care caused the* personal injury or death
28 occurred in any one or more of the following circumstances:

29 (a) A foreign substance other than medication or a prosthetic
30 device was unintentionally left within the body of a patient
31 following surgery;

32 (b) An explosion or fire originating in a substance used in
33 treatment occurred in the course of treatment;

34 (c) An unintended burn caused by heat, radiation or chemicals
35 was suffered in the course of medical care;

36 (d) An injury was suffered during the course of treatment to a
37 part of the body not directly involved in the treatment or proximate
38 thereto; or

39 (e) A surgical procedure was performed on the wrong patient or
40 the wrong organ, limb or part of a patient's body.

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



1 3. ~~{As used in this section, "provider of medical care" means a~~
2 ~~physician, dentist, registered nurse or a licensed hospital as the~~
3 ~~employer of any such person.}~~ *The rebuttable presumption*
4 *pursuant to subsection 1 does not apply in an action in which:*
5 *(a) A plaintiff submits an affidavit pursuant to NRS 41A.071,*
6 *or otherwise designates an expert witness pursuant to the Nevada*
7 *Rules of Civil Procedure, to establish that a provider of health*
8 *care deviated from the accepted standard of care or caused the*
9 *alleged personal injury or death.*
10 *(b) Expert medical testimony is used to establish a claim of*
11 *negligence.*
12 Sec. 10. NRS 3.029 is hereby amended to read as follows:
13 3.029 1. The Supreme Court shall provide by court rule for
14 mandatory appropriate training concerning the complex issues of
15 ~~{medical malpractice}~~ litigation *alleging professional negligence*
16 for each district judge to whom actions involving ~~{medical~~
17 ~~malpractice}~~ *professional negligence* are assigned.
18 2. *As used in this section, "professional negligence" has the*
19 *meaning ascribed to it in NRS 41A.015.*
20 Sec. 11. The amendatory provisions of this act apply to a
21 cause of action that accrues on or after the effective date of this act.
22 Sec. 12. NRS 41A.004, 41A.009 and 41A.013 are hereby
23 repealed.
24 Sec. 13. This act becomes effective upon passage and
25 approval.

TEXT OF REPEALED SECTIONS

41A.004 "Dental malpractice" defined. "Dental malpractice" has the meaning ascribed to the term "malpractice" in NRS 631.075.

41A.009 "Medical malpractice" defined. "Medical malpractice" means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

41A.013 "Physician" defined. "Physician" means a person licensed pursuant to chapter 630 or 633 of NRS.

H



EXHIBIT "5"

EXHIBIT "5"

Amendment No. 881

Senate Amendment to Senate Bill No. 292		(BDR 3-954)
Proposed by: Senate Committee on Judiciary		
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes		

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

NCA/BAW

Date: 5/19/2015

S.B. No. 292—Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)

Page 1 of 7



SENATE BILL NO. 292—SENATOR ROBERSON

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION—Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil actions; providing immunity from civil actions for a board of trustees of a school district or the governing body of a charter school under certain circumstances; revising the applicability of certain provisions of existing law pertaining to certain civil actions involving negligence; revising provisions governing the limitation on the amount of noneconomic damages that may be awarded in certain civil actions; ~~requiring a trial of fact to determine the percentage of responsibility for a plaintiff's harm assigned to various parties in certain civil actions;~~ making various other changes relating to certain actions involving negligence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides that a board of trustees of a school district or the governing body of a charter school is not liable for any civil damages arising from any act or omission by a person employed by or volunteering at a school-based health center. Section 1 also defines "school-based health center" for such purposes.

Existing law defines "medical malpractice," "dental malpractice" and "professional negligence" and contains various provisions relating to civil actions involving claims of medical malpractice, dental malpractice and professional negligence. (Chapter 41A of NRS) This bill removes references in existing law to medical malpractice and dental malpractice and replaces those references with references to professional negligence. Section 1.5 of this bill also revises the definition of professional negligence to incorporate provisions of the previously used definition of medical malpractice.

Existing law defines the term "provider of healthcare" for the purposes of certain civil actions involving professional negligence. (NRS 41A.017) Section 2 of this bill revises that definition to include certain other professionals who provide health care and to include clinics, surgery centers and other entities that employ physicians and other such persons.

Existing law limits the amount of noneconomic damages that may be awarded in an action for injury or death against a provider of health care based upon professional negligence. (NRS 41A.035) Section 3 of this bill limits the total noneconomic damages that may be awarded in such an action to \$350,000, regardless of the number of plaintiffs, defendants or theories of liability.

~~Existing law provides that in an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for certain damages severally only, and not jointly. (NRS 41A.045) Section 4 of this bill (1) requires the trier of fact in an action for professional negligence to determine the percentage of responsibility assigned to each person; and (2) authorizes a defendant to present certain evidence to establish the percentage of responsibility of any party or nonparty to such an action.~~

Existing law establishes a rebuttable presumption in actions for negligence against providers of medical care that the personal injury or death was caused by negligence when certain injuries are sustained. (NRS 41A.100) Section 9 of this bill provides that the rebuttable presumption does not apply in an action in which: (1) a plaintiff submits an affidavit or designates an expert witness to establish that a provider of health care deviated from the accepted standard of care; or (2) expert medical testimony is used to establish a claim of professional negligence.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board of trustees of a school district or the governing body of a charter school that allows or establishes a school-based health center is not liable for any civil damages as a result of any act or omission by a person employed by or volunteering for or affiliated with a school-based health center or a sponsoring entity of the school-based health center.

2. As used in this section, "school-based health center" means a health center located on or in school grounds, property, buildings or any other school district facilities for the purpose of rendering care or services to any person.

~~Section 1.3.~~ Sec. 1.3. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS ~~41A.004~~ 41A.007 to 41A.017, inclusive, have the meanings ascribed to them in those sections.

Sec. 1.5. NRS 41A.015 is hereby amended to read as follows:

41A.015 "Professional negligence" means ~~a negligent act or omission to act by the failure of~~ a provider of health care, in ~~the~~ rendering ~~of professional~~ services, ~~which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.~~

Sec. 2. NRS 41A.017 is hereby amended to read as follows:

41A.017 "Provider of health care" means a physician licensed ~~under~~ pursuant to chapter 630 ~~or 633~~ of NRS, ~~physician assistant, dentist,~~ licensed nurse, dispensing optician, optometrist, ~~practitioner of respiratory care,~~ registered physical therapist, ~~occupational therapist,~~ podiatric physician, licensed psychologist, ~~licensed marriage and family therapist, licensed clinical professional counselor, music therapist,~~ chiropractor, ~~faithful truther, perfumist,~~ doctor of Oriental medicine, ~~in any form,~~ medical laboratory director or technician, ~~pharmacist or~~ licensed dietitian or a licensed hospital, clinic, surgery center ~~for other entity~~, physicians' professional corporation or group practice that employs any such person and its employees.

Sec. 3. NRS 41A.035 is hereby amended to read as follows:

41A.035 In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000 ~~plus~~, regardless of the number of plaintiffs, defendants or theories upon which liability may be based.

Sec. 4. ~~NRS 41A.045 is hereby amended to read as follows:~~

~~41A.045 1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of [negligence] fault attributable to the defendant.~~

~~2. In an action described in subsection 1, the trier of fact shall determine the percentage of responsibility assigned to all persons relating to the harm caused for which recovery is being sought. The trier of fact shall consider the percentage of responsibility of any person who could have contributed to the alleged injury or death, regardless of whether the person was, or could have been, named as a party to the action. A determination of the percentage of responsibility for any nonparty~~

~~(a) May only be used as a vehicle for accurately determining the fault of the named parties;~~

~~(b) Does not subject the nonparty to liability in the action or in any other action; and~~

~~(c) May be introduced as evidence of liability in any action.~~

~~3. To establish the percentage of responsibility of any party or nonparty, a defendant may present to the trier of fact~~

~~(a) An affidavit produced pursuant to NRS 41A.071;~~

~~(b) A report prepared by an expert pursuant to the Nevada Rules of Civil Procedure; and~~

~~(c) Testimony of an expert designated by any party, at any time, pursuant to the Nevada Rules of Civil Procedure.~~

~~4. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence. (Deleted by amendment.)~~

Sec. 5. NRS 41A.061 is hereby amended to read as follows:

41A.061 1. Upon the motion of any party or upon its own motion, unless good cause is shown for the delay, the court shall, after due notice to the parties, dismiss an action involving ~~medical malpractice or dental malpractice~~ professional negligence if the action is not brought to trial within ~~1~~ 3 years after the date on which the action is filed, if the action is filed on or after October 1, 2002, but before October 1, 2005.

~~(a) Three years after the date on which the action is filed, if the action is filed on or after October 1, 2002, but before October 1, 2005.~~

~~(b) Two ~~2~~ 3 years after the date on which the action is filed. If the action is filed on or after October 1, 2005.~~

2. Dismissal of an action pursuant to subsection 1 is a bar to the filing of another action upon the same claim for relief against the same defendants.

3. Each district court shall adopt court rules to expedite the resolution of an action involving ~~medical malpractice or dental malpractice~~ professional negligence.

Sec. 6. NRS 41A.071 is hereby amended to read as follows:

41A.071 If an action for ~~medical malpractice or dental malpractice~~ professional negligence is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit ~~supporting~~ that:

1. Supports the allegations contained in the action ~~{};~~;
2. Is submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged ~~{malpractice;} professional negligence;~~
3. Identifies by name, or describes by conduct, each ~~alleged~~ provider of health care ~~{} who is alleged to be negligent;~~ and
4. ~~Complies with any written report required pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure.~~ Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.

Sec. 7. NRS 41A.081 is hereby amended to read as follows:

41A.081 1. In an action for ~~{medical malpractice or dental malpractice;} professional negligence~~, all the parties to the action, the insurers of the respective parties and the attorneys of the respective parties shall attend and participate in a settlement conference before a district judge, other than the judge assigned to the action, to ascertain whether the action may be settled by the parties before trial.

2. The judge before whom the settlement conference is held:

(a) May, for good cause shown, waive the attendance of any party.

(b) Shall decide what information the parties may submit at the settlement conference.

3. The judge shall notify the parties of the time and place of the settlement conference.

4. The failure of any party, the party's insurer or the party's attorney to participate in good faith in the settlement conference is grounds for sanctions, including, without limitation, monetary sanctions, against the party or the party's attorney, or both. The judges of the district courts shall liberally construe the provisions of this subsection in favor of imposing sanctions in all appropriate situations. It is the intent of the Legislature that the judges of the district courts impose sanctions pursuant to this subsection in all appropriate situations to punish for and deter conduct which is not undertaken in good faith because such conduct overburdens limited judicial resources, hinders the timely resolution of meritorious claims and increases the costs of engaging in business and providing professional services to the public.

Sec. 8. NRS 41A.085 is hereby amended to read as follows:

41A.085 1. In an action for damages for ~~{medical malpractice or dental malpractice;} professional negligence~~ in which the defendant is insured pursuant to a policy of insurance covering the liability of the defendant for a breach of the defendant's professional duty toward a patient:

(a) At any settlement conference, the judge may recommend that the action be settled for the limits of the policy of insurance.

(b) If the judge makes the recommendation described in paragraph (a), the defendant is entitled to obtain from independent counsel an opinion letter explaining the rights of, obligations of and potential consequences to the defendant with regard to the recommendation. The insurer shall pay the independent counsel to provide the opinion letter described in this paragraph, except that the insurer is not required to pay more than \$1,500 to the independent counsel to provide the opinion letter.

2. The section does not:

(a) Prohibit the plaintiff from making any offer of settlement.

(b) Require an insurer to provide or pay for independent counsel for a defendant except as expressly provided in this section.

Sec. 9. NRS 41A.100 is hereby amended to read as follows:

41A.100 1. Liability for personal injury or death is not imposed upon any provider of ~~medical~~ health care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the provider of health care caused the personal injury or death occurred in any one or more of the following circumstances:

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

(b) An explosion or fire originating in a substance used in treatment occurred in the course of treatment;

(c) An unintended burn caused by heat, radiation or chemicals was suffered in the course of medical care;

(d) An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto; or

(e) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient's body.

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

3. ~~As used in this section, "provider of medical care" means a physician, dentist, registered nurse or a licensed hospital as the employer of any such person. The rebuttable presumption pursuant to subsection 1 does not apply in an action in which~~

~~(a) A plaintiff submits an affidavit pursuant to NRS 41A.071, or otherwise designates an expert witness pursuant to the Nevada Rules of Civil Procedure, to establish that the specific provider of health care deviated from the accepted standard of care, for caused the alleged personal injury or death.~~

~~(b) Expert medical testimony is used to establish a claim of negligence.~~

4. Nothing in this section shall be construed to preclude any party to the suit from designating and presenting expert testimony as to the legal or proximate cause of any alleged personal injury or death.

Sec. 10. NRS 3.029 is hereby amended to read as follows:

3.029 1. The Supreme Court shall provide by court rule for mandatory appropriate training concerning the complex issues of ~~medical malpractice~~ litigation alleging professional negligence for each district judge to whom actions involving ~~medical malpractice~~ professional negligence are assigned.

2. As used in this section, "professional negligence" has the meaning ascribed to it in NRS 41A.015.

Sec. 11. The amendatory provisions of this act apply to a cause of action that accrues on or after the effective date of this act.

Sec. 12. NRS 41A.004, 41A.009 and 41A.013 are hereby repealed.

Sec. 13. This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

41A.004 "Dental malpractice" defined. "Dental malpractice" has the meaning ascribed to the term "malpractice" in NRS 631.075.

41A.009 "Medical malpractice" defined. "Medical malpractice" means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

41A.013 "Physician" defined. "Physician" means a person licensed pursuant to chapter 630 or 633 of NRS.

EXHIBIT "6"

EXHIBIT "6"

CHAPTER.....

AN ACT relating to civil actions; providing immunity from civil actions for a board of trustees of a school district or the governing body of a charter school under certain circumstances; revising the applicability of certain provisions of existing law pertaining to certain civil actions involving negligence; revising provisions governing the limitation on the amount of noneconomic damages that may be awarded in certain civil actions; making various other changes relating to certain actions involving negligence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides that a board of trustees of a school district or the governing body of a charter school is not liable for any civil damages arising from any act or omission by a person employed by or volunteering at a school-based health center. Section 1 also defines "school-based health center" for such purposes.

Existing law defines "medical malpractice," "dental malpractice" and "professional negligence" and contains various provisions relating to civil actions involving claims of medical malpractice, dental malpractice and professional negligence. (Chapter 41A of NRS) This bill removes references in existing law to medical malpractice and dental malpractice and replaces those references with references to professional negligence. Section 1.5 of this bill also revises the definition of professional negligence to incorporate provisions of the previously used definition of medical malpractice.

Existing law defines the term "provider of healthcare" for the purposes of certain civil actions involving professional negligence. (NRS 41A.017) Section 2 of this bill revises that definition to include certain other professionals who provide health care and to include clinics, surgery centers and other entities that employ physicians and other such persons.

Existing law limits the amount of noneconomic damages that may be awarded in an action for injury or death against a provider of health care based upon professional negligence. (NRS 41A.035) Section 3 of this bill limits the total noneconomic damages that may be awarded in such an action to \$350,000, regardless of the number of plaintiffs, defendants or theories of liability.

Existing law establishes a rebuttable presumption in actions for negligence against providers of medical care that the personal injury or death was caused by negligence when certain injuries are sustained. (NRS 41A.100) Section 9 of this bill provides that the rebuttable presumption does not apply in an action in which: (1) a plaintiff submits an affidavit or designates an expert witness to establish that a provider of health care deviated from the accepted standard of care; or (2) expert medical testimony is used to establish a claim of professional negligence.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~is material to be omitted~~.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *The board of trustees of a school district or the governing body of a charter school that allows or establishes a school-based health center is not liable for any civil damages as a result of any act or omission by a person employed by or volunteering for or affiliated with a school-based health center or a sponsoring entity of the school-based health center.*

2. *As used in this section, "school-based health center" means a health center located on or in school grounds, property, buildings or any other school district facilities for the purpose of rendering care or services to any person.*

Sec. 1.3. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS ~~41A.004~~ *41A.007* to 41A.017, inclusive, have the meanings ascribed to them in those sections.

Sec. 1.5. NRS 41A.015 is hereby amended to read as follows:

41A.015 "Professional negligence" means ~~the negligent act or omission to act by~~ *the failure of a provider of health care, in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.* *to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.*

Sec. 2. NRS 41A.017 is hereby amended to read as follows:

41A.017 "Provider of health care" means a physician licensed ~~under~~ *pursuant to* chapter 630 or 633 of NRS, *physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians' professional corporation or group practice that employs any such person and its employees.*

Sec. 3. NRS 41A.035 is hereby amended to read as follows:

41A.035 In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000 ~~{}~~, *regardless of the number of plaintiffs, defendants or theories upon which liability may be based.*

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 41A.061 is hereby amended to read as follows:

41A.061 1. Upon the motion of any party or upon its own motion, unless good cause is shown for the delay, the court shall, after due notice to the parties, dismiss an action involving ~~{medical malpractice or dental malpractice}~~ *professional negligence* if the action is not brought to trial within ~~{~~

~~—(a) Three years after the date on which the action is filed, if the action is filed on or after October 1, 2002, but before October 1, 2005.~~

~~—(b) Two} 3 years after the date on which the action is filed. ~~{, if the action is filed on or after October 1, 2005.}~~~~

2. Dismissal of an action pursuant to subsection 1 is a bar to the filing of another action upon the same claim for relief against the same defendants.

3. Each district court shall adopt court rules to expedite the resolution of an action involving ~~{medical malpractice or dental malpractice}~~ *professional negligence*.

Sec. 6. NRS 41A.071 is hereby amended to read as follows:

41A.071 If an action for ~~{medical malpractice or dental malpractice}~~ *professional negligence* is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit ~~{, supporting} that:~~

1. *Supports* the allegations contained in the action ~~{,}~~;

2. *Is* submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged ~~{malpractice}~~ *professional negligence*;

3. *Identifies by name, or describes by conduct, each provider of health care who is alleged to be negligent; and*

4. *Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.*

Sec. 7. NRS 41A.081 is hereby amended to read as follows:

41A.081 1. In an action for ~~{medical malpractice or dental malpractice}~~ *professional negligence*, all the parties to the action,

the insurers of the respective parties and the attorneys of the respective parties shall attend and participate in a settlement conference before a district judge, other than the judge assigned to the action, to ascertain whether the action may be settled by the parties before trial.

2. The judge before whom the settlement conference is held:

(a) May, for good cause shown, waive the attendance of any party.

(b) Shall decide what information the parties may submit at the settlement conference.

3. The judge shall notify the parties of the time and place of the settlement conference.

4. The failure of any party, the party's insurer or the party's attorney to participate in good faith in the settlement conference is grounds for sanctions, including, without limitation, monetary sanctions, against the party or the party's attorney, or both. The judges of the district courts shall liberally construe the provisions of this subsection in favor of imposing sanctions in all appropriate situations. It is the intent of the Legislature that the judges of the district courts impose sanctions pursuant to this subsection in all appropriate situations to punish for and deter conduct which is not undertaken in good faith because such conduct overburdens limited judicial resources, hinders the timely resolution of meritorious claims and increases the costs of engaging in business and providing professional services to the public.

Sec. 8. NRS 41A.085 is hereby amended to read as follows:

41A.085 1. In an action for damages for ~~medical malpractice or dental malpractice~~ *professional negligence* in which the defendant is insured pursuant to a policy of insurance covering the liability of the defendant for a breach of the defendant's professional duty toward a patient:

(a) At any settlement conference, the judge may recommend that the action be settled for the limits of the policy of insurance.

(b) If the judge makes the recommendation described in paragraph (a), the defendant is entitled to obtain from independent counsel an opinion letter explaining the rights of, obligations of and potential consequences to the defendant with regard to the recommendation. The insurer shall pay the independent counsel to provide the opinion letter described in this paragraph, except that the insurer is not required to pay more than \$1,500 to the independent counsel to provide the opinion letter.

2. The section does not:

(a) Prohibit the plaintiff from making any offer of settlement.

(b) Require an insurer to provide or pay for independent counsel for a defendant except as expressly provided in this section.

Sec. 9. NRS 41A.100 is hereby amended to read as follows:

41A.100 1. Liability for personal injury or death is not imposed upon any provider of ~~{medical}~~ *health* care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the *provider of health care caused the* personal injury or death occurred in any one or more of the following circumstances:

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

(b) An explosion or fire originating in a substance used in treatment occurred in the course of treatment;

(c) An unintended burn caused by heat, radiation or chemicals was suffered in the course of medical care;

(d) An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto; or

(e) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient's body.

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

3. ~~{As used in this section, "provider of medical care" means a physician, dentist, registered nurse or a licensed hospital as the employer of any such person.}~~ *The rebuttable presumption pursuant to subsection 1 does not apply in an action in which a plaintiff submits an affidavit pursuant to NRS 41A.071, or otherwise designates an expert witness to establish that the specific provider of health care deviated from the accepted standard of care.*

4. *Nothing in this section shall be construed to preclude any party to the suit from designating and presenting expert testimony*

as to the legal or proximate cause of any alleged personal injury or death.

Sec. 10. NRS 3.029 is hereby amended to read as follows:

3.029 1. The Supreme Court shall provide by court rule for mandatory appropriate training concerning the complex issues of ~~[medical malpractice]~~ litigation *alleging professional negligence* for each district judge to whom actions involving ~~[medical malpractice]~~ *professional negligence* are assigned.

2. *As used in this section, "professional negligence" has the meaning ascribed to it in NRS 41A.015.*

Sec. 11. The amendatory provisions of this act apply to a cause of action that accrues on or after the effective date of this act.

Sec. 12. NRS 41A.004, 41A.009 and 41A.013 are hereby repealed.

Sec. 13. This act becomes effective upon passage and approval.

CARSON TAHOE HEALTHCARE FOUNDATION

Business Entity Information

Status:	Active	File Date:	2/10/1998
Type:	Domestic Non-Profit Corporation	Entity Number:	C2760-1998
Qualifying State:	NV	List of Officers Due:	2/29/2016
Managed By:		Expiration Date:	
NV Business ID:	NV19981141922	Business License Exp:	

Registered Agent Information

Name:	ALLISON MACKENZIE, LTD.	Address 1:	402 NORTH DIVISION STREET
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89703
Phone:		Fax:	
Mailing Address 1:	P O BOX 646	Mailing Address 2:	
Mailing City:	CARSON CITY	Mailing State:	NV
Mailing Zip Code:	89702		
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

Officers

☐ Include Inactive Officers

Director - SUSAN CROWELL

Address 1:	4 E SUNSET WAY	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89703	Country:	
Status:	Active	Email:	

Secretary - RALPH JOHNSON

Address 1:	2691 SKYLINE DRIVE	Address 2:	
City:	MINDEN	State:	NV
Zip Code:	89423	Country:	
Status:	Active	Email:	

Treasurer - NICOLA NEILON

Address 1:	503 N DIVISION STREET	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89703	Country:	
Status:	Active	Email:	

President - JOHN WEEK			
Address 1:	3840 CASHILL BLVD	Address 2:	
City:	RENO	State:	NV
Zip Code:	89509	Country:	
Status:	Active	Email:	

- Actions\Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C2760-1998-001	# of Pages:	1
File Date:	2/10/1998	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	C2760-1998-008	# of Pages:	1
File Date:	3/23/1998	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C2760-1998-005	# of Pages:	1
File Date:	2/8/1999	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C2760-1998-009	# of Pages:	1
File Date:	1/20/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C2760-1998-007	# of Pages:	2
File Date:	2/2/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C2760-1998-006	# of Pages:	2
File Date:	2/22/2002	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	C2760-1998-003	# of Pages:	17
File Date:	9/24/2002	Effective Date:	
CERTIFICATE OF AMENDMENT (NONPROFIT) FILED AMENDING ARTICLES FOURTH AND			
TENTH. (17)PGS. MLJ			
Action Type:	Annual List		
Document Number:	C2760-1998-004	# of Pages:	2
File Date:	2/19/2003	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	C2760-1998-002	# of Pages:	3
File Date:	2/11/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050010333-57	# of Pages:	3
File Date:	2/18/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060018894-18	# of Pages:	3
File Date:	1/12/2006	Effective Date:	
06-07			
Action Type:	Amendment		
Document Number:	20060264063-79	# of Pages:	11
File Date:	4/25/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070006385-21	# of Pages:	3
File Date:	1/2/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080091535-53	# of Pages:	2
File Date:	2/7/2008	Effective Date:	
2008-2009			
Action Type:	Annual List		
Document Number:	20090131668-36	# of Pages:	2
File Date:	2/10/2009	Effective Date:	
09-10			
Action Type:	Annual List		
Document Number:	20100140147-50	# of Pages:	3
File Date:	2/16/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110084340-23	# of Pages:	2
File Date:	2/1/2011	Effective Date:	
11/12			
Action Type:	Amendment		
Document Number:	20110900585-91	# of Pages:	2
File Date:	12/20/2011	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20120075150-53	# of Pages:	2
File Date:	1/31/2012	Effective Date:	
12-13			
Action Type:	Amendment		
Document Number:	20120097779-04	# of Pages:	3
File Date:	2/10/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130058643-72	# of Pages:	1
File Date:	1/28/2013	Effective Date:	
2013/2014			
Action Type:	Annual List		
Document Number:	20140149332-69	# of Pages:	2
File Date:	2/27/2014	Effective Date:	
14-15			
Action Type:	Charitable-Solicitation Registration Statement		
Document Number:	20150094796-13	# of Pages:	2
File Date:	2/27/2015	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150094798-35	# of Pages:	1
File Date:	2/27/2015	Effective Date:	
(No notes for this action)			

EXHIBIT “3”

EXHIBIT “3”

**CARSON MEDICAL GROUP, A
PROFESSIONAL CORPORATION, SAMUEL G.
KELLOGG, M.D., JAMES T. BREEDEN, M.D.,
GEORGE H. HESS, M.D., MICHAEL A. JONES,
M.D., ROGER MEYER, M.D.**

Business Entity Information			
Status:	Active	File Date:	1/7/1976
Type:	Domestic Professional Corporation	Entity Number:	C79-1976
Qualifying State:	NV	List of Officers Due:	1/31/2016
Managed By:		Expiration Date:	
NV Business ID:	NV19761000249	Business License Exp:	1/31/2016

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	JAMES T. BREEDEN, MD	Address 1:	1200 N. MOUNTAIN ST
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89703
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information			
No Par Share Count:	1,000.00	Capital Amount:	\$ 0
No stock records found for this company			

<input checked="" type="checkbox"/> Officers <input type="checkbox"/> Include Inactive Officers			
President - JAMES T BREEDEN			
Address 1:	1200 N MOUNTAIN	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89703	Country:	USA
Status:	Active	Email:	

Secretary - TIMOTHY G GENTNER

Address 1:	1200 N MOUNTAIN	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89703	Country:	USA
Status:	Active	Email:	

Director - TIMOTHY C MCFARREN

Address 1:	1200 N. MOUNTAIN STREET	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89703	Country:	USA
Status:	Active	Email:	

Treasurer - ROGER P MEYER

Address 1:	1200 N MOUNTAIN	Address 2:	
City:	CARSON CITY	State:	NV
Zip Code:	89703	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Incorporation		
Document Number:	C79-1976-001	# of Pages:	7
File Date:	1/7/1976	Effective Date:	

(No notes for this action)

Action Type:	Initial List		
Document Number:	20120264979-72	# of Pages:	3
File Date:	5/3/1976	Effective Date:	

(No notes for this action)

Action Type:	Annual List		
Document Number:	20120264982-26	# of Pages:	26
File Date:	6/16/1976	Effective Date:	

(No notes for this action)

Action Type:	Amendment		
Document Number:	C79-1976-003	# of Pages:	2
File Date:	5/17/1979	Effective Date:	

ROBERT L. BROWN, M.D., SAMUEL G. KELLOGG, B * 001

Action Type:	Amendment		
Document Number:	C79-1976-004	# of Pages:	2
File Date:	12/9/1981	Effective Date:	

SAMUEL G. KELLOGG, M.D., JAMES T. BREEDEN, M.D., GEORGE H. HESS, M.D

BWr 002

Action Type:	Annual List		
Document Number:	C79-1976-010	# of Pages:	1

File Date:	12/26/1997	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C79-1976-011	# of Pages:	1
File Date:	12/14/1998	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C79-1976-012	# of Pages:	1
File Date:	12/17/1999	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C79-1976-009	# of Pages:	1
File Date:	1/4/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C79-1976-006	# of Pages:	1
File Date:	12/8/2001	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	C79-1976-005	# of Pages:	1
File Date:	12/27/2001	Effective Date:	
SAMUEL G KELLOGG MD			
1200 MOUNTAIN ST CARSON CITY NV 89701 APN			
Action Type:	Annual List		
Document Number:	C79-1976-008	# of Pages:	1
File Date:	12/11/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C79-1976-002	# of Pages:	1
File Date:	12/10/2003	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	C79-1976-007	# of Pages:	1
File Date:	12/10/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20050234132-62	# of Pages:	1
File Date:	6/15/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		

Document Number:	20050553651-02	# of Pages:	1
File Date:	11/14/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060761661-55	# of Pages:	1
File Date:	11/29/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070780120-37	# of Pages:	1
File Date:	11/14/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080760392-17	# of Pages:	1
File Date:	11/18/2008	Effective Date:	
08-09			
Action Type:	Annual List		
Document Number:	20100009454-95	# of Pages:	1
File Date:	1/8/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110041568-68	# of Pages:	1
File Date:	1/19/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120018905-88	# of Pages:	1
File Date:	1/11/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130040312-06	# of Pages:	1
File Date:	1/22/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140008211-29	# of Pages:	1
File Date:	1/6/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140773870-09	# of Pages:	1
File Date:	11/22/2014	Effective Date:	
(No notes for this action)			

EXHIBIT “4”

EXHIBIT “4”

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

TAWNI McCROSKY, individually)
and as the natural parent of)
LYAM McCROSKY, a minor child,)
Plaintiff,)
vs.) Case No.: 13TRT000281B
CARSON TAHOE REGIONAL MEDICAL) Dept. No.: I
CENTER, a Nevada business)
entity; AMY SUE HAYES, M.D., an)
individual; and DOES I-X,)
inclusive,)
Defendants.)

RECORDED DEPOSITION OF PMK CARSON TAHOE REGIONAL MEDICAL CENTER

ANNA ANDERS

Taken on May 26, 2015

At 9:27 a.m.

At 6900 South McCarran Boulevard, Suite 2060

Reno, Nevada 89509

1 Q: All right. And so let's talk for a moment about
2 your relationship to the Mom's Clinic. Again, what is it, what
3 relationship do you have with the clinic?

4 A: I am the senior nurse responsible for the clinic.
5 So, I supervise the director or the manager responsible for the
6 operations.

7 Q: What is your understanding of the relationship
8 between the Mom's Clinic and Carson Tahoe Regional Medical
9 Center?

10 A: It's operated by Carson Tahoe.

11 Q: How is it staffed?

12 A: With at least two to three nurses and volunteers.

13 Q: And who were the two to three nurses work for
14 while they are functioning within the Mom's Clinic?

15 A: They work for Carson Tahoe.

16 Q: And how is it determined which two to three nurses
17 at any given time will be assigned to the Mom Clinic?

18 A: They're the same three nurses.

19 Q: Oh, I see. How long has it been that way?

20 A: I can't answer that.

21 Q: Has it been that way since you've had
22 responsibilities with the Mom's Clinic?

23 A: I believe so.

24 Q: Who are the three nurses?

25 A: There's Jackie and Karen and -- sorry, I can't

1 remember the name of the other nurse.

2 Q: Okay. Do you remember the last names of Jackie
3 and Karen?

4 A: No.

5 Q: All right. Well, in any event, Jackie and Karen
6 as well as the other nurse are employees of the hospital at all
7 times when they're assigned to the clinic?

8 A: Correct.

9 Q: Do those nurses have responsibilities at the
10 hospital itself?

11 A: I believe at least one of them also works in the
12 OB department in the hospital.

13 Q: And there's the -- what type of services does the
14 Mom's Clinic provide?

15 A: Prenatal care, education, planning, pregnancy
16 care.

17 Q: And what are the eligibility requirements for
18 treatment at the Mom's Clinic?

19 A: I'm not sure I understand the question.

20 Q: What members of the community are eligible or care
21 through the Mom's Clinic?

22 A: Basically, the underprivileged.

23 Q: The people that would be eligible for Medicaid is
24 my understanding is that yours?

25 A: Yes.

EXHIBIT “5”

EXHIBIT “5”

1
2
3 IN THE FIRST JUDICIAL DISTRICT COURT
4 OF THE STATE OF NEVADA
5 IN AND FOR CARSON CITY

6 -o0o-

7 TAWNI McCROSKY, individually and :
8 as the natural parent of Lyam :
9 McCrosky, a minor child, :
10 :
11 Plaintiff, :
12 :

13 vs.

14 : Case No.
15 : 13TRT000281B

16 CARSON TAHOE REGIONAL MEDICAL :
17 CENTER, a Nevada business entity; : Dept. No. I
18 AMY SUE HAYES, M.D., et al., :
19 :
20 Defendants. :
21 =====

22 DEPOSITION OF

23 AMY SUE HAYES, M.D.

24 Thursday, December 18, 2014

25 Carson City, Nevada

26 Reported by: DIANNE M. BRUMLEY, NV CCR #205
27 California CSR #6796

28 BONANZA REPORTING: 1111 FOREST, RENO, NEVADA
29 Telephone: (775) 786-7655

Page 12		Page 14	
03:29:36	<p>1 I have on my computer.</p> <p>2 Q And you'll have to forgive me, but I don't know what Up-to-Date is. Can you tell me?</p> <p>3 A It's a medical education site, so it's a reference site.</p> <p>4 Q Very well. How did Tawni McCrosky become a patient of yours?</p> <p>5 A I was on call the night she came in.</p> <p>6 Q She came in on the 24th of April?</p> <p>7 A Correct.</p> <p>8 Q She was delivered by C-section on the 25th of April, and we're talking about 2012?</p> <p>9 A Correct.</p> <p>10 Q Had you ever seen her before the 24th of April?</p> <p>11 A No.</p> <p>12 Q When you say you were on call, what type of call list were you on?</p> <p>13 A Our group rotates call in 24-hour increments, so my call was from the 24th to the 25th.</p> <p>14 Q What do you mean when you say your group rotates call?</p> <p>15 A The OB-GYN's in Carson Medical Group share call, so we have a rotating call schedule.</p> <p>16 Q How many OB-GYN's were in the group back in April of 2012?</p>	03:32:31	<p>1 Q And what is your understanding as to why the nurses called you for this particular patient?</p> <p>2 A Because I was responsible for taking care of her.</p> <p>3 Q Did you ever determine how -- strike that. Have you reviewed the obstetrical records, the prenatal obstetrical records of Miss McCrosky?</p> <p>4 A Yes.</p> <p>5 Q Who provided care to her during that period?</p> <p>6 A She was a Mom's clinic patient.</p> <p>7 Q And when did you first have the opportunity to review those records?</p> <p>8 A Probably when I was on the floor, sometime before I went into her room. I don't know exactly what time I looked at the records.</p> <p>9 Q But you had the opportunity to look at the records before you began caring for her?</p> <p>10 A Correct.</p> <p>11 Q And after you received the call from the nurses to tell you that she was there at the hospital?</p> <p>12 A Right.</p> <p>13 Q Since you mentioned the Mom's program, have you ever provided care to patients that were a part of the Mom's program?</p> <p>14 A All the time.</p>
03:30:14		03:32:51	
03:30:30		03:33:14	
03:30:56		03:33:24	
03:31:14		03:33:37	
03:31:37			
03:31:58			
03:32:15			
Page 13		Page 15	
03:30:56	<p>1 A There were six of us taking call.</p> <p>2 Q And do you remember their names?</p> <p>3 A Yes. Do you want me to -- Ruth Tomita, Sandra Koch, Tim McFarren, Steve Arcangeli, myself, and Shannon Hess.</p> <p>4 Q And were you the only one on call from the group on the night of April 24th, April 25th, 2012?</p> <p>5 A Yes.</p> <p>6 Q Was there any other type of call list that you understood the hospital to have at that time?</p> <p>7 A No.</p> <p>8 Q For example, an emergency call list?</p> <p>9 A We are the emergency call list.</p> <p>10 Q And so when did you first become aware of Tawni McCrosky and her presence at the hospital?</p> <p>11 A The nurses called me when she was admitted. I believe that was 11:30, I think.</p> <p>12 Q And what did they tell you?</p> <p>13 A That it was her first pregnancy, she was full term, she was in active labor.</p> <p>14 Q Did they tell you anything else that you can remember?</p> <p>15 A The strip looked fine and she -- I don't remember exactly when she was going to get an epidural, but that she wanted an epidural.</p>	03:33:48	<p>1 Q When you say all the time, do you mean at the Mom's clinic, or once they arrive at the hospital in labor?</p> <p>2 A In both settings.</p> <p>3 Q And when you give your time to the clinic, is that donated time, or are you compensated?</p> <p>4 A It's donated.</p> <p>5 Q And how frequently and over what period of time have you done that?</p> <p>6 A Every time I'm on call for the weekend, I will do the Monday clinic, so it averages out about five to six times a year.</p> <p>7 Q Does the Mom's program have clinic on any day other than Monday?</p> <p>8 A They did not then.</p> <p>9 Q Do they now?</p> <p>10 A They now -- the nurses have clinic on Tuesday.</p> <p>11 Q And when you say then and now, what's the cut-off date, approximately?</p> <p>12 A About a year ago, maybe a year-and-a-half ago they started adding a second day.</p> <p>13 Q So in Tawni's case, it would have been a Monday clinic only?</p> <p>14 A Correct.</p> <p>15 Q Based upon your review of those Mom's clinic</p>
03:31:14		03:33:59	
03:31:37		03:34:16	
03:31:58		03:34:27	
03:32:15		03:34:36	

EXHIBIT “6”

EXHIBIT “6”

IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

---oOo---

TAWNI McCROSKY, individually)
and as the natural parent of)
LYAM McCROSKY, a minor child,)

Plaintiffs,)

vs.)

Case No. 13 TRT00028 1B

CARSON TAHOE REGIONAL MEDICAL)
CENTER, a Nevada business)
entity; AMY SUE HAYES, M.D.,)
an individual; and DOES)
I-X, inclusive,)

Defendants.)

Dept. No. I

DEPOSITION OF TAWNI KRISTEN McCROSKY
02/17/2015
Reno, Nevada

REPORTED BY:

JOHN MOLEZZO
NV CCR #267, CA CSR #7791
MOLEZZO REPORTERS
(775) 322-3334

MOLEZZO REPORTERS (775) 322-3334

1 (Recess.)

2 EXAMINATION

3 BY MR. McBRIDE:

4 Q All right. Good morning, Ms. McCrosky. My name
5 is Robert McBride. I introduced myself before the
6 deposition. I represent Carson Tahoe in this case. I
7 just have a few questions to ask you. Mr. Brown did a
8 great job of asking most of the questions, however, I
9 have just a few follow-up questions.

10 A Okay.

11 Q Prior to today, do you recall if you reviewed
12 any documents in preparation for your deposition?

13 A No, I did not.

14 Q At any time, have you kept a diary of any of the
15 events that occurred with regard to Lyam's birth or any
16 aspects of his daily care since up until today?

17 A No, I haven't.

18 Q Okay. Do you know if your parents might've kept
19 a diary of any sort?

20 A No, they haven't.

21 Q Okay. Now, I think earlier you testified that
22 you began seeing a physician, an OB, after you found out
23 you were pregnant through the MOM's Clinic at Carson
24 Tahoe, is that correct?

25 A It's group of them, yes.

1 Q Okay. How did you hear about that group?

2 A The doctor who told me that I was pregnant, she
3 recommended that I go there. I didn't have insurance or
4 anything at the time.

5 Q And did she give you any sort of pamphlets or
6 materials to read before going to that group?

7 A I think she just gave me the name of it.

8 Q And did she tell you any one physician that she
9 wanted you to see or be seen by?

10 A No, because they rotated out. It wasn't just
11 one specific doctor there.

12 Q Okay. Do you have any understanding as to
13 whether or not that clinic or those physicians, if
14 they're affiliated with Carson Tahoe in some way?

15 A Yes, they are.

16 Q Okay. Do you know, did anyone ever tell you
17 they were employees of the hospital?

18 A No. I don't believe so.

19 Q Was it your understanding they were not
20 employees of the hospital?

21 A No.

22 Q You just don't know one way or another?

23 A Yeah.

24 Q Okay. What was the reason why you made the
25 decision to have Lyam at Carson Tahoe as opposed to any

EXHIBIT “7”

EXHIBIT “7”



Post Office Box 2188
Carson City, Nevada
89702-2188
775/445-8000

CONDITIONS OF ADMISSIONS

Page 1 of 2

#1 - CONSENT TO TREATMENT:

The undersigned consents to the performance of all routine medical care and treatment (tests, x-rays, therapy, laboratory services, medication administration, medical/surgical procedures and anesthesia) that may be performed during this hospitalization or on an outpatient basis, including emergency treatment provided under the general and special instruction of the patient's physician, surgeon and/or other health care provider.

#2 - NURSING CARE:

The hospital provides general duty nursing care. The undersigned consents and understands that his/her care may be observed for educational purposes and that there may be clinical students assigned to assist in the care.

#3 - CONSENT TO PHOTOGRAPH:

The undersigned agrees to the taking of pictures (including still images, videotaping, filming and other types of recording and reproducing images) of the patient's medical or surgical condition or treatment, for the purpose of diagnosis or treatment or for the hospital's operations, including peer review and education or training programs conducted by the hospital.

#4 - RELEASE OF INFORMATION:

In accordance with NRS 62.820, 629.021 and other applicable statutes, the undersigned agrees that the hospital may furnish information which is part of the patient's health care/medical record to any authorized individual upon request, for the purpose of (but not limited to) providing continuum of care or determining liability for payment. Special permission is needed to release information when the patient is being treated for conditions involving restricted diagnosis. Additionally, in accordance with HIPAA privacy regulations, information about you may be released to the public. This information is outlined in the hospital privacy notice. Your rights to deny this access are also outlined in the hospital privacy notice.

#5 - PERSONAL VALUABLES:

CTRHH assumes responsibility for valuables placed in the medical centers safe NOT to exceed five hundred dollars (\$500.00) and for prosthetic devices necessary for the safe delivery of patient care NOT to exceed fifteen hundred dollars (\$1500.00). CTRHH assumes no responsibility for cash, valuables or personal property retained by a patient during his/her stay.

#6 - LEGAL RELATIONSHIPS BETWEEN HOSPITAL AND PHYSICIANS:

All physicians and surgeons furnishing healthcare services to me/the patient, including the radiologist, pathologist, anesthesiologist, emergency room physicians, hospitalists etc., are independent contractors and are NOT employees or agents of the hospital. I am advised that I will receive separate bills for these services. *SK* (Initial)

I understand that I/the patient am under the care and supervision of my/the patient's attending physician, and it is the responsibility of the hospital staff to carry out his/her instructions. I understand that it is the responsibility of my/the patient's physician, surgeon or authorized healthcare provider to obtain my informed consent for surgical or complex medical treatment, special diagnostic or therapeutic procedures, investigational treatment or procedures, and/or other specialized services.

#7 - EMERGENCY MEDICAL ASSESSMENT:

CTRHH will not deny, delay or condition a patient's access to emergency medical care and any necessary stabilizing treatment based upon the patient's method of payment or insurance status.

#8 - PHYSICIAN RELATIONSHIP WITH PATIENT:

The relationship between the patient and the physician is at the direction of the patient. Should the patient choose to no longer accept the services of their treating physician, it is the responsibility of the patient and/or guardian to obtain the services of another physician.

15055 (9/23/10)



CONDITIONS OF ADMISSIONS

Page 2 of 2

9 FINANCIAL ASSISTANCE:

CTRH provides financial counseling for patients who request assistance with insurance, government healthcare eligibility, charity care, uninsured prompt payment and payment plan programs. If you require financial counseling, please request an appointment with a patient financial services counselor through the hospital admitting department.

The Office of the Governor, Consumer Health Assistance, Bureau for Hospital Patients is the State Health Advocacy Agency charged with ensuring that Nevada's hospitals inform all uninsured inpatients about the 30 percent hospital bill discount mandated under NRS 439B.260. They can also help to resolve disputes between patients and hospitals. Contact number is 1-888-333-1597 or e-mail <http://www.govcha.state.nv.us>.

#10 AUTHORIZATION TO VERIFY INFORMATION:

I(we) hereby authorize verification of employment history, bank accounts, credit history and any other information deemed necessary in conjunction with accounts owed the hospital.

#11 ASSIGNMENT OF INSURANCE BENEFITS:

In the event that the undersigned is entitled to hospital benefits of any type arising out of any policy of insurance insuring patient or any other party liable to patients, said benefits are hereby assigned to hospital for application on patient's bill. Patient / Guarantor is responsible to provide information regarding health plan coverage at time of service. Payment denial from insurance due to untimely notification will result in patient/guarantor responsibility for payment of service.

#12 MANAGED CARE HEALTH PLANS:

- If the hospital is contracted with the patient's health plan, the patient or guarantor is responsible to pay directly to the hospital any required co-payment and/or deductible as defined within the patient's health plan policy, as well as any charges that are NOT covered by the patient's health plan policy terms. Nothing in this provision shall preclude the hospital from seeking reimbursement from other payers, including, but not limited to, health plans, preferred provider organizations, insurers, third parties or government sponsored programs, for the balance of the hospital's total billed charges.
- If this hospital does not have a contract with the patient's health plan, the undersigned is legally obligated to pay the hospital's total billed charges for any and all care and services rendered to the patient.

#13 INDEMNITY AND OTHER INSURANCE:

The undersigned irrevocably authorizes direct payment to this hospital and to the doctors involved in the care of the patient. If the patient's insurance does not pay the hospital's total billed charges, the patient or guarantor assumes responsibility for the unpaid balance. If the insurance fails to pay within a reasonable time, per NRS statute, the patient/guarantor will be required to pay the bill in full.

#14 DESTRUCTION OF HEALTH CARE RECORDS:

Pursuant to NRS 629.051, health care records for adults ages 18 years and older at time of service, may be destroyed after five (5) years. Patients less than 18 years of age shall have their records retained for five (5) years past their 18th birthday.

#15 FINANCIAL AGREEMENT:

The undersigned agrees, whether he/she signs as agent or patient, that in consideration of the services to be rendered to the patient, he/she hereby individually obligates himself/herself to pay the amount of the hospital charges in accordance with the regular rates and terms of the hospital. Should the account be referred to an attorney or collection agency for collection, the undersigned shall pay actual attorney's fees and collections expenses. All accounts may bear interest at the legal rate. If the undersigned is unable to pay the patient portion of the bill within 30 days of initial billing, CTRH may finance the balance through a financial institution. Services provided by independent contractors (as defined in #6 page 1) will be billed separately by that provider of service.

Tawni McCrosky
Patient

February 6, 2012
Date

[Signature]
Patient's Agent or Representative

2-6-12
Date

[Signature]
Witness

2-6-12
Date

A copy of this document will be provided to the patient or patient's agent upon request.

16009 (8/29/10)



McCrosky Tawni

000341

EXHIBIT “8”

EXHIBIT “8”

CONDITIONS OF ADMISSIONS

Page 1 of 2

#1 - CONSENT TO TREATMENT:

The undersigned consents to the performance of all routine medical care and treatment (tests, x-rays, therapy, laboratory services, medication administration, medical/surgical procedures and anesthesia) that may be performed during this hospitalization or on an outpatient basis, including emergency treatment provided under the general and special instruction of the patient's physician, surgeon and/or other health care provider.

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The hospital provides general duty nursing care. The undersigned consents and understands that his/her care may be observed for educational purposes and that there may be clinical students assigned to assist in the care.

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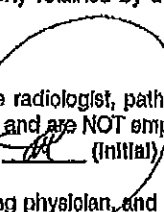
#4 - RELEASE OF INFORMATION:

In accordance with NRS 52.320, 629.021 and other applicable statutes, the undersigned agrees that the hospital may furnish information which is part of the patient's health care/medical record to any authorized individual upon request, for the purpose of (but not limited to) providing continuum of care or determining liability for payment. Special permission is needed to release information when the patient is being treated for conditions involving restricted diagnosis. Additionally, in accordance with HIPAA privacy regulations, information about you may be released to the public. This information is outlined in the hospital privacy notice. Your rights to deny this access are also outlined in the hospital privacy notice.

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I understand that I/the patient am under the care and supervision of my/the patient's attending physician, and it is the responsibility of the hospital staff to carry out his/her instructions. I understand that it is the responsibility of my/the patient's physician, surgeon or authorized healthcare provider to obtain my informed consent for surgical or complex medical treatment, special diagnostic or therapeutic procedures, investigational treatment or procedures, and/or other specialized services.

#7 - EMERGENCY MEDICAL ASSESSMENT:

CTRH will not deny, delay or condition a patient's access to emergency medical care and any necessary stabilizing treatment based upon the patient's method of payment or insurance status.

#8 - PHYSICIAN RELATIONSHIP WITH PATIENT:

The relationship between the patient and the physician is at the direction of the patient. Should the patient choose to no longer accept the services of their treating physician, it is the responsibility of the patient and/or guardian to obtain the services of another physician.

MACROSKY T J VNI

15065 (9/23/10)

BARULICH, MATTHEW J

NTRMC Mem 000347





CONFIDENTIAL INFORMATION *COPY* This document is for ACCIT# 1134000540. Printed by Kathryn J Gelger
Post Office Box 2188
Carson City, Nevada
89702-2188
775/445-8000

CONDITIONS OF ADMISSIONS

Page 2 of 2

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#12 MANAGED CARE HEALTH PLANS:

- If the hospital is contracted with the patient's health plan, the patient or guarantor is responsible to pay directly to the hospital any required co-payment and/or deductible as defined within the patient's health plan policy, as well as any charges that are NOT covered by the patient's health plan policy terms. Nothing in this provision shall preclude the hospital from seeking reimbursement from other payers, including, but not limited to, health plans, preferred provider organizations, insurers, third parties or government sponsored programs, for the balance of the hospital's total billed charges.
- If this hospital does not have a contract with the patient's health plan, the undersigned is legally obligated to pay the hospital's total billed charges for any and all care and services rendered to the patient.

#13 INDEMNITY AND OTHER INSURANCE:

The undersigned irrevocably authorizes direct payment to this hospital and to the doctors involved in the care of the patient. If the patient's insurance does not pay the hospital's total billed charges, the patient or guarantor assumes responsibility for the unpaid balance. If the insurance fails to pay within a reasonable time, per NRS statute, the patient/guarantor will be required to pay the bill in full.

#14 DESTRUCTION OF HEALTH CARE RECORDS:

Pursuant to NRS 629.051, health care records for adults ages 18 years and older at time of service, may be destroyed after five (5) years. Patients less than 18 years of age shall have their records retained for five (5) years past their 18th birthday.

#15 FINANCIAL AGREEMENT:

The undersigned agrees, whether he/she signs as agent or patient, that in consideration of the services to be rendered to the patient, he/she hereby individually obligates himself/herself to pay the amount of the hospital charges in accordance with the regular rates and terms of the hospital. Should the account be referred to an attorney or collection agency for collection, the undersigned shall pay actual attorney's fees and collections expenses. All accounts may bear interest at the legal rate. If the undersigned is unable to pay the patient portion of the bill within 30 days of initial billing, OTRH may finance the balance through a financial institution. Services provided by independent contractors (as defined in #6 page 1) will be billed separately by that provider of service.

Patient

Date

DEC 06 2011

Patient's Agent or Representative

Date

DEC 06 2011

Witness

Date

A copy of this document will be provided to the patient or patient's agent

MCCROSKY-TAWN

15055 (9/29/10)

BARULICH, MATTHEW J No

EXHIBIT “9”

EXHIBIT “9”

CONDITIONS OF ADMISSIONS

Page 1 of 2

#1 - CONSENT TO TREATMENT:

The undersigned consents to the performance of all routine medical care and treatment (tests, x-rays, therapy, laboratory services, medication administration, medical/surgical procedures and anesthesia) that may be performed during this hospitalization or on an outpatient basis, including emergency treatment provided under the general and special instruction of the patient's physician, surgeon and/or other health care provider.

#2 - NURSING CARE:

The hospital provides general duty nursing care. The undersigned consents and understands that his/her care may be observed for educational purposes and that there may be clinical students assigned to assist in the care.

#3 - CONSENT TO PHOTOGRAPH:

The undersigned agrees to the taking of pictures (including still images, videotaping, filming and other types of recording and reproducing images) of the patient's medical or surgical condition or treatment, for the purpose of diagnosis or treatment or for the hospital's operations, including peer review and education or training programs conducted by the hospital.

#4 - RELEASE OF INFORMATION:

In accordance with NRS 629.320, 629.021 and other applicable statutes, the undersigned agrees that the hospital may furnish information which is part of the patient's health care/medical record to any authorized individual upon request, for the purpose of (but not limited to) providing continuum of care or determining liability for payment. Special permission is needed to release information when the patient is being treated for conditions involving restricted diagnosis. Additionally, in accordance with HIPAA privacy regulations, information about you may be released to the public. This information is outlined in the hospital privacy notice. Your rights to deny this access are also outlined in the hospital privacy notice.

#5 - PERSONAL VALUABLES:

CTRH assumes responsibility for valuables placed in the medical centers safe NOT to exceed five hundred dollars (\$500.00) and for prosthetic devices necessary for the safe delivery of patient care NOT to exceed fifteen hundred dollars (\$1500.00). CTRH assumes no responsibility for cash, valuables or personal property retained by a patient during his/her stay.

#6 - LEGAL RELATIONSHIPS BETWEEN HOSPITAL AND PHYSICIANS:

All physicians and surgeons furnishing healthcare services to me/the patient, including the radiologist, pathologist, anesthesiologist, emergency room physicians, hospitalists etc., are independent contractors and are NOT employees or agents of the hospital. I am advised that I will receive separate bills for these services. SA (initial)

I understand that I/the patient am under the care and supervision of my/the patient's attending physician, and it is the responsibility of the hospital staff to carry out his/her instructions. I understand that it is the responsibility of my/the patient's physician, surgeon or authorized healthcare provider to obtain my informed consent for surgical or complex medical treatment, special diagnostic or therapeutic procedures, investigational treatment or procedures, and/or other specialized services.

#7 - EMERGENCY MEDICAL ASSESSMENT:

CTRH will not deny, delay or condition a patient's access to emergency medical care and any necessary stabilizing treatment based upon the patient's method of payment or insurance status.

#8 - PHYSICIAN RELATIONSHIP WITH PATIENT:

The relationship between the patient and the physician is at the direction of the patient. Should the patient choose to no longer accept the services of their treating physician, it is the responsibility of the patient and/or guardian to obtain the services of another physician.

16055 (0/28/10)



CTRMC Mem 000356

CONDITIONS OF ADMISSIONS

Page 2 of 2

#9 FINANCIAL ASSISTANCE:

CTRH provides financial counseling for patients who request assistance with insurance, government healthcare eligibility, charity care, uninsured prompt payment and payment plan programs. If you require financial counseling, please request an appointment with a patient financial services counselor through the hospital admitting department.

The Office of the Governor, Consumer Health Assistance, Bureau for Hospital Patients is the State Health Advocacy Agency charged with ensuring that Nevada's hospitals inform all uninsured inpatients about the 30 percent hospital bill discount mandated under NRS 439B.260. They can also help to resolve disputes between patients and hospitals. Contact number is 1-888-833-1597 or e-mail <http://www.govcha.state.nv.us>.

#10 AUTHORIZATION TO VERIFY INFORMATION:

I/we hereby authorize verification of employment history, bank accounts, credit history and any other information deemed necessary in conjunction with accounts owed the hospital.

#11 ASSIGNMENT OF INSURANCE BENEFITS:

In the event that the undersigned is entitled to hospital benefits of any type arising out of any policy of insurance insuring patient or any other party liable to patients, said benefits are hereby assigned to hospital for application on patient's bill. Patient / Guarantor is responsible to provide information regarding health plan coverage at time of service. Payment denial from insurance due to untimely notification will result in patient/guarantor responsibility for payment of service.

#12 MANAGED CARE HEALTH PLANS:

- If the hospital is contracted with the patient's health plan, the patient or guarantor is responsible to pay directly to the hospital any required co-payment and/or deductible as defined within the patient's health plan policy, as well as any charges that are NOT covered by the patient's health plan policy terms. Nothing in this provision shall preclude the hospital from seeking reimbursement from other payers, including, but not limited to, health plans, preferred provider organizations, insurers, third parties or government sponsored programs, for the balance of the hospital's total billed charges.
- If this hospital does not have a contract with the patient's health plan, the undersigned is legally obligated to pay the hospital's total billed charges for any and all care and services rendered to the patient.

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Patient

Date

Patient's Agent or Representative

Date

Witness

Date

A copy of this document will be provided to the patient or patient's agent upon request.

13055 (05/09/10)



CTRMCMom 000355

EXHIBIT “10”

EXHIBIT “10”

CONDITIONS OF ADMISSIONS

Page 1 of 2

#1 - CONSENT TO TREATMENT:

The undersigned consents to the performance of all routine medical care and treatment (tests, x-rays, therapy, laboratory services, medication administration, medical/surgical procedures and anesthesia) that may be performed during this hospitalization or on an outpatient basis, including emergency treatment provided under the general and special instruction of the patient's physician, surgeon and/or other health care provider.

#2 - NURSING CARE:

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The relationship between the patient and the physician is at the direction of the patient. Should the patient choose to no longer accept the services of their treating physician, it is the responsibility of the patient and/or guardian to obtain the services of another physician.

16058 (9/28/10)



CTRMC Mom 000366

CONDITIONS OF ADMISSIONS

Page 2 of 2

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Patient

Date

OCT 11 2011

Patient's Agent or Representative

Date

OCT 11 2011

Witness

Date

A copy of this document will be provided to the patient or patient's agent upon request

10055 (02/2010)

MCCROSKY.TAWN1



CTRMC Mon 000360

EXHIBIT “11”

EXHIBIT “11”

CTRM Mom 000384



Post Office Box 2168
Carson City, Nevada
89702-2168
775/445-8000

CONDITIONS OF ADMISSIONS

Page 1 of 2

#1 - CONSENT TO TREATMENT:

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15053 (9/29/10)



CONDITIONS OF ADMISSIONS

Page 2 of 2

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Tawni McCrasky
Patient

September 26, 2011
Date

[Signature]
Patient's Agent or Representative

9-26-11
Date

[Signature]
Witness

[Signature]
Date

A copy of this document will be provided to the patient or patient's agent upon request.

16055 (2/24/10)

McCrasky, Tawni



CTRMC Mom 000383

EXHIBIT “12”

EXHIBIT “12”



CARSON TAHOE Regional Healthcare

**Carson Tahoe
Regional Medical
Center**

1600 Medical Parkway
Carson City, NV 89703
(775) 445-8000

**Carson Tahoe
Cancer Center**

1535 Medical Parkway
Carson City, NV 89703
(775) 445-7500

**Specialty
Medical Center**

775 Fleischmann Way
Carson City, NV 89703
(775) 445-7427

**Carson Tahoe
Minden Medical
Center**

925 Ironwood Drive
Minden, NV 89423
(775) 445-7800

**Dayton
Professional
Building**

901 Medical Center Dr.
Dayton, NV 89403
(775) 445-7605

**Behavioral
Health Services**

West William at
Minnesota in Carson
(775) 445-7350

**Carson Tahoe
Physicians Clinic**

1600 Medical Parkway
Carson City, NV 89703
(775) 445-8690

**Partnerships:
Sierra Surgery
Hospital****MedDirect
Urgent Care****Carson Tahoe
Radiation
Oncology
Associates, LLP**

May 1, 2011

Timothy C. McFarren, M.D.

Steven Aroangeli, M.D.

Samuel R. Chacon, M.D.

Amy S. Hayes, M.D.

Sandra Koch, M.D.

Ruth S. Tomita, M.D.

Shannon L. Hess, M.D.

-all-

Carson Medical Group
1470 Medical Parkway
Carson City, NV 89703

Re: Letter of Agreement to Provide OB/GYN On-Call Coverage

Dear Dr. McFarren, et. al.:

In furtherance of Carson Tahoe Regional Healthcare's charitable purposes and its provision of quality medical care to the citizens of the greater Carson City community, please allow this letter to serve as your agreement ("Agreement") to provide OB/GYN on-call coverage services as set forth below.

1. On-Call Coverage. You agree to provide professional OB/GYN on-call coverage services at Carson Tahoe Regional Medical Center ("CTRMC") as an independent contractor pursuant to a schedule determined by OB Department On-Call Scheduler. You will provide the on-call coverage services hereunder in compliance with all applicable rules and regulations, all requirements of The Joint Commission, CTRMC's Medical Staff Bylaws, Rules and Regulations, and all other CTRMC's rules, policies and procedures.
2. Compensation/Billing. In consideration for the on-call coverage provided by you under this Agreement, CTRMC shall pay you or your Group as directed per 24-hour period (from 8:00 a.m. to 8:00 a.m.). Such compensation shall be payable on a monthly basis no later than the 15th calendar day of the month following CTRMC's receipt of time records and such other information as reasonably requested by CTRMC to document your time spent providing on-call services during the prior month. You will separately and directly bill and collect your professional fees from patients and/or all third-party payors. The parties agree that this compensation arrangement is commercially reasonable and consistent with the fair market value of the services provided hereunder, and does not take into account the volume or value of referrals or other business generated between the parties.

CTRMC P&P 363

Dr. McFarren, M.D.

May 1, 2011

Page 2

3. Termination. This Agreement may be terminated by either party at any time and without cause upon the provision of at least 30 days written notice to the other party; provided, however, if this Agreement is terminated within the initial one (1) year of the Agreement, the parties will not re-enter a substantially similar arrangement for different compensation within such initial one (1) year. Further, this Agreement may be terminated immediately by CTRMC in the event of your disqualification as a provider under a Federal or state government health care program such as Medicare or Medicaid, or in the event you are no longer a member of CTRMC's Medical Staff.
4. Compliance with Laws/Governing Law. The parties shall comply with all applicable state and federal laws and regulations. This Agreement shall be governed by the laws of the State of Nevada.
5. Access to Books and Records. During the term of this Agreement and for a period of at least four (4) years following its termination, you shall make this Agreement and your books, documents and records available to the Secretary of Health and Human Services, to the Comptroller General, and to their duly authorized representatives to the extent required by Section 952 of the Omnibus Budget Reconciliation Act of 1908 or any successor legislation thereto. You agree to notify Hospital in writing of any request for access to such documents and shall provide Hospital with copies of such request and all materials described in such request within ten (10) days of receipt.

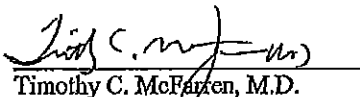
We appreciate your willingness to provide the services as described herein. If you are in agreement with these terms and conditions, please sign where indicated below, returning the original of this Agreement to me while retaining a copy for your file. Should you have any questions, please do not hesitate to contact me.

CARSON TAHOE REGIONAL HEALTHCARE



Ed Epperson
President and Chief Executive Officer

The undersigned has read the above terms and conditions and hereby agrees to provide OB/GYN on-call coverage services as set forth in this letter in accordance therewith.



Timothy C. McFarren, M.D.

Chairman OB/GYN Department Carson Medical Group

5/9/2011

Date

EXHIBIT “13”

EXHIBIT “13”

1 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR CARSON CITY

3
4
5 TAWNI McCROSKY, individually)
6 and as the natural parent of)
7 LYAM McCROSKY, a minor child,)
8 Plaintiff,) Case No.: 13TRT000281B
9 vs.) Dept. No.: I
10 CARSON TAHOE REGIONAL MEDICAL)
11 CENTER, a Nevada business)
12 entity; AMY SUE HAYES, M.D., an)
13 individual; and DOES I-X,)
14 inclusive,)
15 Defendants.)

16 _____)

17

18 RECORDED DEPOSITION RUTH TOMITA M.D.

19 Taken on April 29, 2015

20 At 3:10 p.m.

21 Supreme Court Library, Capitol Complex

22 201 South Carson Street, Room 103

23 Carson, Nevada 89710

24

25

1 memories are refreshed and perhaps yours has been. Do you now
2 have any recollection as to who asked you to help Dr. Hayes in
3 the C-section?

4 A: No.

5 Q: And you don't know if it was a nurse or if it was
6 a physician?

7 A: No. I mean like I said it was probably I was the
8 closest person there.

9 Q: Okay. Could we agree that it could have been
10 either a nurse or a physician?

11 A: It had to be someone.

12 Q: Obviously--

13 A: I agree.

14 Q: All right. Do you remember having a conversation
15 with Dr. Arcangeli to tell him, "I can't be downstairs?"

16 A: No.

17 Q: Did you ever have a conversation with Dr.
18 Arcangeli that you can recall about the C-section that you were
19 involved in?

20 A: No.

21 Q: I understand that the Carson Medical Group was by
22 agreement to provide on-call obstetrical services to the
23 hospital during that April 2012 timeframe, is that your
24 understanding?

25 A: Yes.

EXHIBIT “14”

EXHIBIT “14”

1 CASE NO.: 13 TRT00028 1B

2 DEPT NO.: 1

3
4 IN THE FIRST JUDICIAL DISTRICT COURT OF THE
5 STATE OF NEVADA IN AND FOR CARSON CITY

6 -000-

7 TAWNI McCROSKY, INDIVIDUALLY,
8 AND AS THE NATURAL PARENT OF
9 LYAM McCROSKY, A MINOR CHILD,

10 Plaintiffs,

11 vs.

12 CARSON TAHOE REGIONAL MEDICAL
13 CENTER, A NEVADA BUSINESS ENTITY;
14 AMY SUE HAYES, M.D., AN INDIVIDUAL; AND
15 DOES I-X, INCLUSIVE,

16 Defendants.

17 DEFENDANT AMY SUE HAYES, M.D.'S RESPONSES TO
18 PLAINTIFF'S FIRST SET OF INTERROGATORIES

19 Defendant, AMY SUE HAYES, M.D., by and through her undersigned
20 counsel, hereby responds to Plaintiff's First Set of Interrogatories as follows:

21 INTERROGATORY NO. 1:

22 Identify all persons who assisted in the preparation of the answers to these
23 interrogatories, and their relationship to Defendant.

24 RESPONSE TO INTERROGATORY NO. 1:

25 Objection, seeks information protected by attorney client and attorney work
26 product privileges.

27 INTERROGATORY NO. 2:

28 Identify any and all witnesses who you understand or believe to have
knowledge of or who you understand to have witnessed any event or condition
that is the subject of this action, including the allegations in Plaintiff's Complaint

1/28/15

1 and Affirmative Defenses in Defendant's most recently filed answer, and for
2 each such witness identify the knowledge that you understand them to have
3 and identify the allegations in the Plaintiff's Complaint or Affirmative Defenses in
4 Defendant's most recently filed answer to which their knowledge is applicable.

5 RESPONSE TO INTERROGATORY NO. 2:

6 Please see all prior NRCP 16.1 designations and other discovery, written and
7 depositions.

8 INTERROGATORY NO. 3:

9 Identify each non-retained expert witness, including any parties, whom
10 Defendant expects to call at trial and who may provide expert witness opinion
11 testimony.

12 RESPONSE TO INTERROGATORY NO. 3:

13 Unknown at this time.

14 INTERROGATORY NO. 4:

15 Do you contend that anyone who provided care to Lyam McCrosky on April 25,
16 2012, failed to use reasonable care, skill or knowledge ordinarily used under
17 similar circumstances, i.e., committed malpractice. If so, identify each such
18 individual and the error or omission which you believe was committed by each.

19 RESPONSES INTERROGATORY NO. 4:

20 Objection, this Interrogatory is vague, ambiguous, overbroad and compound,
21 calls for a legal opinion, calls for expert testimony, seeks information protected
22 by peer review statutory protections and seeks information protected by
23 attorney client and attorney work product privileges.

24 INTERROGATORY NO. 5:

25 Do you contend that anyone who provided care to Tawni McCrosky on April 25,
26 2012, failed to use reasonable care, skill or knowledge ordinarily used under
27 similar circumstances, i.e., committed malpractice. If so, identify each such
28 individual and the error or omission which you believe was committed by each.

1 RESPONSE TO INTERROGATORY NO. 5:

2 Objection, this interrogatory is vague, ambiguous, overbroad and compound,
3 calls for a legal opinion, calls for expert testimony, seeks information protected
4 by peer review statutory protections and seeks information protected by
5 attorney client and attorney work product privileges.

6 INTERROGATORY NO. 6:

7 Do you contend that Lyam McCrosky was inappropriately resuscitated following
8 his birth? If "yes", please identify each individual who you believe failed to
9 appropriately resuscitate Lyam McCrosky.

10 RESPONSE TO INTERROGATORY NO. 6:

11 Objection, this interrogatory is vague, ambiguous, overbroad and compound,
12 calls for a legal opinion, calls for expert testimony, seeks information protected
13 by peer review statutory protections and seeks information protected by
14 attorney client and attorney work product privileges.

15 INTERROGATORY NO. 7:

16 Please describe how hospital on call status for obstetrical services was
17 determined within your group in April, 2012.

18 RESPONSE TO INTERROGATORY NO. 7:

19 By scheduling rotations which are made up on a quarterly basis with rotating 24
20 hour blocks.

21 INTERROGATORY NO. 8:

22 Did you or your medical group have a contract with CTRMC or anyone acting or
23 purporting to act on its behalf to provide obstetrical services in April, 2012; and,
24 if so, has that contract been subsequently revised in any way?

25 RESPONSE TO INTERROGATORY NO. 8:

26 It is believed that there was a contract relating to call services.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document DOES NOT contain the Social Security Number of any person.

DATED this 28th day of January, 2015.

LEMONS, GRUNDY & EISENBERG
Attorneys for Defendant
Amy Sue Hayes, M.D.

BY: 
EDWARD J. LEMONS, ESQ.
Nevada Bar No. 699

VERIFICATION

STATE OF NEVADA)
 :ss.
CARSON CITY)

I, AMY SUE HAYES, M.D., do hereby swear under penalty of perjury that I
have read the foregoing answers to Interrogatories and know the contents
thereof; and the same is true to the best of my knowledge, information and
belief.

AMY SUE HAYES, M.D.

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 2015.

Notary Public

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CERTIFICATE OF SERVICE

I am a citizen of the United States. My business address is 6005 Plumas Street, Suite 300, Reno, NV 89519, and I am employed by LEMONS, GRUNDY & EISENBERG in the City of Reno and County of Washoe where this service occurs. I am over the age of 18 years and not a party to the within action.

On January 28, 2015, following the ordinary business practice, I caused to be served to the addressee(s) listed below, a true copy of the foregoing document(s) and described as *Defendant's Responses to Plaintiff's First Set of Interrogatories*.

☒ BY MAIL: In an envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Reno, Nevada and addressed to:

Peter D. Durney
DURNEY & BRENNAN, LTD.
6900 S. McCarran Blvd.
Suite 2060
Reno, Nevada 89509

John C. Kelly, Esq.
CARROLL, KELLY, TROTTER, FRANZEN
MCKENNA & PEABODY
111 West Ocean Blvd., 14th Floor
P. O. Box 22636
Long Beach, CA 90801

☐ BY PERSONAL SERVICE: In an envelope to be hand delivered this date;

☐ BY OVERNIGHT DELIVERY: In an envelope to be delivered to an overnight delivery carrier with delivery fees provided for;

☐ BY FACSIMILE: by transmitting by facsimile to the respective fax telephone phone number(s).

☐ BY USING THE COURT'S EFS which electronically served the following individual(s):

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

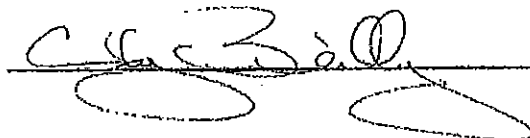


EXHIBIT “15”

EXHIBIT “15”

1 CASE NO.: 13 TRT00028 1B

2 DEPT NO.: I

3
4 IN THE FIRST JUDICIAL DISTRICT COURT OF THE
5 STATE OF NEVADA IN AND FOR CARSON CITY

6 -000-

7 TAWNI McCROSKY, INDIVIDUALLY,
8 AND AS THE NATURAL PARENT OF
9 LYAM McCROSKY, A MINOR CHILD,

10 Plaintiffs,

11 vs.

12 CARSON TAHOE REGIONAL MEDICAL
13 CENTER, A NEVADA BUSINESS ENTITY;
14 AMY SUE HAYES, M.D., AN INDIVIDUAL; AND
15 DOES I-X, INCLUSIVE,

16 Defendants.

17 DEFENDANT AMY SUE HAYES, M.D.'s RESPONSES TO
18 DEFENDANT CARSON TAHOE REGIONAL MEDICAL CENTER'S
19 FIRST SET OF REQUESTS FOR ADMISSIONS

20 Defendant, AMY SUE HAYES, M.D., by and through her undersigned
21 counsel, hereby responds to Defendant Carson Tahoe Regional Medical
22 Center's First Set of Request for Admissions as follows:

23 REQUEST NO. 1:

24 Admit that you have never been an employee of Carson Tahoe Regional
25 Medical Center.

26 RESPONSE TO REQUEST NO. 1:

27 Admit.

28 ~ * ~

~ * ~

1 REQUEST NO. 2:

2 Admit that you were not an employee of Carson Tahoe Regional Medical
3 Center on April 24, 2012.

4 RESPONSE TO REQUEST NO. 2:

5 Admit.

6 REQUEST NO. 3:

7 Admit that you were not an employee of Carson Tahoe Regional Medical
8 Center on April 25, 2012.

9 RESPONSE TO REQUEST NO. 3:

10 Admit.

11 REQUEST NO. 4:

12 Admit that you have never told Tawni McCrosky that you were an employee of
13 Carson Tahoe Regional Medical Center.

14 RESPONSE TO REQUEST NO. 4:

15 Admit.

16 REQUEST NO. 5:

17 Admit that you have always been an Independent contractor or Carson Tahoe
18 Regional Medical Center.

19 RESPONSE TO REQUEST NO. 5:

20 Admit that Dr. Hayes was and is an independent physician with medical staff
21 privileges at CTRMC.

22 REQUEST NO. 6:

23 Admit that you were an Independent contractor of Carson Tahoe Regional
24 Medical Center on April 24, 2012.

25 RESPONSE TO REQUEST NO. 6:

26 Admit that Dr. Hayes was an independent physician with medical staff privileges
27 at CTRMC.

28 ~ * ~

1 **REQUEST NO. 7:**

2 Admit that you were an independent contractor of Carson Tahoe Regional
3 Medical Center on April 25, 2012.

4 **RESPONSE TO REQUEST NO. 7:**

5 Admit that Dr. Hayes was an independent physician with medical staff privileges
6 at CTRMC.

7 **REQUEST NO. 8:**

8 Admit that you billed Medicaid separately for Tawni McCrosky's care and
9 treatment.

10 **RESPONSE TO REQUEST NO. 8:**

11 Admit.

12 **REQUEST NO. 9:**

13 Admit that Carson Tahoe Regional Medical Center did not select you as the
14 physician to care for Tawni McCrosky on April 24, 2012.

15 **RESPONSE TO REQUEST NO. 9:**

16 Unable to admit or deny; see Response to Request No. 11 below.

17 **REQUEST NO. 10:**

18 Admit that Carson Tahoe Regional Medical Center did not select you as the
19 physician to care for Tawni McCrosky on April 25, 2012.

20 **RESPONSE TO REQUEST NO. 10:**

21 Unable to admit or deny; see Response to Request No. 11 below.

22 **REQUEST NO. 11:**

23 Admit that Carson Tahoe Medical Group "scheduled rotations which were made
24 up on a quarterly basis with rotating 24 hours blocks" for hospital on call status
25 for obstetrical services in April of 2012. See, Defendant Amy Sue Hayes,
26 M.D.'s responses to Plaintiff's First Set of Interrogatories, pg. 3:16-20.

27 **RESPONSE TO REQUEST NO. 11:**

28 Admit.

1 REQUEST NO. 12:

2 Admit that Carson Tahoe Regional Medical Center did not issue your
3 paychecks.

4 RESPONSE TO REQUEST NO. 12:

5 Admit.

6 REQUEST NO. 13:

7 Admit that Carson Tahoe Regional Medical Center did not direct you in how to
8 care for your patients.

9 RESPONSE TO REQUEST NO. 13:

10 Admit.

11 AFFIRMATION

12 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
13 preceding document DOES NOT contain the Social Security Number of any
14 person.

15 DATED this 22nd day of June, 2015.

16 LEMONS, GRUNDY & EISENBERG
17 Attorneys for Defendant
18 Amy Sue Hayes, M.D.

19 BY: 
20 EDWARD J. LEMONS, ESQ.
21 Nevada Bar No. 699
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1
2 CERTIFICATE OF SERVICE

3 I am a citizen of the United States. My business address is 6005 Plumas
4 Street, Suite 300, Reno, NV 89519, and I am employed by LEMONS, GRUNDY &
5 EISENBERG in the City of Reno and County of Washoe where this service
occurs. I am over the age of 18 years and not a party to the within action.

6 On June 22, 2015, following the ordinary business practice, I caused to
7 be served to the addressee(s) listed below, a true copy of the foregoing
8 document(s) and described as *Defendant Hayes' Responses to Defendant
Carson Tahoe Regional Medical Center's First Set of Request for
Admissions.*

9 ☒ BY MAIL: in an envelope with postage thereon fully prepaid to be
placed in the U.S. Mail at Reno, Nevada and addressed to:

10 Peter D. Durney
11 DURNEY & BRENNAN, LTD.
12 6900 S. McCarran Blvd.
Suite 2060
Reno, Nevada 89509

13 John C. Kelly, Esq.
14 Robert McBride
CARROLL, KELLY, TROTTER, FRANZEN
15 MCKENNA & PEABODY
8329 W. Sunset Road, Suite 260
16 Las Vegas, Nevada 89113

17 ☐ BY PERSONAL SERVICE: In an envelope to be hand delivered this date;

18 ☐ BY OVERNIGHT DELIVERY: in an envelope to be delivered to an
overnight delivery carrier with delivery fees provided for;

19 ☐ BY FACSIMILE: by transmitting by facsimile to the respective fax
20 telephone number(s).

21 ☐ BY USING THE COURT'S EFS which electronically served the following
individual(s):

22 I declare under penalty of perjury under the laws of the State of Nevada
23 that the foregoing is true and correct.

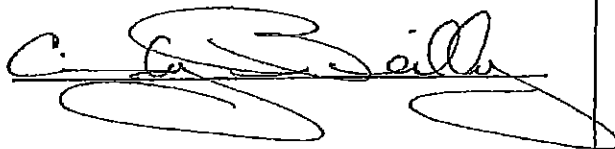
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EXHIBIT “16”

EXHIBIT “16”

1 CASE NO. 13TRT000281B

2 DEPT. NO. I

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6

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR CARSON CITY

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9 TAWNI McCROSKY, individually and as the
10 natural parent of LYAM McCROSKY, a minor
child,

11

Plaintiffs,

12

13

v.

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17

CARSON TAHOE REGIONAL MEDICAL
CENTER, a Nevada business entity; AMY
SUE HAYES, M.D., and individual; and
DOES I-X, inclusive,

Defendants.

PLAINTIFF TAWNI McCROSKY'S
RESPONSES TO DEFENDANT CARSON
TAHOE REGIONAL MEDICAL
CENTER'S FIRST SET OF REQUEST
FOR ADMISSIONS

18

19

20

COMES NOW Plaintiff TAWNI McCROSKY, by and through undersigned counsel, and
hereby responds to Defendant CARSON TAHOE REGIONAL MEDICAL CENTER'S First Set
of Request for Admission as follows:

21

REQUEST NO. 1:

22

23

Admit that you did not consider delivering Lyam at any hospital other than CARSON
TAHOE REGIONAL MEDICAL CENTER.

24

RESPONSE TO REQUEST NO. 1:

25

Deny.

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1 **REQUEST NO. 2:**

2 Admit that you did not investigate any hospital other than CARSON TAHOE
3 REGIONAL MEDICAL CENTER to deliver Lyam, as testified to at page 84, lines 6-10 of your
4 February 17, 2015 deposition.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

6 Admit.

7 **REQUEST NO. 3:**

8 Admit that you initialed item #6 on the document attached hereto as Exhibit "A".

9 **RESPONSE TO REQUEST NO. 3:**

10 Admit.

11 **REQUEST NO. 4:**

12 Admit that is your signature on the document attached hereto as Exhibit "B".

13 **RESPONSE TO REQUEST NO. 4:**

14 Admit.

15 **REQUEST NO. 5:**

16 Admit that you have no facts which would support a claim that CARSON TAHOE
17 REGIONAL MEDICAL CENTER engaged in gross negligence.

18 **RESPONSE TO REQUEST NO. 5:**

19 Deny.

20 **REQUEST NO. 6:**

21 Admit that no one ever advised you that AMY HAYES, M.D. was employed by
22 CARSON TAHOE REGIONAL MEDICAL CENTER at any time when you received medical
23 care from AMY HAYES, M.D.

24 **RESPONSE TO REQUEST NO. 6:**

25 Objection. The phrase "at any time when you received medical care" is overbroad, vague
26 and ambiguous and calls for medical opinion from the Plaintiff, which she is not qualified to
27 give. Plaintiff admits that she received no express representation that the doctor was an
28 employee.

1 **REQUEST NO. 7:**

2 Admit that AMY HAYBS, M.D. never advised you she was employee of CARSON
3 TAHOE REGIONAL MEDICAL CENTER.

4 **RESPONSE TO REQUEST NO. 7:**

5 Admit.

6 **REQUEST NO. 8:**

7 Admit that you did not rely on any advertising of CARSON TAHOE REGIONAL
8 MEDICAL CENTER in deciding where to deliver your baby, Lyam McCrosky.

9 **RESPONSE TO REQUEST NO. 8:**

10 Objection. The term "advertising" is overbroad, vague and ambiguous. Plaintiff admits
11 that she did not rely on any formal advertising such as billboards, television, radio, and any other
12 form of media.

13 **REQUEST NO. 9:**

14 Admit that one of the reasons Lyam McCrosky was delivered at CARSON TAHOE
15 REGIONAL MEDICAL CENTER is because it was closest to your residence at the time.

16 **RESPONSE TO REQUEST NO. 9:**

17 Plaintiff admits that "one" of the reasons that CTRMC was chosen was because of
18 proximity. Plaintiff denies that CTRMC was the closest medical facility to her residence.

19 **REQUEST NO. 10:**

20 Admit that you are not aware of any false statements made by the nurses at CARSON
21 TAHOE REGIONAL MEDICAL CENTER concerning the quality of care you would receive.

22 **RESPONSE TO REQUEST NO. 10:**

23 Admit.

24 **REQUEST NO. 11:**

25 Admit that Lyam McCrosky's biological father is Christopher Owen Burt.

26 **RESPONSE TO REQUEST NO. 11:**

27 Deny. We have recently learned that the biological father's name is actually Kay Otho
28 Burt, III.

1 **REQUEST NO. 12:**

2 Admit that you have never terminated Christopher Owen Burt's parental rights related to
3 Lyam McCrosky.

4 **RESPONSE TO REQUEST NO. 12:**

5 Deny. The Plaintiff has filed a Petition to terminate the Parental Rights of Kay Otho
6 Burt, III in the Ninth Judicial District Court of the State of Nevada, being civil action no. 15-CV-
7 0133.

8 **REQUEST NO. 13:**

9 Admit that you have incurred no out-of-pocket medical expenses for care and treatment
10 you personally received as a result of the alleged negligence of Defendant CARSON TAHOE
11 REGIONAL MEDICAL CENTER.

12 **RESPONSE TO REQUEST NO. 13:**

13 Deny.

14 **REQUEST NO. 14:**

15 Admit that you are not aware of any false statements made by the nurses at CARSON
16 TAHOE REGIONAL MEDICAL CENTER concerning the quality of care Lyam McCrosky
17 would receive.

18 **RESPONSE TO REQUEST NO. 14:**

19 Admit.

20 **REQUEST NO. 15:**

21 Admit you have no evidence that AMY HAYES, M.D. was an employee of CARSON
22 TAHOE REGIONAL MEDICAL CENTER at the time of Lyam McCrosky's delivery.

23 **RESPONSE TO REQUEST NO. 15:**

24 Deny.

25 **REQUEST NO. 16:**

26 Admit you have no evidence to support your claim that CARSON TAHOE REGIONAL
27 MEDICAL CENTER's advertising provided false information.

28 //

1 **RESPONSE TO REQUEST NO. 16:**

2 Objection. The term "advertising" is overbroad, vague and ambiguous. Plaintiff admits
3 to the extent that the term "advertising" means billboards, tv, radio, and any other form of media
4 promotion.

5 **REQUEST NO. 17:**

6 Admit you have no evidence to support you [sic] claim that CARSON TAHOE
7 REGIONAL MEDICAL CENTER provided you with false information.

8 **RESPONSE TO REQUEST NO. 17:**

9 Deny.

10 **REQUEST NO. 18:**

11 Admit that nothing the nurses at CARSON TAHOE REGIONAL MEDICAL CENTER
12 did or failed to do, on or about April 25, 2012, contributed to any harm to Lyam McCrosky.

13 **RESPONSE TO REQUEST NO. 18:**

14 Deny.

15 **REQUEST NO. 19:**

16 Admit that no medical provider has ever informed you that your son Lyam McCrosky
17 suffered brain damage as a result of the care and treatment provided by the nurses at CARSON
18 TAHOE REGIONAL MEDICAL CENTER.

19 **RESPONSE TO REQUEST NO. 19:**

20 Deny.

21 **REQUEST NO. 20**

22 Admit that you have no evidence to contradict AMY HAYES, M.D.'s deposition
23 testimony in this case that AMY HAYES, M.D. made the decision to take you to surgery on
24 April 25, 2012 at 7:34 a.m.

25 **RESPONSE TO REQUEST NO. 20:**

26 Deny.

27 //

28 //

1 **REQUEST NO. 21:**

2 Admit that you have no evidence to contradict AMY HAYES, M.D.'s deposition
3 testimony in this case that AMY HAYES, M.D. chose not to take to [sic] you for c-section
4 earlier than 7:34 a.m. because she thought Lyam could be delivered vaginally.

5 **RESPONSE TO REQUEST NO. 21:**

6 Deny.

7 **REQUEST NO. 22:**

8 Admit that you have no evidence to contradict AMY HAYES, M.D.'s deposition
9 testimony in this case that AMY HAYES, M.D. made the decision to attempt a vacuum assisted
10 delivery of Lyam McCrosky prior to performing a c-section on April 25, 2012.


11 **RESPONSE TO REQUEST NO. 22:**

12 Admit.

13 Plaintiff reserves the right to supplement these responses as discovery continues.

14 DATED this 16th day of JUNE, 2015.

15 DURNEY & BRENNAN, LTD.

16
17 
18 ALLASIA L. BRENNAN, ESQ., #9766
19 PETER D. DURNEY, ESQ., #57
20 6900 So. McCarran Blvd., Ste. 2060
21 Reno, NV 89509
22 Attorneys for Plaintiffs
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of Durney & Brennan, Ltd., and that on the date shown below, pursuant to NRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the foregoing document, addressed to:

Edward J. Lemons, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas St., Ste. 300
Reno, NV 89509

John C. Kelly, Esq.
CARROLL, KELLY, TROTTER
FRANZEN & McKENNA
111 W. Ocean Blvd., 14th Fl.
Long Beach, CA 90801-5636

Robert C. McBride, Esq.
CARROLL, KELLY, TROTTER
FRANZEN, McKENNA & PEABODY
8329 W. Sunset Rd., Ste. 260
Las Vegas, NV 89113

DATED this 14 day of JUNE, 2015.



ABBEY WHITFIELD

EXHIBIT “17”

EXHIBIT “17”

CONDITIONS OF ADMISSIONS

Page 1 of 2

#1 - CONSENT TO TREATMENT:

The undersigned consents to the performance of all routine medical care and treatment (tests, x-rays, therapy, laboratory services, medication administration, medical/surgical procedures and anesthesia) that may be performed during this hospitalization or on an outpatient basis, including emergency treatment provided under the general and special instruction of the patient's physician, surgeon and/or other health care provider.

#2 - NURSING CARE:

The hospital provides general duty nursing care. The undersigned consents and understands that his/her care may be observed for educational purposes and that there may be clinical students assigned to assist in the care.

#3 - CONSENT TO PHOTOGRAPH:

The undersigned agrees to the taking of pictures (including still images, videotaping, filming and other types of recording and reproducing images) of the patient's medical or surgical condition or treatment, for the purpose of diagnosis or treatment or for the hospital's operations, including peer review and education or training programs conducted by the hospital.

#4 - RELEASE OF INFORMATION:

In accordance with NRS 52.320, 629.021 and other applicable statutes, the undersigned agrees that the hospital may furnish information which is part of the patient's health care/medical record to any authorized individual upon request, for the purpose of (but not limited to) providing continuum of care or determining liability for payment. Special permission is needed to release information when the patient is being treated for conditions involving restricted diagnosis. Additionally, in accordance with HIPAA privacy regulations, information about you may be released to the public. This information is outlined in the hospital privacy notice. Your rights to deny this access are also outlined in the hospital privacy notice.

#5 - PERSONAL VALUABLES:

CTRH assumes responsibility for valuables placed in the medical centers safe NOT to exceed five hundred dollars (\$500.00) and for prosthetic devices necessary for the safe delivery of patient care NOT to exceed fifteen hundred dollars (\$1500.00). CTRH assumes no responsibility for cash, valuables or personal property retained by a patient during his/her stay.

#6 - LEGAL RELATIONSHIPS BETWEEN HOSPITAL AND PHYSICIANS:

All physicians and surgeons furnishing healthcare services to me/the patient, including the radiologist, pathologist, anesthesiologist, emergency room physicians, hospitalists etc., are independent contractors and are NOT employees or agents of the hospital. I am advised that I will receive separate bills for these services. MC (Initial)

I understand that I/the patient am under the care and supervision of my/the patient's attending physician, and it is the responsibility of the hospital staff to carry out his/her instructions. I understand that it is the responsibility of my/the patient's physician, surgeon or authorized healthcare provider to obtain my informed consent for surgical or complex medical treatment, special diagnostic or therapeutic procedures, investigational treatment or procedures, and/or other specialized services.

#7 - EMERGENCY MEDICAL ASSESSMENT:

CTRH will not deny, delay or condition a patient's access to emergency medical care and any necessary stabilizing treatment based upon the patient's method of payment or insurance status.

#8 - PHYSICIAN RELATIONSHIP WITH PATIENT:

The relationship between the patient and the physician is at the direction of the patient. Should the patient choose to no longer accept the services of their treating physician, it is the responsibility of the patient and/or guardian to obtain the services of another physician.

MCCROSKY, TAYLOR

15095 (9/28/10)



CONDITIONS OF ADMISSIONS

Page 2 of 2

#9 FINANCIAL ASSISTANCE:

OTRH provides financial counseling for patients who request assistance with insurance, government healthcare eligibility, charity care, uninsured prompt payment and payment plan programs. If you require financial counseling, please request an appointment with a patient financial services counselor through the hospital admitting department.

The Office of the Governor, Consumer Health Assistance, Bureau for Hospital Patients is the State Health Advocacy Agency charged with ensuring that Nevada's hospitals inform all uninsured inpatients about the 30 percent hospital bill discount mandated under NRS 439B.260. They can also help to resolve disputes between patients and hospitals. Contact number is 1-888-333-1597 or e-mail <http://www.govcha.state.nv.us>.

#10 AUTHORIZATION TO VERIFY INFORMATION:

I(we) hereby authorize verification of employment history, bank accounts, credit history and any other information deemed necessary in conjunction with accounts owed the hospital.

#11 ASSIGNMENT OF INSURANCE BENEFITS:

In the event that the undersigned is entitled to hospital benefits of any type arising out of any policy of insurance insuring patient or any other party liable to patients, said benefits are hereby assigned to hospital for application on patient's bill. Patient / Guarantor is responsible to provide information regarding health plan coverage at time of service. Payment denial from insurance due to untimely notification will result in patient/guarantor responsibility for payment of service.

#12 MANAGED CARE HEALTH PLANS:

- If the hospital is contracted with the patient's health plan, the patient or guarantor is responsible to pay directly to the hospital any required co-payment and/or deductible as defined within the patient's health plan policy, as well as any charges that are NOT covered by the patient's health plan policy terms. Nothing in this provision shall preclude the hospital from seeking reimbursement from other payers, including, but not limited to, health plans, preferred provider organizations, insurers, third parties or government sponsored programs, for the balance of the hospital's total billed charges.
- If this hospital does not have a contract with the patient's health plan, the undersigned is legally obligated to pay the hospital's total billed charges for any and all care and services rendered to the patient.

#13 INDEMNITY AND OTHER INSURANCE:

The undersigned irrevocably authorizes direct payment to this hospital and to the doctors involved in the care of the patient. If the patient's insurance does not pay the hospital's total billed charges, the patient or guarantor assumes responsibility for the unpaid balance. If the insurance fails to pay within a reasonable time, per NRS statute, the patient/guarantor will be required to pay the bill in full.

#14 DESTRUCTION OF HEALTH CARE RECORDS:

Pursuant to NRS 629.051, health care records for adults ages 18 years and older at time of service, may be destroyed after five (5) years. Patients less than 18 years of age shall have their records retained for five (5) years past their 18th birthday.

#15 FINANCIAL AGREEMENT:

The undersigned agrees, whether he/she signs as agent or patient, that in consideration of the services to be rendered to the patient, he/she hereby individually obligates himself/herself to pay the amount of the hospital charges in accordance with the regular rates and terms of the hospital. Should the account be referred to an attorney or collection agency for collection, the undersigned shall pay actual attorney's fees and collections expenses. All accounts may bear interest at the legal rate. If the undersigned is unable to pay the patient portion of the bill within 30 days of initial billing, CTRH may finance the balance through a financial institution. Services provided by independent contractors (as defined in #6 page 1) will be billed separately by that provider of service.

Laurie McCull
Patient

4/2/2012
Date

Jenny Shover
Patient's Agent or Representative

4/2/12
Date

Witness

Date

A copy of this document will be provided to the patient or patient's agent upon

15055 (04/22/10)

HAYES, AMY SUE

No

PA



EXHIBIT “18”

EXHIBIT “18”

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

TAWNI McCROSKY, individually)

and as the natural parent of)

LYAM McCROSKY, a minor child,)

Plaintiff,)

vs.) Case No.: 13TRT000281B

CARSON TAHOE REGIONAL MEDICAL) Dept. No.: I

CENTER, a Nevada business)

entity; AMY SUE HAYES, M.D., an)

individual; and DOES I-X,)

inclusive,)

Defendants.)

RECORDED DEPOSITION OF JENNY GLOVER

Taken on April 6, 2015

At 1:43 p.m.

201 South Carson Street, Room 107

Carson City, Nevada 89710

1 delivery, to pre-register. Because that way, when OB calls and
2 they say, you know, "We have whoever here, " we already have them
3 in the computer, name, birthday. If it's through the MOM's
4 Clinic, we ask for the doctor who's going to be admitting them,
5 whoever is on-call that day for MOM's Clinic, work with them and
6 then, we put them in their room in the computer.

7 Q: Did you ever work at the MOM's Clinic?

8 A: I did not.

9 Q: Okay. So, all the pre-registration work that you
10 did, say, in the year 2012, would have been at the hospital
11 itself, the main hospital?

12 A: Yes.

13 Q: All right. I'd like to show you a document that
14 we're going to mark as Exhibit 1 to your deposition.

15 A: Okay. Thank you.

16 Q: And if you'd look at page two.

17 A: Okay.

18 Q: In the lower left-hand corner, there appears to be
19 your signature. Is it in fact your signature?

20 A: Yes, it is.

21 Q: And looking at this document, does it refresh your
22 recollection at all about obtaining Ms. McCrosky's signature on
23 the document? In other words, does it enable you to remember
24 this lady?

25 A: The only thing, when I was called and told I was

EXHIBIT “19”

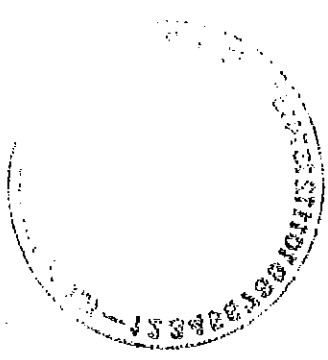
EXHIBIT “19”

03/17/12

NEW YORK
Medicaid Claim Detail Report

MEDICAID ID #	SSN	Last Name	First Name	DOB	4/10/1990	4/25/2012	Pharmacy NOC
		MCROSKY	TAWNI		Provider Name	Billed Amt	
2012193700164401	4/25/2012	4/25/2012	002015109	MAUSLING PAUL W DO	\$3,500.00	\$3,500.00	
2012123700112001	4/25/2012	4/25/2012	002016611	HASLURTER DANIEL L MD	\$840.00	\$840.00	
20121237000228501	4/25/2012	4/25/2012	100513247	WOLZ MARK R MD	\$225.00	\$225.00	
20121217001563001	4/26/2012	4/26/2012	002009120	SWANAY-TOMITA RUTH S MD	\$953.00	\$953.00	
20121217001565001	4/26/2012	4/26/2012	002013059	HAYES AMY S MD	\$1,821.00	\$1,821.00	
20121185007897101	4/27/2012	4/27/2012	002816125	WAL-MART STORES, INC	\$5.34	\$5.34	68645022254 (Anti-inflammatory) BUPROFEN TAB 800MG
2012118500789531	4/27/2012	4/27/2012	002816125	WAL-MART STORES, INC	\$11.54	\$11.54	53746020801 (Analgesic Narcotic Pain) OXYCOD/APAP TAB 5-325MG
2012152701224201	4/30/2012	4/30/2012	100502181	CROGHAN CARL L MD	\$150.00	\$22.77	(67484) OB SURG COMP NEC-POSTOPAR, (38818) OTHER ACUTE POSTOP PAIN
2012128700117501	4/30/2012	4/30/2012	001216885	RENOWN REGIONAL MEDICAL CENTER	\$691.00	\$22.77	(64894) OTH CURR CON-D-POSTPARTUM, (38818) OTHER ACUTE POSTOP PAIN, (V1382) HISTORY OF TOBACCO USE
2012121801418311	4/30/2012	4/30/2012	100514453	LONGS DRUG STORE 07949	\$11.99	\$11.29	00406052201 (Analgesic Narcotic Pain) OXYCOD/APAP TAB 7.5-325
2012122801016911	5/1/2012	5/1/2012	100514453	LONGS DRUG STORE 07949	\$15.19	\$7.49	60951060270 (Analgesic Narcotic Pain) ENDOCET TAB 5-325MG
2012145700192501	5/1/2012	5/1/2012	002013059	HAYES AMY S MD	\$44.00	\$44.00	(99859) OT POSTOP INFECTION

\$8,308.06 \$2,984.48



McCrosky000571

Electronically Filed
Sep 25 2015 02:29 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAWNI McCROSKY, individually and
as the natural parent of
LYAM McCROSKY, a minor child,

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JAMES T. RUSSELL,

Respondents.

CARSON TAHOE REGIONAL
MEDICAL CENTER, a Nevada
business entity,

Real Party in Interest.

Supreme Court Case No.

FJDC Case No. 13TRT000281B

PETITIONER'S APPENDIX

VOLUME I

Petition for Writ of Mandamus

Allasia L. Brennan, Esq. (9766)
Peter D. Durney, Esq. (057)
Durney & Brennan, Ltd.
6900 S. McCarran Blvd.
Suite 2060
Reno, Nevada 89509
775-322-2923

Attorneys for Petitioner Tawni McCrosky

ALPHABETICAL APPENDIX INDEX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NOS.</u>
1.	Defendant Carson Tahoe Regional Medical Center's Motion to Include Co-Defendant, Amy Sue Hayes, M.D. on the Verdict Form	August 5, 2015	I	011-043
2.	Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	August 19, 2015	I	044-145
3.	Defendant Carson Tahoe Regional Medical Center's Reply in Support of Motion to Include Co-Defendant, Amy Sue Hayes, M.D. on the Verdict Form	August 28, 2015	II	246-253
4.	Defendant Carson Tahoe Regional Medical Center's Reply in Support of Motion for Partial Summary Judgment	August 28, 2015	II	254-468
5.	Notice of Entry of Order	September 23, 2015	III	569-575
6.	Notice of Entry of Order	September 23, 2015	III	562-568
7.	Order Granting Defendant Carson Tahoe Regional Medical Center's Motion to Include Co-Defendant, Amy Sue Hayes, M.D., on the Verdict Form	September 22, 2015	III	559-561
8.	Order Granting Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	September 22, 2015	III	555-558
9.	Plaintiff's Opposition to Defendant Carson Tahoe Regional Medical Center's Motion to Include Co-Defendant, Amy Hayes, M.D., on the Verdict Form	August 21, 2015	I	146-195

1	10.	Plaintiff's Opposition to	August 25, 2015	I	196-245
2		Defendant Carson Tahoe			
3		Regional Medical Center's			
		Motion for Partial Summary			
		Judgment			
4	11.	Plaintiff's First Amended	April 17, 2015	I	001-010
5		Complaint			
6	12.	Sur-Reply to Defendant	August 31, 2015	II	469-475
7		Carson Tahoe Regional			
		Medical Center's Motion for			
		Partial Summary Judgment			
8	13.	Transcript of Proceedings	September 1, 2015	III	476-554
9		from JAVS Digital			
10		Recording Hearing,			
		September 1, 2015			

CHRONOLOGICAL INDEX TO APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NOS.</u>
1.	Plaintiff's First Amended Complaint	April 17, 2015	I	001-010
2.	Defendant Carson Tahoe Regional Medical Center's Motion to Include Co-Defendant, Amy Sue Hayes, M.D. on the Verdict Form	August 5, 2015	I	011-043
3.	Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	August 19, 2015	I	044-145
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6.	Defendant Carson Tahoe Regional Medical Center's Reply in Support of Motion to Include Co-Defendant, Amy Sue Hayes, M.D. on the Verdict Form	August 28, 2015	II	246-253
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<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NOS.</u>
8.	Sur-Reply to Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	August 31, 2015	II	469-475
9.	Transcript of Proceedings from JAVS Digital Recording Hearing, September 1, 2015	September 1, 2015	III	476-554
10.	Order Granting Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	September 22, 2015	III	555-558
11.	Order Granting Defendant Carson Tahoe Regional Medical Center's Motion to Include Co- Defendant, Amy Sue Hayes, M.D., on the Verdict Form	September 22, 2015	III	559-561
12.	Notice of Entry of Order	September 23, 2015	III	562-568
13.	Notice of Entry of Order	September 23, 2015	III	569-575

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Durney & Brennan, Ltd., and that on the date
3 shown below, pursuant to NRAP 25(d), I deposited in the United States mail at Reno,
4 Nevada, a true copy of the foregoing document, addressed to:

5
6 The Honorable James T. Russell
7 First Judicial District Court
8 885 East Musser Street
9 Carson City, Nevada 89701
Respondent

10 John C. Kelly, Esq.
11 CARROLL, KELLY, TROTTER
12 FRANZEN & McKENNA
13 111 W. Ocean Blvd., 14th Fl.
14 Long Beach, California 90801-5636
Attorneys for Real Party in Interest
Carson Tahoe Regional Medical Center

15 Robert C. McBride, Esq.
16 CARROLL, KELLY, TROTTER
17 FRANZEN, McKENNA & PEABODY
18 8329 W. Sunset Rd., Ste. 260
19 Las Vegas, Nevada 89113
Attorneys for Real Party in Interest
Carson Tahoe Regional Medical Center

20
21 DATED this 25 day of September, 2015.

22
23 
24 ABBEY WHITEFIELD

1 CASE NO. 13TRT000281B

2 DEPT. NO. I

REC'D & FILED

2015 APR 17 PM 3:19

SUSAN MERRIWETHER
CLERK

BY
C. COOPER DEPUTY

3
4
5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR CARSON CITY

8 * * *

9 TAWNI McCROSKY, individually and as the
10 natural parent of LYAM McCROSKY, a minor
child,

11 Plaintiffs,

12
13 v.

14 CARSON TAHOE REGIONAL MEDICAL
15 CENTER, a Nevada business entity; AMY
16 SUE HAYES, M.D., an individual; and DOES
I-X, inclusive,

17 Defendants.

FIRST AMENDED COMPLAINT

18
19 COME NOW Plaintiffs above-named, by and through undersigned counsel, and for their
20 claims for relief against Defendants, and each of them, aver and allege as follows:

21 GENERAL ALLEGATIONS

22 I.

23 At all times material hereto, Plaintiffs were and continue to be residents of the State of
24 Nevada.

25 II.

26 At all times material hereto, Defendant CARSON TAHOE REGIONAL MEDICAL
27 CENTER was and continues to be a hospital operating in the county of Carson City and duly
28

1 licensed in the State of Nevada pursuant to the provisions of Chapter 449 of the Nevada Revised
2 Statutes.

3 III.

4 The true names or capacities of the defendants sued herein as DOES I-X, inclusive, are
5 unknown at this time to Plaintiffs, who, therefore, sue such defendants by fictitious names.
6 Plaintiffs will seek leave to assert the true names of said defendants when the same are
7 ascertained by Plaintiffs. At such time, Plaintiffs will also assert appropriate allegations against
8 said defendants. Plaintiffs are informed and believe that each of the Doe defendants designated
9 herein by such fictitious names was negligent or otherwise legally responsible in some manner
10 for the events and happenings referred to herein and to the proximately caused injuries and
11 damages resulting therefrom.

12 IV.

13 At all times material hereto, Defendant AMY SUE HAYES, M.D, was and continues to
14 be a physician duly licensed to practice medicine in the State of Nevada pursuant to the
15 provisions Chapter 630 of the Nevada Revised Statutes. Plaintiffs are informed and believe that
16 she is a resident of the State of Nevada. Upon information and belief, Defendant AMY SUE
17 HAYES, M.D. was at all times an apparent or ostensible agent, servant and/or employee of
18 Defendant CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-X, and was, at all
19 times material hereto, acting within the course and scope of her apparent or ostensible agency
20 and/or employment.

21 V.

22 At all times material hereto, each of the defendants were acting under the direction and
23 control of the other defendants and were acting within the course and scope of their respective
24 employment and/or agency, ostensible or otherwise, with each of the other defendants. Their
25 actions were otherwise either expressly or impliedly ratified and approved by the other
26 defendants.

27 //

28

1 VI.

2 At all times material hereto, each of the defendants were acting under the direction and
3 control of the other defendant and were acting within the course and scope of their respective
4 employment and/or agency, ostensible of otherwise, with each of the other defendants. Their
5 actions were otherwise either expressly or impliedly ratified and approved by the other
6 defendants.

7 VII.

8 At all times material hereto, Defendants, and each of them, acted together and in concert
9 in pursuance of a common plan or design.

10 VIII.

11 At all times material hereto, Defendants, and each of them, were engaged in a joint
12 enterprise pursuant to express or implied agreement with a common purpose, a community of
13 pecuniary interest, and each having an equal voice in the direction of the enterprise.

14 IX.

15 At all times material hereto, Defendants CARSON TAHOE REGIONAL MEDICAL
16 CENTER, and DOES I-V, and each of them, were and now are corporations, hospitals,
17 partnerships, associations, or other entities organized and existing under and by virtue of the laws
18 of the State of Nevada and other States, and were at all times and places mentioned herein
19 engaged in the ownership, operation, and/or maintenance of hospitals, emergency rooms, labor
20 and delivery rooms, medical clinics, medical practices and/or other medical facilities and
21 activities open to the general public and paying patients in the State of Nevada in the County of
22 Washoe.

23 X.

24 At all times herein mentioned, Defendants CARSON TAHOE REGIONAL MEDICAL
25 CENTER, and Does I-V, and each of them, employed doctors, physician assistants, nurses,
26 and/or other staff to treat members of the public, including the plaintiffs, each of whom at all
27 times material hereto acted within the course and scope of their respective employment and/or
28

1 agency and/or ostensible agency and/or joint venture or whose actions were otherwise ratified
2 and affirmed by each of the other defendants.

3 XI.

4 Defendants CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-V,
5 inclusive, represented themselves to the public at large and to Plaintiffs herein to be at all times
6 properly equipped, fully accredited, competently staffed by qualified and prudent personnel, and
7 operating in compliance with all applicable standards of care.

8 XII.

9 At all times material hereto, Defendants, and each of them, negligently, carelessly,
10 recklessly, and without regard to the safety of Plaintiffs and others like them, either failed to
11 provide and implement adequate standards, protocols, and safeguards to prevent the injuries that
12 occurred in this case or otherwise failed to follow established standards, protocols, and
13 safeguards which would have prevented the injuries that occurred in this case.

14 FIRST CLAIM FOR RELIEF

15 (Medical Malpractice/Professional Negligence)

16 XIII.

17 Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs
18 and incorporate the same herein by reference.

19 XIV.

20 On April 25, 2012, Plaintiff TAWNI was admitted to Defendant CARSON TAHOE
21 REGIONAL MEDICAL CENTER's facility as a result of active labor. She was 3 cm dilated.

22 XV.

23 While in labor, LYAM's heart rate was being monitored. Following rupture of the
24 membranes, the heart rate decreased into the 50's then ultimately increased to 110 in a matter of
25 20 minutes, resulting in 20 minutes of bradycardia. Despite these warning signs, and others,
26 Defendants, and each of them, in violation of applicable standards, failed to deliver LYAM
27 promptly.

28 //

XVI.

LYAM was ultimately delivered by cesarean section at 7:48 a.m. The infant suffered hypoxic-ischemic encephalopathy. After resuscitation efforts were successful, LYAM was transported to Renown Regional Medical Center.

XVII.

As a proximate result of the negligence, carelessness, and recklessness and wrongful conduct of Defendants, and each of them, and their failure to provide standard of care treatment, LYAM suffered severe distress and progressive asphyxia, and was consequently diagnosed with hypoxemic-ischemic encephalopathy.

XVIII.

Plaintiffs allege that during the course of medical care and treatment afforded to Plaintiff TAWNI and LYAM, Defendants, and each of them, individually and jointly failed to exercise that degree of skill, care and expertise normally exercised by comparable physicians and medical providers having similar skills, education, training, experience or otherwise similarly situated, all as more particularly set forth in the attached Affidavit of a medical expert who practices in an area substantially similar to the types of practice engaged in at the time of the alleged malpractice. Plaintiffs incorporate this Affidavit as if set forth in the body of this Complaint, together with the curriculum vitae of the medical expert.

XIX.

As a further direct and proximate result of the negligence and wrongful conduct of Defendants, and each of them, as aforesaid, Plaintiff LYAM is entitled to recover his respective special or economic damages, both past and future, to include medical expenses, expenses associated with special developmental needs, vocational and related expenses, and diminished earning capacity and long-term earnings loss, all according to proof.

XX.

As a further direct and proximate result of Defendants' negligence and wrongful conduct, as aforesaid, Plaintiff TAWNI has suffered and will continue to suffer a loss of earnings and a

1 decrease in her earning capacity to her economic damage, past, present and future in a sum
2 according to proof.

3 XXI.

4 As a further direct and proximate result of the negligence and wrongful conduct of
5 Defendants, and each of them, as aforesaid, Plaintiff TAWNI has suffered and will continue to
6 suffer serious emotional distress as a result of the delayed birth of her child and her child's
7 present and long-term disability, all to her general damage in a just and reasonable amount in
8 excess of TEN THOUSAND DOLLARS (\$10,000.00).

9 XXII.

10 As a further direct and proximate result of the negligence and wrongful conduct of
11 Defendants, and each of them, as aforesaid, the Plaintiff LYAM has suffered and will continue to
12 suffer general damages in a just and reasonable amount in excess of TEN THOUSAND
13 DOLLARS (\$10,000.00).

14 SECOND CLAIM FOR RELIEF

15 (Negligent Misrepresentation - CARSON TAHOE REGIONAL MEDICAL CENTER and
16 DOES I-X)

17 XXIII.

18 Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs
19 and incorporate the same herein by reference.

20 XXIV.

21 CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-X, inclusive,
22 advertised that their facilities were of the highest quality and properly and adequately staffed
23 with competent and qualified members of a medical team, including, without limitation thereto,
24 qualified nurses and qualified physicians trained, prepared, and equipped to handle emergencies.

25 XXV.

26 The information CARSON TAHOE REGIONAL MEDICAL CENTER supplied in the
27 course and scope of its business to Plaintiffs and the public-at-large was false and designed to
28 gain business.

1 XXVI.

2 At all times material hereto, the Plaintiffs justifiably relied on the representations of
3 Defendant, CARSON TAHOE REGIONAL MEDICAL CENTER, as aforesaid.

4 XXVII.

5 Based on such representations Plaintiff TAWNI chose to deliver at Defendant CARSON
6 TAHOE REGIONAL MEDICAL CENTER's facility to ensure that she was attended to by
7 competent and qualified medical professionals.

8 XXVIII.

9 Plaintiff TAWNI's justifiable reliance was misplaced because CARSON TAHOE
10 REGIONAL MEDICAL CENTER was not adequately prepared to handle her emergency. It had
11 inadequately trained staff and/or was understaffed and/or did not have appropriate and/or
12 adequate facilities to address her needs, in direct contrast to the representations it made.

13 XXIX.

14 As a direct and proximate result of the negligence and wrongful misrepresentations made
15 by the CARSON TAHOE REGIONAL MEDICAL CENTER and each of them, as aforesaid,
16 Plaintiff TAWNI has suffered pecuniary loss.

17 THIRD CLAIM FOR RELIEF

18 (Intentional Misrepresentation – Carson Tahoe Regional Medical Center and DOES I-X)

19 XXX.

20 Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs
21 and incorporate the same herein by reference.

22 XXXI.

23 CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-X, inclusive,
24 advertised that their facilities were of the highest quality and properly and adequately staffed
25 with competent and qualified members of a medical team, including, without limitation thereto,
26 qualified nurses and qualified physicians trained, prepared, and equipped to handle emergencies.

27 //

28 //

//

1 XXXII.

2 The representations made by Defendant CARSON TAHOE REGIONAL MEDICAL
3 CENTER and DOES I-X, and each of them, were false. Defendants had an insufficient basis of
4 information for making such representations, yet did so nonetheless in order to encourage and
5 induce patients like Plaintiff to become patients at CARSON TAHOE REGIONAL MEDICAL
6 CENTER.

7 XXXIII.

8 As a proximate result of the intentional conduct of Defendants, and each of them, and
9 their failure to provide standard of care treatment as advertised and promised, LYAM suffered
10 severe distress and progressive asphyxia, and was consequently diagnosed with hypoxemic-
11 ischemic encephalopathy.

12 XXXIV

13 As a further direct and proximate result of the intentional conduct of Defendants, and
14 each of them, as aforesaid, Plaintiff TAWNI has suffered and will continue to suffer serious
15 emotional distress as a result of the delayed birth of her child and her child's present and long-
16 term disability, all to her general damage in a just and reasonable amount in excess of TEN
17 THOUSAND DOLLARS (\$10,000.00).

18 XXXV.

19 As a further direct and proximate result of the negligence and wrongful conduct of
20 Defendants, and each of them, as aforesaid, the Plaintiff LYAM has suffered and will continue to
21 suffer general damages in a just and reasonable amount in excess of TEN THOUSAND
22 DOLLARS (\$10,000.00).

23 FOURTH CLAIM FOR RELIEF

24 (Negligent Infliction of Emotional Distress-Tawni McCrosky)

25 XXXVI.

26 Plaintiff TAWNI repeats and repleads each and every allegation contained in all prior
27 paragraphs and incorporates the same herein by reference as to all defendants.

28 //

1 XXXVII.

2 At all times material hereto, there existed and continues to exists a close relationship
3 between plaintiffs, TAWNI and LYAM, namely, mother and child, and the defendants, and each
4 of them, were aware of this close relationship when they agreed to care for the mother and
5 deliver and care for her unborn child.

6 XXXVIII.

7 It was reasonably foreseeable and easily predictable that any acts of negligence by the
8 defendants, and each of them, that would injure the child would lead to serious emotional
9 distress in Plaintiff TAWNI.

10 XXXIX.

11 As a further direct and proximate result of the negligence and wrongful conduct of
12 Defendants, and each of them, as aforesaid, Plaintiff TAWNI has suffered and will continue to
13 suffer a loss of earnings and a decrease in her earning capacity to her economic damage, past,
14 present and future in a sum according to proof.

15 XL.

16 As a further direct and proximate result of the negligence and wrongful conduct of
17 Defendants, and each of them, as aforesaid, plaintiff, TAWNI has suffered and will continue to
18 suffer severe and serious emotional distress and shock and injury to her nervous system and
19 body, all to her general damage in a just and reasonable amount in excess of TEN THOUSAND
20 DOLLARS (\$10,000.00).

21 WHEREFORE, Plaintiffs, while expressly reserving their right to amend this Complaint
22 up to and including the time of trial to include additional defendants as well as additional
23 theories of recovery and items of damages not yet ascertained, demand judgment against
24 defendants, and each of them, as follows:

- 25 1. For general damages to the Plaintiffs, and each of them, in a just and reasonable
26 amount in excess of TEN THOUSAND DOLLARS (\$10,000.00), each;
- 27 2. For special or economic damages to the Plaintiffs, and each of them, according to
28 proof;

CERTIFICATE OF SERVICE

I certify that I am an employee of Durney & Brennan, Ltd., and that on the date shown below, pursuant to NRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the foregoing document, addressed to:

Edward J. Lemons, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas St., Ste. 300
Reno, NV 89509

John C. Kelly, Esq.
CARROLL, KELLY, TROTTER
FRANZEN & McKENNA
PO Box 22636,
Long Beach CA 90801-5636

Robert C. McBride, Esq.
CARROLL, KELLY, TROTTER
FRANZEN, McKENNA & PEABODY
8329 W. Sunset Rd., Ste. 260
Las Vegas, NV 89113

DATED this 10th day of APRIL, 2015.



ABBEY WHITFIELD

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CASE NO. 13TRT000281B
DEPT. No. I

REC'D & FILED
2015 AUG -5 PM 2:52
SUSAN MERRIWETHER
CLERK
BY C. GRIFFIN

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA AND
FOR CARSON CITY

TAWNI McCROSKY, individually and as the natural
parent of LYAM McCROSKY, a minor child,

Plaintiffs,

vs.

CARSON TAHOE REGIONAL MEDICAL CENTER,
a Nevada business entity; AMY SUE HAYES, M.D., an
individual, and DOES I-X, inclusive,

Defendants.

DEFENDANT CARSON TAHOE REGIONAL MEDICAL CENTER'S MOTION
INCLUDE CO-DEFENDANT, AMY SUE HAYES, M.D. ON THE VERDICT
FORM

COMES NOW Defendant CARSON TAHOE REGIONAL MEDICAL CENTER, by and
through its counsel of record, JOHN C. KELLY, ESQ. and ROBERT C. McBRIDE, ESQ., of
CARROLL, KELLY, TROTTER FRANZEN, McKENNA & PRABODY, and hereby files its
Motion to Include Dr. Hayes on the Verdict Form.

///

///

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///

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///

///

1 This Motion is made and based on the attached Memorandum of Points and Authorities,
2 exhibits attached hereto, and the pleadings and papers already on file herein.

3 DATED this 5th day of August, 2015.

4 CARROLL, KELLY, TROTTER,
5 FRANZEN, McKENNA, & PEABODY

6 By:  #10904

7 JOHN C. KELLY, ESQ.

8 Nevada Bar No.: 9848

9 ROBERT C. McBRIDE, ESQ.

10 Nevada Bar No.: 007082

11 8329 West Sunset Road, Suite 260

12 Las Vegas, Nevada 89113

13 Attorneys for Defendant

14 *Carson Tahoe Regional Medical Center*

1 ARGUMENT

2 I. INCLUDING ALL NEGLIGENT PARTIES ON THE SPECIAL VERDICT
3 FORM IS NECESSARY TO ALLOW THE JURY TO APPORTION FAULT
4 PURSUANT TO NRS 41A.045

5 Nevada Revised Statute 41A.045 abrogates joint and several liability for medical malpractice
6 defendants as the statute provides:

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

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

15 (emphasis added).

16 A defendant in a medical malpractice case cannot be liable for his/her/its "percentage of
17 negligence" if all reasonable parties who could be responsible for the negligence are not
18 considered in the jury's analysis. Excluding potentially responsible parties from the verdict form
19 would subject medical malpractice defendants to *joint and* several liability in direct contravention
20 of NRS §41A.045.

21 On October 6, 2014, the Nevada Supreme Court heard oral argument on this issue, but has
22 not yet rendered a decision. *See e.g. Ptroozl, M.D. v. Eigh. Jud. Dist. Ct.*, Case No. 64946.
23 However, courts in other jurisdictions have consistently held that negligent non-parties should be
24 included on special verdict forms. For example, in *Le'Gall v. Lewis County*, plaintiff filed suit
25 against the county after sustaining injuries trying to escape a fire. *Le'Gall v. Lewis County*, 923
26 P.2d 427 (Ida. 1996). Although he was not named in the action, the special verdict form included
27 plaintiff's supervisor in light of evidence that his negligence may have caused the fire. *Id.* at 430.

28 ///

1 In upholding the lower court's decision, the Idaho Supreme Court reasoned that:

2 If the jury could conclude, based on the evidence, that an actor negligently
3 contributed to the plaintiff's injury then the actor must be included on the special
4 verdict form.

5 *Id.* (citations omitted).

6 This is unaffected by why the negligent actor is not a party at the time of trial as:

7 [T]he jury should consider the negligence of actors involved in the event giving
8 rise to the negligence action, even if the actors are not parties...or they cannot be
9 liable to the plaintiff by operation of law *or settlement*.

10 *Id.* (emphasis added).

11 California Civil Code Section 1431.2 establishes several liability only for noneconomic
12 damages. To effectuate this, courts in California provide that:

13 In determining a defendant's share of fault, the court may consider other joint
14 tortfeasors' degree of fault for the plaintiff's injuries and reduce the defendant's
15 share accordingly. A defendant may attempt to reduce his or her share of liability
16 for noneconomic damages by seeking to add nonparty joint tortfeasors.

17 *Wilson v. Ritto*, 105 Cal. App. 4th 361, 129 Cal. Rptr. 2d 336 (Cal. App. 4th Dist. 2003).

18 Plaintiff's ob-gyn expert, Dr. Schrimmer's testimony demonstrates that Dr. Hayes' actions
19 must be considered in evaluating liability and causation:

20 Q: ...What's your understanding of your role as an expert in this case?

21 A: ... That line has been blurred a little bit by the settlement with Dr.
22 Hayes...because it's still very difficult to look at one and not look at the
23 other.

24 *See Depo. Trans. of Dr. Schrimmer*, 37:4-12, attached hereto as Exhibit "4".

25 Dr. Schrimmer further opines that Dr. Hayes breached the standard of care by
26 "inappropriate management of the fetal bradycardia resulting in severe delay in delivering the
27 fetus." *See Exhibit "1"*. At his deposition, Dr. Schrimmer testified regarding his criticisms of Dr.
28 Hayes' care and treatment and agreed that "Dr. Hayes was very definitely the obstetrician in

1 charge." See Exhibit "4" at 38:7-9. Despite Dr. Hayes' settlement, Dr. Schrimmer confirmed that
2 his opinions as to Dr. Hayes' alleged negligence had not changed. *Id.* at 52:1-8.

3 **A. PLAINTIFF'S ALLEGATIONS AGAINST CTRMC NECESSARILY**
4 **INCLUDE CRITICISMS OF DR. HAYES WARRANTING HER**
5 **INCLUSION ON THE SPECIAL VERDICT FORM**

6 The crux of Plaintiff's allegations against the nursing staff at CTRMC is that they should
7 have recognized Dr. Hayes' negligent actions and initiated a sequence of events (known as "chain
8 of command") to bring in another physician and take over Plaintiff's care. Plaintiff designated
9 nursing expert, Laura Mahlmeister, R.N. to opine as to the standard of care for nurses at CTRMC.
10 At her deposition, Nurse Mahlmeister testified:

11 Q: So would it be accurate to say that it's your opinion that by -- that at 6:55,
12 Carla Sells had an obligation to usurp the judgment of Dr. Hayes and make
13 arrangements to get this baby delivered?

14 A: She had the absolute duty...I would say that she had a duty to question the
15 physician's order, and that the order was so severely out of line with the
16 condition of the unborn baby at that time that she had to immediately seek
17 the additional consultation of advice of another physician...

18 See Depo Trans. of Laura Mahlmeister, R.N., 52-53:15-2, attached hereto as Exhibit "5".

19 Plaintiff's allegations against CTRMC rely on criticisms of Dr. Hayes' care and treatment.
20 Plaintiff's theory of liability logically demands that the jury be permitted to apportion fault, if
21 any, among Dr. Hayes and CTRMC. It would be patently unfair to allow Plaintiff to argue that
22 Dr. Hayes was negligent without allowing Defendant to argue that it is not responsible for Dr.
23 Hayes' negligence.

24 A jury must be able to allocate fault in order to effectuate the purpose of NRS §41A.045's
25 abolition of joint and several liability. Plaintiff's experts establish liability and causation on
26 behalf of Dr. Hayes. Accordingly, Defendant must be permitted to include Dr. Hayes on the jury
27 verdict form.

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DATED this 5 day of August, 2015.

By:

#10904

1 **AFFIRMATION PURSUANT TO NRS 239B.030**

2 The undersigned hereby affirms that the within document does not contain the Social
3 Security Number of any person.

4 DATED this 5th day of August, 2015.

5 CARROLL, KELLY, TROTTER,
6 FRANZEN, McKEMNA, & PEABODY

7  #10104
8 By: _____

9 JOHN C. KELLY, ESQ.
10 Nevada Bar No.: 9848
11 ROBERT C. McBRIDE, ESQ.
12 Nevada Bar No.: 007082
13 8329 West Sunset Road, Suite 260
14 Las Vegas, Nevada 89113
15 Attorneys for Defendant
16 *Carson Tahoe Regional Medical Center*

1 CERTIFICATE OF SERVICE


2 I HEREBY CERTIFY that on the 5th day of August, 2015, I served a true and correct
3 copy of the foregoing DEFENDANT CARSON TAHOE REGIONAL MEDICAL
4 CENTER'S MOTION INCLUDE CO-DEFENDANT, AMY SUE HAYES, M.D. ON
5 THE VERDICT FORM, addressed to the following counsel of record at the following
6 address(es):
7

8 (X) VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid, addressed as indicated on the service list below in the
United States mail at Las Vegas, Nevada;

10 () VIA FACSIMILE: By causing a true copy thereof to be telecopied to the number
11 indicated on the service list below; or

12 () VIA PERSONAL DELIVERY: By causing a true copy thereof to be hand delivered on
this date to the address(es) at the addressee(s) set forth on the service list below; or

13 () VIA ELECTRONIC MEANS: By using the Court's BFS, which electronically served the
14 below individual(s):
15
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19 An employee of CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY
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INDEX OF EXHIBITS

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2	Expert report of Donald Null, Jr., M.D.	2
3	Order granting Motion to file Motion for Approval of Good Faith Settlement under seal	3
4	Excerpts of deposition of David Schrimmer, M.D.	4
5	Excerpts of deposition of Laura Mahlmeister, R.N.	3

EXHIBIT “1”

EXHIBIT “1”

April 4, 2015

From:
David B. Schrimmer, MD
4860 Y Street, Suite 2500
Sacramento, CA 95819

To:
Peter D. Durney
Attorney at Law
Durney & Brennan, Ltd.
6900 McCarran Blvd., Suite 2060
Reno, Nevada 89509

Re: McCrosky v. Carson Tahoe Regional Medical Center, et al.

Dear Mr. Durney,

I am a licensed physician in the state of California where I have practiced for over 30 years. After graduating from medical school at the University of California in 1983, I then proceeded directly to a residency in Obstetrics & Gynecology. I successfully completed a residency in Obstetrics and Gynecology at Los Angeles County- USC Medical Center in 1987. After practicing general Ob-Gyn for two years while continuing to teach at USC, I returned for a formal fellowship in Maternal-Fetal Medicine. Fellowship was completed in 1991, and I am board certified in both Obstetrics and Gynecology as well as Maternal-Fetal Medicine.

Following fellowship, I practiced Maternal-Fetal Medicine in San Diego, California in a community-based practice for 10 years. In 2001, I joined the faculty of the University of California, San Diego, where I practiced for 13 years. During that time, I climbed the academic ranks, and was ultimately promoted to Clinical Professor. In 2014, I was recruited by the University of California, Davis to the position of Division Chief for the division of Maternal-Fetal Medicine. In addition, in January of 2015, I was also promoted to Vice Chairman of the department of Obstetrics and Gynecology as well as Chief of Obstetrics. I currently serve in these capacities at UC Davis.

I have reviewed the Prenatal Records of Tawni McCrosky. In addition, I have reviewed the following documents:

1. Hospital records for Tawni McCrosky from her hospital stay at Carson Tahoe Regional Medical Center in April, 2012.
2. Hospital summaries for Liam McCrosky from Renown Regional Medical Center.
3. Depositions from the involved nursing staff, Amy Hayes, MD and the patient herself.
4. Carson Tahoe Regional Medical Center Policies and procedures as they would pertain to this admission.

Based upon my review of the above, it is my opinion, within a reasonable degree of medical probability, that the standard of obstetric, inpatient hospital care was not met by the following individuals caring for Ms. McCrosky:

1. Amy Hayes, MD
2. Veronica Klein, RN
3. Suzanne Lusich, RN
4. Gia Parkhurst, RN

Also from my review, it is my opinion that Carson Tahoe Regional Medical Center also failed to meet the standard of care by failing to properly train and evaluate the obstetric staff with regard to basic obstetric care, including evaluation of fetal heart rate tracings, appropriate triage and recognition of obstetric emergencies, and the appropriate use of leadership "chain of command."

Finally, it is my opinion, that the totality of these events has led to the severe neurologic injury sustained by Lyam McCrosky during the course of his labor and ultimate delivery at Carson Tahoe Regional Medical Center.

Case Summary

Initial Triage Assessment:

Tawni McCrosky was a 21 year old G1P0 who had an essentially unremarkable prenatal course. She presented to Carson Tahoe Regional Medical Center on April 24 at 39 weeks, 2 days gestation with complaints of contractions and early labor symptoms. The patient had previous early prenatal care, and thus her dating left no doubt that she had a term pregnancy.

Upon arrival to the hospital, the patient was triaged. She was initially stable, but did have some blood pressure elevations that required further observation and investigation. Early fetal monitoring was started, and the fetal findings were overall reassuring, category I. These findings suggested that the fetus was doing well at the time of admission to the hospital. The contraction pattern at the time of admission was still evolving into what would become a more consistent labor pattern and close observation and follow up was indicated. At the time of admission, the patient had a cervical exam, demonstrating 3 cm of dilation, suggesting early labor. The fetal head was "floating," "ballotable" and thus again, close observation and follow up in the hospital was indicated due to the potential complications that can occur with sudden rupture of membranes in this situation (cord prolapse, cord compression, malpresentation). Ultimately, after additional monitoring and after reviewing the case with Dr Hayes, the patient was admitted to the hospital with a labor diagnosis. It should be noted that nursing and physician notes, including a physical exam (or exam update) as well as an organized, outline of individualized care for this patient, were scant and at times, completely lacking in the information provided to me thus far. From the records reviewed, it does not appear that a comprehensive plan was created that would address the

specific risk factors that were present in Ms. McCrosky. These risk factors were most notable, but not limited to, the high fetal station and the initial contraction pattern.

Labor Course:

The patient's labor course was relatively uncomplicated with the exception of the continued high fetal station. Epidural anesthesia was provided to the patient with apparent reasonable pain control. Maternal records are also notable for a lack of a regular schedule with regard to documentation of maternal cervical exams, fetal position/station and at the end of the labor progress, regular maternal vital signs. Throughout the labor process, physician notes are scant at best, and there is no evidence to suggest an ongoing dialogue with the patient about the progress of her labor and any concerns that may be developing.

When the patient was ultimately completely dilated, she still had a high fetal station, either minus 1 or minus 2 per conflicting notes in the record (Minus 2 per Dr. Hayes at 0600). A bulging bag of waters, ultimately protruding from the vagina, was documented repeatedly. The medical record reflects a lack of recognition of this potentially catastrophic scenario; and there was no documentation of potential interventions offered by either the nursing staff or Dr. Hayes, and no evidence of discussion with the patient about the situation whatsoever. Communication between physician and nursing throughout the labor process was severely lacking.

At approximately 0630 in the morning, the patient, unattended by nursing staff, reported that she had membranes protruding from the vaginal between her legs. The medical record is conflicted in that there is documentation that Dr. Hayes ultimately ruptured membranes; as well as notation that the membranes ruptured spontaneously. Almost immediately after membrane rupture, there was a severe fetal bradycardia beginning at about 0631 or 0632. Fetal heart rate at that time plummets to about 70 beats per minute. 0632 and the rupture of the membranes marks the beginning of the final chapter of what led to this catastrophic newborn outcome, and the following are of significance:

1. Subcutaneous terbutaline was given to stop uterine contractions even though there was not clear evidence of uterine overstimulation as the cause of the bradycardia.
2. An intrauterine pressure catheter was placed even though there was ability to see uterine activity. Precious time was lost.
3. There is no documentation that a vaginal exam was completed to check for an umbilical cord prolapse.
4. Amnioinfusion was started even though amnioinfusion is contraindicated in the setting of acute fetal bradycardia. In addition, there was no documentation throughout the labor process that there was oligohydramnios. Amnioinfusion with normal amniotic fluid volume is also contraindicated. Once again, precious time was lost for a non-indicated procedure.
5. There were repeated patient position changes including trendelenberg, over a prolonged period of time even though there was no change or improvement in the fetal heart rate pattern.

6. At no time is there documentation of discussion of moving the patient to the operating room for cesarean delivery until approximately one hour after the fetal heart rate changes occurred.
7. Maternal vital signs are lacking through this critical time period. Acute maternal blood pressure changes from epidural anesthesia can also cause fetal bradycardia.
8. The attempt at vacuum was done at a high fetal station and was very unlikely to be successful. This was apparently realized after the first unsuccessful attempt, but again, precious time was lost.
9. Throughout the bradycardia, there was a lack of nursing backup, and as such, "real time" charting and vital signs were not possible.
10. There was extreme delay in getting the patient to the operating room.
11. There was extreme delay in the physician decision to move to cesarean section for delivery.
12. Nursing and physician staff were over extended with another procedure (retained placenta). From the available records, it is not clear if the retained placenta was an obstetric emergency or if it could have easily waited, freeing critical personnel for the much-needed cesarean delivery.
13. Due to the second procedure, nursing staff was pulled from the care of Ms. McCrosky with incomplete nurse-to-nurse communication. Thus nursing care became further fragmented.
14. There was no attempt to initiate a "chain of command" intervention to obtain additional physician help and second opinions with regard to the acute emergency. In fact, from the nursing deposition, it would appear that there is a culture of nursing reluctance and perhaps intimidation in terms of challenging a physician opinion.
15. There are many issues of incomplete charting, retrospective charting and charting errors. In addition, there were notes created by individuals who were not even present suggesting that the wrong individuals were logged into the computer during what was clearly a chaotic time for which the nursing team was not prepared to deal with.
16. Physician charting during the prolonged bradycardia is near absent during the final, most critical hour of the labor process.
17. A lack of nursing training and ongoing drills severely limited the ability of the staff to deal with this obstetric emergency.
18. There is no documentation of informed consent being offered to the patient for the various attempted interventions.

Outcome:

Ultimately, Infant McCrosky was born essentially lifeless, with a one minute APGAR of zero. His five minute APGAR was only 1, demonstrating that he was profoundly ill at the time of his birth. Infant McCrosky was slowly stabilized, and ultimately transferred to Renown Regional Medical Center. His discharge diagnosis included seizures from hypoxic ischemic encephalopathy. He also had a scalp hematoma from the attempted vacuum delivery.

Conclusions: Care that fell below the "standard of care:"

Amy Hayes, MD

1. Failed to appropriately manage the labor process for Ms. McCrosky.
2. Failed to recognize and respond to the critical nature of the bulging bag of waters and the high fetal station.
3. Inappropriate management of the fetal bradycardia resulting in severe delay in delivering the fetus.
4. Inappropriate use of the intrauterine pressure catheter.
5. Inappropriate use of the amnioinfusion.
6. Inappropriate attempted vacuum delivery given the clinical scenario.
7. Failure to obtain sufficient help in managing the labor desk given the reported multitude of problems that were going on involving more than one patient.
8. Inadequate documentation of the medical events, treatment choices and informed consent.

Nursing Staff, including:

Veronica Klein, RN
Suzanne Lusich, RN
Gla Parkhurst, RN

1. Failed to adequately assess the problems and potential risks that ultimately contributed to the catastrophic newborn outcome.
2. Failed to initiate the "chain of command" process which would have elevated the acuity of the problems and potentially provided more medical assistance.
3. Failed to communicate effectively with the on call physician.
4. Failed to protect the patient with regard to informed consent.
5. Failed to meet the standard of care for documentation:
 - i. Back charting from the fetal strip
 - ii. Lack of identification of the individual making notes on the tracing
 - iii. Login errors thus misidentifying individuals who wrote notes.
6. Incomplete and inappropriate patient handoff during a medical emergency.

Carson Tahoe Regional Medical:

1. Inadequate nursing training in identification of high-risk obstetric patients and obstetric clinical scenarios.
2. Inadequate training drills and practice sessions to deal with acute emergencies.
3. Failure to create a culture where physicians, nurses and support staff are all on an equal playing field and not influenced by fear or intimidation.
4. Failed to enforce timely and appropriate physician/nursing communication.
5. Failed to advocate for the patient with regard to informed consent.

I reserve the right to amend this report, should additional materials be sent to me for review.

Report submitted on April 5, 2015
David B. Schrimmer, MD

EXHIBIT “2”

EXHIBIT “2”

Peter D. Durney, Esq.,
Durney & Brennan, Ltd.
6900 So. McCarran Blvd.
Suite 2060
Reno, Nevada 89509

Re: McCrosky v. CTRMC, et al.

Dear Mr. Durney:

Thank you for the opportunity to review the records in the above cause. I have reviewed Lyam's records and those of his mother. As you are well aware Lyam was born on 4-25-2012 at 0748 hours. He was severely birth depressed requiring vigorous resuscitation following which he was transferred to the NICU. Due to his birth asphyxia arrangements were made to transfer him for cooling therapy.

I will discuss causation of his central nervous system injuries and standard of care during the resuscitation.

Lyam's mother's prenatal course was unremarkable. Her prenatal labs were within normal limits. Fetal growth was normal. She went into labor on 4-24-2012 and was admitted for management of her labor. I will comment on issues during her labor as they relate to the causation of his neurological injuries. I will not be offering standard of care as I am a neonatologist and not an obstetrician.

The severe problems during labor began at 0631 on 4-25-2012 when her membranes were ruptured with a subsequent fall in fetal heart rate to 60 at 0633. Terbutaline was started and the heart rate remained 90 or less. An amnioinfusion was started and the heart rate increased to 160 at 0705 but decreased back to 70 at 0710 and then improved again. At 0729 the fetal heart rate was 120 and a trial of vacuum assisted delivery was attempted. This resulted in a fall in the fetal heart rate and a c-section was performed with his delivery at 0748. He was essentially dead at the time of delivery with no tone, no respiratory effort and no audible heart rate. The 1 minute APGAR was 0. He required bag and mask ventilation, external heart massage and then intubation. His 5 minute APGAR was 1. His 15 minute APGAR was 3. He received epinephrine down the endotracheal tube X1 and intravenous X1. He also received 30cc of normal saline and then a second bolus of 20 cc of normal saline. His cord pH was 6.81 pCO2 88 PO2 47.6 HCO3 13 and base excess negative 23.4. Following the resuscitative efforts his blood gas was pH 7.22 PCO2 15.4 PO2 220, HCO3 6.2 base excess negative 18.7. He was prepared for transport and the transport team arrived at 0950.

In summary, Lyam had clear signs of fetal distress after rupture of membranes with very slow recovery. If Lyam had been delivered within twenty minutes of the initial bradycardia, more likely than not, he would have been normal. Additionally, even if he had been delivered by 0700 more likely than not his central nervous injury would have been either very minimal or not at all. Allowing him to suffer repeated episodes of bradycardia and then attempting a vacuum extraction led to his severe HIE.

I reserve the right to modify my opinions should additional information become available.

I will maintain the records and be available for deposition and/or trial as needed.

Sincerely yours,

/s/ Donald Null, Jr. MD

Donald M. Null, Jr, MD

EXHIBIT “3”

EXHIBIT “3”

1 CASE NO.: 13 TRT00028 1B

2 DEPT NO.: I

RECEIVED & FILED

2016 JUN -9 PM 3:31

JUDAN MERRIWETHER
CLERK
DEPT. OF JUDICIAL SERVICES

3
4
5 IN THE FIRST JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR CARSON CITY

6 -000-

7 TAWNI McCROSKY, INDIVIDUALLY,
8 AND AS THE NATURAL PARENT OF
LYAM McCROSKY, A MINOR CHILD,

9 Plaintiffs,

10 vs.

11 CARSON TAHOE REGIONAL MEDICAL CENTER, A
12 NEVADA BUSINESS ENTITY;
13 AMY SUE HAYES, M.D., AN INDIVIDUAL;
AND DOES I-X, INCLUSIVE,

14 Defendants.

15
16 ORDER

17
18 Defendant, Amy Sue Hayes, M.D., having moved this Court for an Order
19 allowing her Motion for Approval of Good Faith Settlement, Plaintiff's Verified Petition
20 for Compromise of Minor's Claim, and any related briefing to be filed under seal
21 pursuant to the Supreme Court Rules for Sealing and Redacting Court Records Rule 1
22 *et. seq.*, the Court being fully advised in the premises and good cause appearing,

23 IT IS HEREBY ORDERED that Defendant's Motion is granted. The Clerk is directed
24 to seal Defendant Amy Sue Hayes, M.D. Motion for Approval of Good Faith
25 Settlement, Plaintiff's Verified Petition for Compromise of Minor's Claim, and any
26 related briefing. Any documents subject to this Order which were inadvertently filed
27 without sealing shall be sealed.

28

LEMONS, GRUNDY
& EISENBERG
A PROFESSIONAL CORPORATION
6005 PLUMAS STREET
THIRD FLOOR
RENO, NV 89518-4000
(775) 769-4600

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of June, 2015, I served a copy of the foregoing
by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

Peter D. Durney, Esq.
Allasia L. Brennan, Esq.
Durney & Brennan, LTD.
6900 So. McCarran Blvd., Ste. 2060
Reno, NV 89509

Edward J. Lemons, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., Ste. 300
Reno, NV 89509

John C. Kelly, Esq.
Robert C. McBride, Esq.
Carroll, Kelly, Trotter, Franzen & McKenna
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113

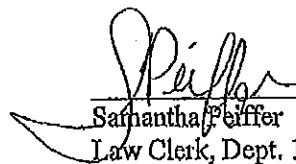

Samantha Peiffer
Law Clerk, Dept. 1

EXHIBIT “4”

EXHIBIT “4”

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IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

---o0o---

TAWNI McCROSKY, individually)
and as the Natural Parent)
of LYAM McCROSKY, a minor)
child,)
Plaintiff,)
vs.)
CARSON TAHOE REGIONAL)
MEDICINE CENTER, a Nevada)
Business Entity, AMY SUE)
HAYES, M.D., an individual,)
and DOES 1 - X,)
Defendants.)

Case No. 13TRT000281B
Department I

DEPOSITION OF
DAVID B. SCHRIMMER, M.D.
MONDAY, JULY 27, 2015

-o0o-

Reported By: BROOKE DIANE TERRY
CSR No. 469

Job No. 252186

1 today to prompt me to, you know, get my act together and
2 send a bill.

3 Q. A little reminder.

4 What's your understanding of your role as an
5 expert in this case?

6 A. It's to offer my opinion initially on both the
7 physician care as well as the hospital care of the
8 patient.

9 That line has been blurred a little bit by the
10 settlement with Dr. Hayes. When I say "a little bit,"
11 because it's still very difficult to look at one and not
12 look at the other.

13 Q. Explain what you mean by that?

14 A. Well, um, hospitals work as a team, they
15 function as a team. And it takes the entire team.

16 So, one of the team members is now less
17 verbal, you know, they're not participating as much, but
18 that doesn't mean that the work or the involvement has
19 gone away. They were still there and there were still
20 decisions made, with the doctor on -- or on behalf of
21 the doctor or support of the doctor or not support of
22 the doctor.

23 So, even though that part of the lawsuit is,
24 in a sense, has been resolved, it doesn't mean the facts
25 -- it doesn't mean the person has completely gone away,

1 their involvement has gone away.

2 Q. Would you agree with me that Dr. Hayes was the
3 OBGYN in charge of delivering the baby, was in charge of
4 the bulk of the main decision-making with regard to the
5 delivery of Lyam McCrosky?

6 MR. DURNEY: Object to the form.

7 THE WITNESS: Well, I would agree that
8 Dr. Hayes was very definitely the obstetrician in
9 charge.

10 So, there's no question that doctors have a
11 lot of authority, and that, in a sense, you know, the
12 doctor is oftentimes, you know, looked to as sort of the
13 captain of the ship, but that doesn't mean that the team
14 doesn't still function in totality.

15 Q. BY MR. McBRIDE: Okay. We'll go through some
16 more specifically in your report of the concerns that
17 you have there.

18 One of the things I was looking at -- do you
19 have your report in front of you, or did you bring that
20 with you?

21 A. Um, I have it in computer form.

22 Q. Okay. I might just refer you to a portion of
23 it, as we go through. I didn't bring an extra copy with
24 me. I'm sorry.

25 A. (Getting out computer)

1 Q. And then, at first you outlined eight specific
2 criticisms of Dr. Hayes; is that right?

3 A. That's correct.

4 Q. And earlier you testified that you still hold
5 the same opinions today; is that correct?

6 A. Essentially, yes.

7 Q. Okay. Well, have any of the opinions changed?

8 A. Um, no.

9 Q. And you say, in particular, one of the first
10 ones, failed to appropriately manage the labor process
11 for Ms. McCrosky, correct?

12 A. Yes.

13 Q. Okay. Do you mean by the "labor process"?
14 At what point did that begin, and at what
15 point did it end?

16 A. It began when she first presented to the
17 hospital, and it ended with the delivery of the baby.

18 So, there were -- there are several exams
19 where the baby is continuing to be at a high fetal
20 station, and I don't find notes by Dr. Hayes that
21 explains her thinking in terms of, do I need to do
22 anything about this, should I be worried about this,
23 should I think about rupturing the membranes, should I
24 rupture the membranes just by breaking the bag of water,
25 or should I use a technique called "needle in the

EXHIBIT “5”

EXHIBIT “5”

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-oOo-

TAWNI McCROSKY, individually and as the
natural parent of LYAM McCROSKY, a minor
child,
Plaintiffs,

-vs-

CASE NO. 13 TRT000281B

CARSON TAHOE REGIONAL MEDICAL
CENTER, a Nevada business entity; AMY SUE
HAYES, M.D., an individual, and DOES 1-X,
inclusive,

Defendants.

V I D E O T A P E D P R O C E E D I N G S
DEPOSITION OF LAURA R. MAHLMEISTER, Ph.D., R.N.

Friday, July 17, 2015, 9:54 a.m.

REPORTED BY:
VALERIE DIANE MAFFEI, RPR, CSR NO. 12138

1 when she had to say, Dr. Hayes, I'm sorry, we are
2 releasing the brakes. We are disconnecting the monitor,
3 and we are -- I have four nurses here, and we are moving
4 the patient to the main OR. We are calling another
5 physician, if you feel you cannot leave your other
6 patient who may be imminently delivering.

7 But we are taking Ms. McCrosky to the main OR.
8 We have an anesthesiologist coming in. We have a
9 manager on the line who will make sure we have the room
10 ready. And we are gonna take her where we feel the most
11 expeditious delivery can be done, because Dr. Tomita is
12 still in the room. And we can't guarantee if a problem
13 may not develop that prevents us from ever using that
14 room in a timely fashion.

15 Q. So would it be accurate to say that it's your
16 opinion that by -- that at 6:55, Carla Sells had an
17 obligation to usurp the judgment of Dr. Hayes and make
18 arrangements to get this baby delivered?

19 A. She had the absolute duty. The word "usurp" is
20 inappropriate in this day and age, in terms of patient
21 safety.

22 Q. What word would you use?

23 A. I would say that she had a duty to question the
24 physician's order, and that the order was so severely
25 out of line with the condition of the unborn baby at

1 that time that she had to immediately seek the
2 additional consultation of advice of another physician
3 and her nurse manager, and while doing that, moving the
4 patient to the main OR.

5 And again, if Dr. Hayes said, well, I have
6 another patient I'm going in to see. I want to keep
7 both these patients on the unit. She says, we are gonna
8 call for a crash C-section. We are gonna get one of
9 your partners. We'll get another available
10 obstetrician, whatever we have to do. But she's going
11 to the main OR, if there's a main OR room empty. It's
12 clean. We have the equipment. We have the staff. It
13 was change of shift. They had doubled the number of
14 nurses --

15 Q. Understand. So --

16 A. -- available.

17 Q. So this is -- these events that you believe
18 should have occurred, and because they didn't, were a
19 breach of the standard of care occurred at 6:55?

20 A. I'd say, 6:50, because she -- by 6:55, the
21 patient should have been on her way to the OR.

22 Q. Let me stop you there. If -- strike that.

23 Have you formed an opinion or impression as
24 to -- and this is based upon all the evidence that you
25 have in this case and the testimony. There's been a lot

1 CASE NO. 13TRT000281B

2 DEPT. No. I

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4 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
5 FOR CARSON CITY
6

SUSAN MERRITT
CLERK
DEPUTY

7 TAWNI McCROSKY, individually and as the natural parent
8 of LYAM McCROSKY, a minor child,

9 Plaintiffs,

10 vs.

11 CARSON TAHOE REGIONAL MEDICAL CENTER, a
12 Nevada business entity; AMY SUE HAYES, M.D., an
13 individual, and DOES I-X, inclusive,

14 Defendants.

15 **DEFENDANT CARSON TAHOE REGIONAL MEDICAL CENTER'S MOTION**
16 **FOR PARTIAL SUMMARY JUDGMENT**

17 COMES NOW, Defendant, CARSON TAHOE REGIONAL MEDICAL CENTER, by
18 and through the law offices of CARROLL, KELLY, TROTTER, FRANZEN, McKENNA &
19 PEABODY and hereby files its Motion for Partial Summary Judgment.

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

3 DATED this 11th day of August, 2015.

4 CARROLL, KELLY, TROTTER,
5 FRANZEN, McKENNA, & PEABODY

6
7 By:

 #12687
JOHN C. KELLY, ESQ.

Nevada Bar No.: 9848

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

8329 West Sunset Road, Suite 260

Las Vegas, Nevada 89113

11 Attorneys for Defendant

12 *Carson Tahoe Regional Medical Center*

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6 This is a medical malpractice case brought by Plaintiff Tawni McCrosky ("Plaintiff"),
7 individually, and as the parent of Lyam McCrosky ("Lyam"), arising out of the care and treatment
8 provided by the nurses at Defendant CTRMC and Defendant Amy Sue Hayes, M.D. ("Dr.
9 Hayes") during Plaintiff's labor and delivery April 24-25, 2012. Plaintiff alleges that Defendants
10 breached the applicable standard of care by failing to promptly deliver Lyam McCrosky, which
11 resulted in hypoxemic-ischemic encephalopathy. (Plaintiff's First Amended Complaint ¶¶15-16,
12 attached hereto as Exhibit "1"). Plaintiff also alleges that CTRMC is vicariously liable for the
13 care and treatment rendered by its "employee/ostensible agent," Dr. Hayes. Accordingly, this
14 Motion addresses Plaintiff's claims of agency and vicarious liability.

15 **II.**

16 **UNDISPUTED STATEMENT OF FACTS**

17 1. Plaintiff asserts medical malpractice against CTRMC through vicarious liability
18 for she alleges that "Defendant AMY SUE HAYES, M.D. was at all times an apparent or
19 ostensible agent, servant and/or employee of Defendants CARSON TAHOE REGIONAL
20 MEDICAL CENTER...at all times material hereto, acting within the course and scope of her
21 apparent or ostensible agency and/or employment...the Defendants...individually and jointly
22 failed to exercise that degree of skill, care and expertise normally exercised by comparable
23 physicians and medical providers having similar skills, education, training, experience or
24 otherwise similarly situated..." (Plaintiff's First Amended Complaint ¶¶4, 19, attached hereto as
25 Exhibit "1").
26

27 2. At all relevant times, CTRMC was/is a domestic non-profit corporation. (Business
28

Entity Information, Nevada Secretary of State, www.nvsos.gov/sosentitysearch (accessed August 7, 2015), attached hereto as Exhibit "2").

3. At all relevant times, Carson Medical Group was/is a domestic professional corporation. (Business Entity Information, Nevada Secretary of State, www.nvsos.gov/sosentitysearch (accessed August 10, 2015), attached hereto as Exhibit "3").

4. The MOM's Clinic is operated by CTRMC to serve the people that would be eligible for Medicaid. (Deposition of Anna Anders, R.N., pg. 10:7-10, 11:20-25, attached hereto as Exhibit "4").

5. The MOM's Clinic provides prenatal care, education, planning, and pregnancy care. (Deposition of Anna Anders, R.N., pg. 11:13-16, attached hereto as Exhibit "4").

6. The physicians of Carson Medical Group donate their time at the MOM's Clinic. (Deposition of Amy Sue Hayes, M.D., pg. 15:5-7, attached hereto as Exhibit "5").

7. Plaintiff Tawni McCrosky's family physician recommended that she go to the MOM's Clinic because she did not have insurance or financial resources at the time. (Deposition of Plaintiff Tawni McCrosky, pg. 82:21-25; 83:1-4, attached hereto as Exhibit "6").

8. Before obtaining any treatment at the MOM's Clinic, Plaintiff Tawni McCrosky initialed and signed the same exact Conditions of Admission before each visit. (February 6, 2012 Conditions of Admissions, attached hereto as Exhibit "7;" December 6, 2011 Conditions of Admissions, attached hereto as Exhibit "8;" November 28, 2011 Conditions of Admissions, attached hereto as Exhibit "9;" October 11, 2011 Conditions of Admissions, attached hereto as Exhibit "10;" and September 26, 2011 Conditions of Admissions, attached hereto as Exhibit "11.").

9. Plaintiff Tawni McCrosky testified that no one ever told her that the physicians at the MOM's Clinic were employees of the hospital. (Deposition of Plaintiff Tawni McCrosky, pg.

83:16-18, attached hereto as Exhibit "6").

10. At all relevant times, Carson Medical Group was by agreement to provide on-call obstetrical services to CTRMC. (Letter of Agreement to Provide OB/GYN On-Call Coverage, attached hereto as Exhibit "12;" Deposition of Ruth Tomita, M.D., pg. 19:21-25, attached hereto as Exhibit "13;" Deposition of Amy Sue Hayes, M.D., pg. 12:16-23, attached hereto as Exhibit "5").

11. At all relevant times, Dr. Hayes was neither an agent nor an employee of CTRMC but was acting according to her agreement with CTRMC as an independent contractor. (Letter of Agreement to Provide OB/GYN On-Call Coverage, attached hereto as Exhibit "12").

12. Carson Tahoe Medical Group controlled the scheduling of physicians at CTRMC. (Defendant Amy Sue Hayes, M.D.'s Responses to Plaintiff's First Set of Interrogatories, pg. 3:16-20, attached hereto as Exhibit "14;" Dr. Hayes' Responses to CTRMC's Request for Admissions, Response to Request No. 11, attached as Exhibit "15").

13. At all relevant times, CTRMC did not employ Hayes; did not provide her a paycheck; did not set her schedule; and did not direct her care of patients. (Exhibit "15" at Requests Nos. 11, 12, and 13).

14. At all relevant times, Dr. Hayes never told Plaintiff that she was an employee of CTRMC. (Exhibit "15" at Request No. 4).

15. Plaintiff Tawni McCrosky admitted that Dr. Hayes never advised her that she was an employee of CTRMC. (Plaintiff Tawni McCrosky's Responses to Defendant Carson Tahoe Regional Medical Center's First Set of Request for Admissions, Request No. 7, attached as Exhibit "16").

16. Plaintiff Tawni McCrosky admitted that she initialed item # 6 on the Conditions of Admission. (Exhibit "16" Request No. 3; Conditions of Admission, attached hereto as Exhibit

1 "15").

2 17. Plaintiff Tawni McCrosky admitted that it is her signature on the Conditions of
3 Admission. (Exhibit "17;" Exhibit "10" at Request No. 4).

4 18. The Conditions of Admissions signed and initialed by Plaintiff on April 2, 2012,
5 provided that "[a]ll physicians and surgeons furnishing healthcare services to me/the patient,
6 including the radiologist, pathologist, anesthesiologist, emergency room physicians, hospitalists,
7 etc., are independent contractors and are NOT employees or agents of the hospital. I am advised
8 that I will receive separate bills for these services." (Exhibit "17").

9
10 19. Jenny Glover witnessed Plaintiff Tawni McCrosky sign and initial the Conditions
11 of Admissions. (Exhibit "18;" Deposition of Jenny Glover, pg. 13:18-20, attached hereto as
12 Exhibit "16").

13
14 20. Plaintiff Tawni McCrosky signed and initialed the Conditions of Admissions on
15 April 2, 2012 before her labor and delivery on April 24-25, 2012. (Exhibit "17").

16 21. Plaintiff Tawni McCrosky was billed separately for Dr. Hayes' services.
17 (Medicaid Claim Detail Report, attached hereto as Exhibit "19").

18 **III.**

19 **LEGAL ARGUMENT**

20 **A. STANDARD OF REVIEW**

21 The purpose of the summary judgment procedure is to obviate trials when they would
22 serve no useful purpose. *Short v. Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963); *Corey v. Hom*,
23 80 Nev. 39, 389 P.2d 76 (1964). It does not involve resolution of factual issues, but seeks to
24 discover if any real issue of fact exists. *Daugherty v. Wabash Life Insurance Co.*, 87 Nev. 32, 482
25 P.2d 814 (1971). Summary judgment proceedings pierce the formality of the pleadings and test
26 whether, based on the uncontroverted facts, one party is entitled to judgment as a matter of law.
27
28

1 *Dredge Corp. v. Husite Co.*, 78 Nev. 69, 369 P.2d 676 cert. denied 371 U.S. 821 (1962);
2 *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

3 Under Nevada Rule of Civil Procedure 56, a party seeking summary judgment must
4 satisfy two substantive requirements: (1) There must be no genuine issue as to any material fact;
5 and (2) The moving party must be entitled to judgment as a matter of law. *Anderson v. Liberty*
6 *Lobby, Inc.*, 477 U.S. 242, 247 (1985). A material fact is one which will affect the outcome of the
7 action. *Id.* at 248.

8
9 Because no issues of material fact exist with respect to Plaintiff's claims of agency and
10 vicarious liability, CTRMC is entitled to partial summary judgment as a matter of law.

11 **B. CO-DEFENDANT DR. HAYES WAS NEITHER AN AGENT NOR**
12 **EMPLOYEE OF CTRMC AND NO ISSUES OF MATERIAL FACT EXIST.**

13 **1. As A Preliminary Matter, This Court May Determine That Agency Does**
14 **Not Exist As A Matter Of Law.**

15 The Supreme Court of Nevada first addressed the issue of agency in the medical
16 malpractice context in *Oehler v. Humana*, 105 Nev. 348, 775 P.2d 1271 (1989). Plaintiff Beverly
17 Oehler filed a Complaint against Humana Hospital Sunrise and numerous physicians alleging that
18 they were liable under a negligent supervision theory (respondeat superior) and a vicarious
19 liability (agency) theory. After discovery was conducted, Humana Hospital Sunrise filed a
20 Motion for Summary Judgment, which was granted. The plaintiff subsequently appealed.

21
22 The *Oehler* Court found that there was no genuine issue of material fact regarding the
23 vicarious liability (agency) theory. The Court found that agency did not exist as a matter of law,
24 stating "[a] hospital is not vicariously liable for acts of physicians who are neither employees nor
25 agents of the hospital." *Id.* at 351 (citing *Gasbarra v. St. James Hospital*, 406 N.E.2d 544 (Ill.
26 App. 1980); *Cooper v. Curry*, 589 P.2d 201 (N.M. 1978)).

27 Most recently in *Schlotfeldt*, the Nevada Supreme Court looked to other jurisdictions as a
28

1 guide for establishing the presence of agency between a doctor and hospital and evoking
2 vicarious liability. *Schlotsfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 48 (1996). Looking
3 to *Hill v. St. Clare's Hospital*, 67 N.Y.2d 72, 490 N.E.2d 823, 827 (1986), the Court found that
4 "absent an employment relationship, a doctor's mere affiliation with a hospital is not sufficient to
5 hold a hospital vicariously liable for the doctor's negligent conduct." *See also, Ruane v. Niagara*
6 *Falls Memorial Medical Center*, 60 N.Y.2d 908, 458 N.E.2d 1253 (1983). A physician or surgeon
7 who is on a hospital's staff is not necessarily liable for his tortious acts. *Evans v. Bernhard*, 533
8 P.2d 721, 725, 23 Ariz. App. 413 (1975). A hospital does not generally expose itself to vicarious
9 liability for a doctor's actions by merely extending staff privileges to that doctor. *Moon v. Mercy*
10 *Hospital*, 373 P.2d 944, 946; 150 Colo. 430 (1962); *Hundt v. Proctor Community Hospital*, 284
11 N.E.2d 676, 678; 5 Ill. App. 3d 987 (1972).

12
13 In *Schlotsfeldt*, the Court pointedly stated that their holding did not disturb *Oehler* and the
14 cases were distinguishable because:
15

16 [D]etermining the existence of agency is quite different than
17 determining the absence of agency. First, concluding agency exists
18 requires an affirmative finding on all the elements of agency.
19 **Concluding agency does not exist requires only the negation of**
20 **one element of the agency relationship.** Second, the legal
21 consequences of concluding that agency exists are much different
22 from concluding the opposite. One defendant's liability can become
inextricably linked to the tortious acts of another defendant through
the conclusion of agency. On the other hand, refusing to find
agency merely requires a plaintiff to prove a case against each
defendant individually.

23 *Schlotsfeldt*, 112 Nev. 42, FN 3 (1996) (*emphasis added*).

24 Considering *Oehler* and *Schlotsfeldt* together, a judge may determine that agency does not
25 exist as a matter of law, since concluding that agency does not exist requires only the negation of
26 one element of the agency relationship. In contrast, concluding agency does exist requires an
27 affirmative finding on all the elements of agency and is a question of fact for the jury.
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1 patient comes to the hospital and the hospital selects a doctor to serve the patient” *Id.* The Court
2 discussed the factual issues involved in determining whether ostensible agency exists: (1) whether
3 a patient entrusted himself or herself to the hospital; (2) whether the hospital selected the doctor
4 to serve the patient; (3) whether a patient reasonably believed the doctor was an employee or
5 agent of the hospital; and (4) whether the patient was put on notice that a doctor was an
6 independent contractor. *Id.* None of these questions of fact exist in the present case.
7

8 **a. Plaintiff Did Not Entrust Herself to CTRMC Hospital.**

9 Plaintiff entrusted herself to the medical care of Dr. Hayes as evidenced by Ms.
10 McCrosky’s initials and signature on the “Conditions of Admission” form. (Exhibit “17”).
11 Plaintiff had not been seen by a physician at CTRMC on April 2, 2012 prior to the time Plaintiff
12 signed the Conditions of Admission. (Exhibit “17”). During her visits and prior to seeing any
13 physician at the MOM’s Clinic, Plaintiff initialed and signed a “Conditions of Admission” form.
14 (Exhibit “7;” Exhibit “8;” Exhibit “9;” Exhibit “10;” and Exhibit “11”). The relevant section of
15 the “Conditions of Admission” states:
16

17 **#6 – LEGAL RELATIONSHIPS BETWEEN HOSPITAL AND PHYSICIANS:**

18 All physicians and surgeons furnishing healthcare services to me/the patient,
19 including the radiologist, pathologist, anesthesiologist, emergency room
20 physicians, hospitalists, etc., are independent contractors and are NOT employees
21 or agents of the hospital. **I am advised that I will receive separate bills for these services.**

22 I understand that I/the patient am under the care and supervision of my/the
23 patient’s attending physician, and it is the responsibility of the hospital staff to
24 carry out his/her instructions. **I understand that it is the responsibility of my/the**
25 **patient’s physician, surgeon or authorized healthcare provider to obtain my**
26 **informed consent for surgical or complex medical treatment, special**
27 **diagnostic or therapeutic procedures, investigational treatment or**
28 **procedures, and/or other specialized services.**

Id.

Plaintiff signed the document and initialed the clause acknowledging her understanding of

1 the language making it clear she did not entrust herself to the care of the hospital, but rather to the
2 care of independent contractor, Dr. Hayes. *Id.* Plaintiff admitted that she initialed the Conditions
3 form at paragraph 6 and Jenny Glover signed as a witness. Therefore, she cannot claim she was
4 unaware of what the Conditions form contained. Ms. McCrosky's acknowledgment of the
5 independent status of the physician providing care prevents her from claiming that she entrusted
6 herself to the care of the hospital.
7

8 **b. CTRMC Did Not Select Dr. Hayes to Provide Medical Services to**
9 **Tawni McCrosky.**

10 CTRMC did not select Dr. Hayes to serve Tawni McCrosky. Carson Tahoe Medical
11 Group set the schedule and rotated the physicians on a schedule. Dr. Hayes testified in deposition
12 as follows:

13 Q. Very well. How did Tawni McCrosky become a patient of yours?

14 A. I was on call the night she came in.

15 Q. She came in on the 24th of April?

16 A. Correct.

17 Q. She was delivered by C-section on the 25th of April, and we're talking about
18 2012?

19 A. Correct.

20 Q. Had you ever seen her before the 24th of April?

21 A. No.

22 Q. When you say you were on call, what type of call list were you on?

23 A. Our group rotates call in 24-hour increments, so my call was from the 24th to
24 the 25th.

25 Q. What do you mean when you say your group rotates call?

26 A. The OB-GYN's in Carson Medical Group share call, so we have a rotating call
27 schedule.

28 ...

1 Q. And were you the only one on call from the group on the night of April 24th,
2 April 25th, 2012?

3 A. Yes.

4 (Exhibit "5" at 12:6-23, 13:6-8).

5 The relationship between CTRMC and Dr. Hayes is undisputed, and there are no material
6 issues as to whether CTRMC selected Dr. Hayes to care for Tawni McCrosky. Because CTRMC
7 did not select Dr. Hayes to care for Tawni McCrosky; and because CTRMC did not even have
8 input as to who would be providing services on any given day; Dr. Hayes did not, as a matter of
9 law, have the apparent authority to bind CTRMC because Ms. McCrosky could not have
10 reasonably assumed that she was an agent of CTRMC. *Schlotfeldt*, 112 Nev. at 48.

11
12 **c. Tawni McCrosky Could Not Have Reasonably Believed Dr. Hayes**
13 **Was An Agent of CTRMC.**

14 Ms. McCrosky's acknowledgement and signature on the "Conditions of Admission"
15 established that she knew that Dr. Hayes who treated her at CTRMC was not its agent or
16 employee. Ms. McCrosky admitted she initialed paragraph #6 on the form. In fact, Ms. McCrosky
17 initialed paragraph #6 and signed the "Conditions of Admission" on five prior other occasions.
18 (Exhibit "17;" Exhibit "7;" Exhibit "8;" Exhibit "9;" Exhibit "10;" and Exhibit "11"). The
19 presence of these forms precludes any assertion by Ms. McCrosky that she could have reasonably
20 believed that Dr. Hayes was an agent of CTRMC. Even if Ms. McCrosky truly believed Dr.
21 Hayes was an agent of CTRMC, such a belief was unreasonable in light of the executed forms.

22
23 Furthermore, Plaintiff could not have reasonably believed that Dr. Hayes was an agent or
24 employee of CTRMC because the "practice of medicine by a general corporation organized under
25 Chapter 78 of Nevada Revised Statutes is illegal." Attorney General Opinion, 1977 Nev. Op.
26 Atty. Gen. 40 (Nev.A.G.), 1977 Nev. Op. Atty. Gen. No. 219, 1977 WL 29108. Carson Tahoe
27 Regional Healthcare., doing business as Carson Tahoe Regional Medical Center, is a domestic
28

1 non-profit corporation. Business Entity Information, Nevada Secretary of State,
2 www.nvsos.gov/sosentitysearch (accessed August 6, 2015), attached hereto as Exhibit "2".
3 Notably, only professional corporations are authorized to render professional services through
4 their employees. NRS 89.050. In compliance with the law, CTRMC (a non-profit corporation)
5 contracted with Carson Medical Group (a professional corporation) to provide physician services.
6

7 Because it would have been illegal for CTRMC to hire Dr. Hayes to practice medicine as
8 its agent or employee, Plaintiff is incapable of asserting that she reasonably believed the same.
9 Plaintiff's ignorance of the law is no excuse, as "[e]very one is presumed to know the law and this
10 presumption is not even rebuttable." *Smith v. State*, 38 Nev. 477, L.R.A. 1916A, 1276 (1915); *See*
11 *also Sengel v. IGT*, 116 Nev. 565, 573 (2000).

12 **d. Ms. McCrosky was put on Notice that Dr. Hayes was an Independent**
13 **Contractor of CTRMC.**

14 It is undisputed that Ms. McCrosky was expressly put on notice by the "Conditions of
15 Admission" form that Dr. Hayes was an Independent Contractor of CTRMC. Although the
16 Nevada Supreme Court has not yet examined the effect of a consent form on the issue of
17 ostensible agency, several other jurisdictions have concluded that a signed consent form
18 indicating that physicians are not agents or employees is grounds for summary judgment.
19

20 For example, in *Baptist Memorial Hospital System v. Sampson*, the Texas Supreme Court
21 determined that since the patient signed a consent form similar to CTRMC's form, and the
22 hospital did nothing that would lead a reasonable patient to believe that the treating physicians
23 were hospital employees, the hospital was not vicariously liable as a matter of law. 969 S.W.2d
24 945, 950 (Tex. 1998).

25 Similarly, in *Fletcher v. South Peninsula Hospital*, the Alaska Supreme Court affirmed
26 summary judgment in favor of a hospital on the issue of apparent agency where a patient signed a
27 consent form similar to CTRMC's form. 71 P.3d 833 (Ala. 2003). In short, the Alaska Supreme
28

1 Court reasoned that, by having the patient sign the consent form, the defendant hospital
2 affirmatively dispelled any appearance of employment, agency or authority. *Id.* at 841.

3 Moreover, the Illinois appellate courts have also affirmed summary judgment in favor of
4 defendant hospitals as to allegations of apparent agency. For example, in *James v. Ingalls*
5 *Memorial Hospital*, the plaintiff signed a consent form which precluded her from claiming that
6 she thought her physician was an employee of the hospital. 701 N.E.2d 207 (1st Dist. 1998).
7 Because she was specifically advised that the physicians were not employees of the hospital and
8 signed a form acknowledging that information, summary judgment was granted on apparent
9 agency. Similarly, in *Churkey v. Sherman Hospital*, summary judgment was granted for the
10 defendant hospital when the plaintiff signed a consent form acknowledging that the physicians
11 were not employees and therefore could not establish that the hospital "held out" the physician as
12 its agent. 768 N.E.2d 842 (2nd Dist. 2002).
13

14 Here, Ms. McCrosky signed the "Conditions of Admission" advising her that Dr. Hayes
15 was neither an agent nor employee of CTRMC. (Exhibit "17"). As addressed in *Schlotfeldt* and
16 the persuasive decisions from Texas, Alabama and Illinois, this form put Plaintiff on notice that
17 Dr. Hayes at CTRMC was not an employee or agent of the hospital, but rather an independent
18 medical practitioner. 112 Nev. at 48.
19

20 Since there are no questions of material fact as to the existence of an ostensible agency
21 relationship, summary judgment is appropriate as a matter of law.
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IV.

CONCLUSION

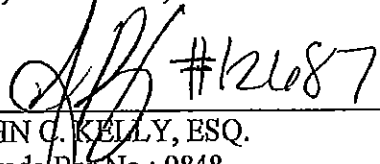
CTRMC is entitled to partial summary judgment on Plaintiff's actual and ostensible agency allegations. The evidence reveals that Dr. Hayes was an independent contractor and was neither an agent nor employee of CTRMC. Further, Plaintiff's ostensible agency claim fails, as discussed, *supra*. Therefore, summary judgment in favor of CTRMC on the issues of actual agency and ostensible agency is appropriate.

WHEREFORE, for the foregoing reasons, Defendant CTRMC respectfully requests this Court enter an Order granting this Motion for Partial Summary Judgment in its favor and against Plaintiff with respect to the aforementioned claims of actual and ostensible agency, and for such other and further relief as this Court deems just and proper.

DATED this 11th day of August, 2015.

CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA, & PEABODY

By:

 #12687

JOHN C. KELLY, ESQ.
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Attorneys for Defendant
Carson Tahoe Regional Medical Center

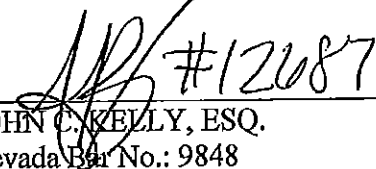
AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that the within document does not contact the Social Security Number of any person.

DATED this 11th day of August, 2015.

CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA, & PEABODY

By:

 #12687
JOHN C. KELLY, ESQ.
Nevada Bar No.: 9848
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Attorneys for Defendant
Carson Tahoe Regional Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Carroll, Kelly, Trotter, Franzen, McKenna & Peabody; that service of DEFENDANT CARSON TAHOE REGIONAL MEDICAL CENTER'S MOTION FOR PARTIAL SUMMARY JUDGMENT was made by depositing a true copy of same in a sealed envelope, postage prepaid, in the United States Mail addressed as follows:

Peter D. Durney, Esq.
6900 S. McCarran Boulevard, Suite 2060
Reno, NV 89509

544-2809-08

Dated this 11th day of August, 2015.


An Employee of Carroll, Kelly, Trotter,
Franzen, McKenna & Peabody

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EXHIBIT “1”

EXHIBIT “1”

1 CASE NO. 13TRT000281B

2 DEPT. NO. I

3
4
5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

8 * * *

9 TAWNI McCROSKY, individually and as the
10 natural parent of LYAM McCROSKY, a minor
child,

11 Plaintiffs,

12
13 v.

14 CARSON TAHOE REGIONAL MEDICAL
CENTER, a Nevada business entity; AMY
15 SUB HAYES, M.D., an individual; and DOES
16 I-X, inclusive,

17 Defendants.

FIRST AMENDED COMPLAINT

18
19 COME NOW the Plaintiffs above-named, by and through undersigned counsel, and for
20 their claims for relief against the Defendants, and each of them, aver and allege as follows:

21
22 GENERAL ALLEGATIONS

23 I.

24 At all times material hereto, Plaintiffs were and continue to be residents of the State of
25 Nevada.

26 II.

27 At all times material hereto, Defendant CARSON TAHOE REGIONAL MEDICAL
28 CENTER was and continues to be a hospital operating in the county of Carson City and duly

1 licensed in the State of Nevada pursuant to the provisions of Chapter 449 of the Nevada Revised
2 Statutes.

3 III.

4 The true names or capacities of the defendants sued herein as DOES I-X, inclusive, are
5 unknown at this time to Plaintiffs, who, therefore, sue such defendants by fictitious names.
6 Plaintiffs will seek leave to assert the true names of said defendants when the same are
7 ascertained by Plaintiffs. At such time, Plaintiffs will also assert appropriate allegations against
8 said defendants. Plaintiffs are informed and believes that each of the Doe defendants designated
9 herein by such fictitious names was negligent or otherwise legally responsible in some manner
10 for the events and happenings referred to herein and to the proximately caused injuries and
11 damages resulting therefrom.

12 IV.

13 At all times material hereto, Defendant AMY SUE HAYES, M.D, was and continues to
14 be a physician duly licensed to practice medicine in the State of Nevada pursuant to the
15 provisions Chapter 630 of the Nevada Revised Statutes. Plaintiffs are informed and believe that
16 she is a resident of the State of Nevada. Upon information and belief, Defendant AMY SUE
17 HAYES, M.D. was at all times an apparent or ostensible agent, servant and/or employee of
18 Defendant CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-X, and was, at all
19 times material hereto, acting within the course and scope of her apparent or ostensible agency
20 and/or employment.

21 V.

22 At all times material hereto, each of the Defendants was acting under the direction and
23 control of the other Defendants and was acting within the course and scope of their respective
24 employment and/or agency, ostensible or otherwise, with each of the other Defendants. Their
25 actions were otherwise either expressly or impliedly ratified and approved by the other
26 Defendants.

27 //

28

VI.

At all times material hereto, each of the Defendants was acting under the direction and control of the other Defendant and was acting within the course and scope of their respective employment and/or agency, ostensible or otherwise, with each of the other Defendants. Their actions were otherwise either expressly or impliedly ratified and approved by the other Defendants.

VII.

At all times material hereto, the Defendants, and each of them, acted together and in concert in pursuance of a common plan or design.

VIII.

At all times material hereto, the Defendants, and each of them, were engaged in a joint enterprise pursuant to express or implied agreement with a common purpose, a community of pecuniary interest, and each having an equal voice in the direction of the enterprise.

IX.

At all times material hereto, defendants CARSON TAHOE REGIONAL MEDICAL CENTER, and DOES I-V, and each of them, were and now are corporations, hospitals, partnerships, associations, or other entities organized and existing under and by virtue of the laws of the State of Nevada and other States, and were at all times and places mentioned herein engaged in the ownership, operation, and/or maintenance of hospitals, emergency rooms, labor and delivery rooms, medical clinics, medical practices and/or other medical facilities and activities open to the general public and paying patients in the State of Nevada in the County of Washoe.

X.

At all times herein mentioned, defendants CARSON TAHOE REGIONAL MEDICAL CENTER, and Does I-V, and each of them, employed doctors, physician assistants, nurses, and/or other staff to treat members of the public, including the Plaintiffs, each of whom at all times material hereto acted within the course and scope of their respective employment and/or

1 agency and/or ostensible agency and/or joint venture or whose actions were otherwise ratified
2 and affirmed by each of the other defendants.

3 XI.

4 Defendants, CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-V,
5 inclusive, represented themselves to the public at large and to the Plaintiffs herein to be at all
6 times properly equipped, fully accredited, competently staffed by qualified and prudent
7 personnel, and operating in compliance with all applicable standards of care.

8 XII.

9 At all times material hereto, the defendants, and each of them, negligently, carelessly,
10 recklessly, and without regard to the safety of the Plaintiffs and others like them, either failed to
11 provide and implement adequate standards, protocols, and safeguards to prevent the injuries that
12 occurred in this case or otherwise failed to follow established standards, protocols, and
13 safeguards which would have prevented the injuries that occurred in this case.

14 FIRST CLAIM FOR RELIEF

15 (Medical Malpractice/Professional Negligence)

16 XIII.

17 Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs
18 and incorporate the same herein by reference.

19 XIV.

20 On April 25, 2012, Plaintiff TAWNI was admitted to Defendant CARSON TAHOE
21 REGIONAL MEDICAL CENTER's facility as a result of active labor. She was 3 cm dilated.

22 XV.

23 While in labor, LYAM's heart rate was being monitored. Following rupture of the
24 membranes, the heart rate decreased into the 50's then ultimately increased to 110 in a matter of
25 20 minutes, resulting in 20 minutes of bradycardia. Despite these warning signs and others,
26 Defendants, and each of them, in violation of applicable standards, failed to deliver LYAM
27 promptly.

28 //

XVI.

LYAM was ultimately delivered by cesarean section at 7:48 a.m. The infant suffered hypoxic-ischemic encephalopathy. After resuscitation efforts were successful, LYAM was transported to Renown Regional Medical Center.

XVII.

As a proximate result of the negligence, carelessness, and recklessness and wrongful conduct of the Defendants, and each of them, and their failure to provide standard of care treatment, LYAM suffered severe distress and progressive asphyxia, and was consequently diagnosed with hypoxemic-ischemic encephalopathy.

XVIII.

Plaintiffs allege that during the course of medical care and treatment afforded to Plaintiff TAWNI and LYAM, the Defendants, and each of them, individually and jointly failed to exercise that degree of skill, care and expertise normally exercised by comparable physicians and medical providers having similar skills, education, training, experience or otherwise similarly situated, all as more particularly set forth in the attached Affidavit of a medical expert who practices in an area substantially similar to the types of practice engaged in at the time of the alleged malpractice. Plaintiffs incorporate this Affidavit as if set forth in the body of this Complaint, together with the curriculum vitae of the medical expert.

XIX.

As a further direct and proximate result of the negligence and wrongful conduct of the Defendants, and each of them, as aforesaid, Plaintiff LYAM is entitled to recover his respective special or economic damages, both past and future, to include medical expenses, expenses associated with special developmental needs, vocational and related expenses, and diminished earning capacity and long-term earnings loss, all according to proof.

XX.

As a further direct and proximate result of the Defendants' negligence and wrongful conduct, as aforesaid, Plaintiff TAWNI has suffered and will continue to suffer a loss of earnings

1 and a decrease in her earning capacity to her economic damage, past, present and future in a sum
2 according to proof.

3 As a further direct and proximate result of the negligence and wrongful conduct of the
4 Defendants, and each of them, as aforesaid, Plaintiff TAWNI has suffered and will continue to
5 suffer serious emotional distress as a result of the delayed birth of her child and her child's
6 present and long-term disability, all to her general damage in a just and reasonable amount in
7 excess of TEN THOUSAND DOLLARS (\$10,000.00).

8 XXI.

9 As a further direct and proximate result of the negligence and wrongful conduct of the
10 Defendants, and each of them, as aforesaid, the Plaintiff LYAM has suffered and will continue to
11 suffer general damages in a just and reasonable amount in excess of TEN THOUSAND
12 DOLLARS (\$10,000.00).

13 SECOND CLAIM FOR RELIEF

14 (Negligent Misrepresentation - CARSON TAHOE REGIONAL MEDICAL CENTER and

15 DOES I-X)

16 XXII.

17 Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs
18 and incorporate the same herein by reference.

19 XXIII.

20 CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-X, inclusive,
21 advertised that their facilities were of the highest quality and properly and adequately staffed
22 with competent and qualified members of a medical team, including, without limitation thereto,
23 qualified nurses and qualified physicians trained, prepared, and equipped to handle emergencies.

24 XXIV.

25 The information CARSON TAHOE REGIONAL MEDICAL CENTER supplied in the
26 course and scope of its business to Plaintiffs and the public-at-large was false and designed to
27 gain business.

28 //

1 XXV.

2 At all times material hereto, the Plaintiffs justifiably relied on the representations of
3 Defendant, CARSON TAHOE REGIONAL MEDICAL CENTER, as aforesaid.

4 XXVI.

5 Based on such representations Plaintiff TAWNI chose to deliver at Defendant CARSON
6 TAHOE REGIONAL MEDICAL CENTER's facility to ensure that she was attended to by
7 competent and qualified medical professionals.

8 XXVII.

9 Plaintiff TAWNI's justifiable reliance was misplaced because CARSON TAHOE
10 REGIONAL MEDICAL CENTER was not adequately prepared to handle her emergency. It had
11 inadequately trained staff and/or was understaffed and/or did not have appropriate and/or
12 adequate facilities to address her needs, in direct contrast to the representations it made.

13 XXVIII.

14 As a direct and proximate result of the negligence and wrongful misrepresentations made
15 by the CARSON TAHOE REGIONAL MEDICAL CENTER and each of them, as aforesaid,
16 Plaintiff TAWNI has suffered pecuniary loss.

17 THIRD CLAIM FOR RELIEF

18 (Intentional Misrepresentation – Carson Tahoe Regional Medical Center and DOES I-X)

19 XXIX.

20 Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs
21 and incorporate the same herein by reference.

22 XXX.

23 CARSON TAHOE REGIONAL MEDICAL CENTER and DOES I-X, inclusive,
24 advertised that their facilities were of the highest quality and properly and adequately staffed
25 with competent and qualified members of a medical team, including, without limitation thereto,
26 qualified nurses and qualified physicians trained, prepared, and equipped to handle emergencies.

27 //

28 //

//

1 XXXI.

2 The representations made by Defendant CARSON TAHOE REGIONAL MEDICAL
3 CENTER and DOES I-X, and each of them, were false. Defendants had an insufficient basis of
4 information for making such representations, yet did so nonetheless in order to encourage and
5 induce patients like Plaintiff become patients at CARSON TAHOE REGIONAL MEDICAL
6 CENTER.

7 XXXII.

8 As a proximate result of the intentional conduct of the Defendants, and each of them, and
9 their failure to provide standard of care treatment as advertised and promised, LYAM suffered
10 severe distress and progressive asphyxia, and was consequently diagnosed with hypoxemic-
11 ischemic encephalopathy.

12 XXXIII

13 As a further direct and proximate result of the intentional conduct of the Defendants, and
14 each of them, as aforesaid, Plaintiff TAWNI has suffered and will continue to suffer serious
15 emotional distress as a result of the delayed birth of her child and her child's present and long-
16 term disability, all to her general damage in a just and reasonable amount in excess of TEN
17 THOUSAND DOLLARS (\$10,000.00).

18 XXXV.

19 As a further direct and proximate result of the negligence and wrongful conduct of the
20 Defendants, and each of them, as aforesaid, the Plaintiff LYAM has suffered and will continue to
21 suffer general damages in a just and reasonable amount in excess of TEN THOUSAND
22 DOLLARS (\$10,000.00).

23 FOURTH CLAIM FOR RELIEF

24 (Negligent Infliction of Emotional Distress-Tawni McCrosky)

25 XXVI.

26 Plaintiff TAWNI repeats and repleads each and every allegation contained in all prior
27 paragraphs and incorporates the same herein by reference as to all defendants.

28 //

XXVII.

At all times material hereto, there existed and continues to exist a close relationship between plaintiffs, TAWNI and LYAM, namely, mother and child, and the defendants, and each of them, were aware of this close relationship when they agreed to care for the mother and deliver and care for her unborn child.

XXVIII.

It was reasonably foreseeable and easily predictable that any acts of negligence by the defendants, and each of them, that would injure the child would lead to serious emotional distress in Plaintiff TAWNI.

XXIX.

As a further direct and proximate result of the negligence and wrongful conduct of the defendants, and each of them, as aforesaid, Plaintiff TAWNI has suffered and will continue to suffer a loss of earnings and a decrease in her earning capacity to her economic damage, past, present and future in a sum according to proof.

XXX.

As a further direct and proximate result of the negligence and wrongful conduct of the defendants, and each of them, as aforesaid, plaintiff, TAWNI has suffered and will continue to suffer severe and serious emotional distress and shock and injury to her nervous system and body, all to her general damage in a just and reasonable amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

WHEREFORE, Plaintiffs, while expressly reserving their right to amend this Complaint up to and including the time of trial to include additional Defendants as well as additional theories of recovery and items of damages not yet ascertained, demand judgment against the Defendants, and each of them, as follows:

1. For general damages to the Plaintiffs, and each of them, in a just and reasonable amount in excess of TEN THOUSAND DOLLARS (\$10,000.00), each;
2. For special or economic damages to the Plaintiffs, and each of them, according to proof;

1. For general damages to the Plaintiffs, and each of them, in a just and reasonable amount in excess of TEN THOUSAND DOLLARS (\$10,000.00), each;

2. For special or economic damages to the Plaintiffs, and each of them, according to proof;

3. For attorney's fees if any be allowed under the law;

4. For prejudgment interest;

5. For costs of suit incurred herein; and

6. For such other and further relief as the Court deems appropriate.

The undersigned affirms that this document does not contain the social security number of any person.

DATED this _____ day of FEBRUARY, 2015.

DURNEY & BRENNAN, LTD.

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ABBAY WHITFIELD

EXHIBIT “2”

EXHIBIT “2”