

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Appellants,

v.

PAT SONGER and ERICKSON  
THORPE & SWAINSTON, LTD.

Respondents

---

Electronically Filed  
Case No. 68994 Aug 09 2016 09:37 a.m.  
District Court: Travis Lindeman  
Clerk of Supreme Court

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**JOINT APPENDIX**

**VOLUME I OF VII**

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Appeal from the Fifth Judicial District Court  
Case. No. CV35969

DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
LAW OFFICE OF DANIEL MARKS  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; FAX (702) 386-6812  
*Attorneys for Appellants*

JOSEPH P. GARIN, ESQ.  
Nevada State Bar No. 006653  
SIRIA L. GUTIERREZ, ESQ.  
Nevada State Bar No. 011981  
LIPSON, NEILSON, COLE  
SELTZER, GARIN  
9900 Covington Cross Dr. Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500; FAX (702) 382-1512  
*Attorneys for Respondent*

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## **CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 8th day of August, 2016, I did serve the above and forgoing JOINT APPENDIX, VOLUME I of VII by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, to the following:

Joseph P. Garin, Esq.  
Siria L. Gutierrez, Esq.  
LIPSON, NEILSON, COLE,  
SELTZER, GARIN  
*Attorneys for Respondent*

*Glenda Jew*  
An employee of the  
LAW OFFICE OF DANIEL MARKS

1 COMP  
LAW OFFICE OF DANIEL MARKS  
2 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
3 ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
4 610 South Ninth Street  
Las Vegas, Nevada 89101  
5 (702) 386-0536: FAX (702) 386-6812  
*Attorneys for Plaintiffs*

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUN 04 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY PC

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA *y*

8 IN AND FOR THE COUNTY OF NYE

9 RAYMOND DELUCCHI and  
10 TOMMY HOLLIS,

Case No. *CV 35969*  
Dept. No. *1*

11 Plaintiffs,

12 v.

**JURY TRIAL DEMANDED**

13 PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

14 Defendants.  
15 \_\_\_\_\_ /

16 **COMPLAINT**

17 COMES NOW Plaintiffs Raymond Delucchi and Tommy Hollis by and through undersigned  
18 counsel Adam Levine, Esq. of the Law Office of Daniel Marks and for their causes of action against  
19 the Defendants herein alleges as follows:

- 20 1. At all times material hereto, Plaintiff RAYMOND DELUCCHI, was and is a resident of  
21 Clark County, Nevada.
- 22 2. At all times material hereto, Plaintiff TOMMY HOLLIS, was and is a resident of the  
23 Nye County, Nevada.
- 24 3. At all times material hereto, Defendant PAT SONGER (hereinafter referred to as  
25 "SONGER"), was and is a resident of Humboldt County, Nevada.

1 4. At all times material hereto, Defendant ERICKSON, THORPE & SWAINSTON, LTD.,  
2 (hereinafter referred to as "ETS") was a Nevada domestic limited-liability company  
3 organized and existing under the laws of the State of Nevada and doing business in Nye  
4 County, Nevada.

5 5. That Defendants caused events to occur in the State of Nevada, County of Nye out of  
6 which Plaintiffs' claims herein arise. The jurisdictional amount for filing these claims is  
7 satisfied and exceeds \$10,000.

8 **COUNT ONE**  
9 **(Defamation)**

10 6. Plaintiff Delucchi is a Firefighter/Paramedic employed by Pahrump Valley Fire &  
11 Rescue Service ("PVFRS"). Plaintiff Hollis is a Firefighter/Emergency Medical  
12 Technician (Intermediate) employed by PVFRS.

13 7. Defendant ETS is a law firm which contracts with The Nevada Public Agency  
14 Insurance Pool and Public Agency Compensation Trust ("POOL/PACT") to provide  
15 legal services.

16 8. On or about May 25, 2012 at 1:00 AM Plaintiffs were driving a PVFRS medical unit on  
17 Nevada State Highway 160 when they encountered unknown person(s) operating an  
18 unknown motor vehicle who was acting erratically. After pulling the medical unit off  
19 the side of the highway, Plaintiffs offered to transport either the driver and/or the  
20 passenger of the vehicle to Desert View Hospital in Pahrump, Nevada. The driver of the  
21 vehicle rejected the offer by dropping his vehicle into gear and speeding off leaving  
22 Plaintiffs by the side of Highway 160 (hereafter "the Incident").

23 9. On or about May 30, 2012 the occupants of the vehicle, later identified as James and  
24 Brittanie Choyce, and/or their relatives, called the Chief of PVFRS regarding the  
25 Incident.

10. On or about June 27, 2012 one or more attorneys from ETS hired and/or arranged for Defendant Songer to review the facts and conduct interviews relating to the Incident.
11. Attorney Rebecca Bruch, who was employed by ETS within the course and scope of her employment, was designated as the person to direct the investigation and to whom Songer would report.
12. On August 2, 2012 Rebecca Bruch e-mailed Songer asking him to call her before Songer wrote his report.
13. Songer and Bruch co-authored a report which was prepared for Plaintiffs' employer regarding the Incident. Portions written by Songer were edited by Bruch. Other paragraphs were written directly by Bruch and directed to be incorporated into the report. Several pages of the "Conclusions" portion of the report stated it was "confidential attorney work product".
14. The report prepared by Songer and Bruch was submitted to Plaintiffs' employer by Songer and/or Bruch. Following submission of the report Songer and Bruch orally reiterated the contents in a telephone conversation with the Town Manager of Pahrump.
15. The report contained multiple false statements of fact, and/or statements of opinion which implied facts to be true, with regard to the Incident which were defamatory in nature. These statements include, but are not necessarily limited to:
  - a. That Plaintiffs engaged in conduct unbecoming employees of the Pahrump Valley Fire & Rescue Service and/or were discourteous to members of the public;
  - b. That Plaintiffs falsified reports and/or made material omissions to reports;
  - c. That Plaintiffs engaged in actual or threatened physical violence against the Choyces including "intimidation";
  - d. That Plaintiffs violated PVFRS policies for failing to report each other's violations of rules and protocols;



- e. That Plaintiffs repeatedly violated their chain of command on multiple issues;
  - f. That Plaintiffs disrupted the PVFRS morale;
  - g. That Plaintiffs attempted to suppress, modify or interfere with written communications of PVFRS;
  - h. That Plaintiffs used profane or indecent language and/or terms of endearment such as "Honey, sweetie etc";
  - i. That Plaintiffs failed to maintain a professional attitude as well as appropriate hygiene while on duty.
  - j. That there was patient contact within the meaning of the law and that Plaintiffs neglected their duties in connection therewith;
  - k. That Plaintiffs refused to transport the Choyces to an "appropriate hospital destination" for their own convenience; and
  - l. That Plaintiff Hollis did not properly supervise the activity of the ambulance in violation of national standards of care.
16. ETS is vicariously liable for the actions of its agents Songer and Bruch.
  17. The statements of the Defendants as set forth above constitute libel and/or slander *per se*.
  18. As a direct and proximate result of the libel and/or slander *per se* by the Defendants, Plaintiffs suffered and/or incurred loss of employment, loss of revenue and the use of revenue; attorney fees and litigation costs in seeking to regain their employment; loss of their homes; and emotional distress.
  19. The actions of the Defendants were fraudulent, malicious and/or oppressive so as to warrant the imposition of punitive damages under NRS 42.005.

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///

**COUNT TWO**  
**(Intentional Infliction Of Emotional Stress)**

20. Plaintiffs restate the allegations of paragraphs 1 through 19 and incorporate them herein by reference.
21. In addition to the defamatory statements contained within the report submitted by Songer and Bruch, the report made other statements which were false, and known to be false by the authors.
22. Defendant Songer interviewed both Plaintiffs and was informed that the Choyces sped off in their vehicle after an offer was made by the Plaintiffs to transport them to Desert View Hospital. Songer further reviewed audio recordings of earlier interviews with the Plaintiffs where PVFRS was informed of this fact.
23. Songer did not interview either James or Brittanie Choyce in connection with his investigation. Instead, he and Bruch authored a report which falsely suggested to any reader that he had in fact interviewed the Choyces and found their version of the incident to be more credible.
24. The report was written in a manner to falsely suggest to the reader that there had been statements by James and Brittanie Choyce recorded by Lieutenant Steven Moody of PVFRS. In fact there were no such recordings.
25. The report was written in a manner to falsely suggest to the reader that Brittanie Choyce met the standards for the definition of a "patient" when in fact she did not meet the definition of a patient within the meaning of the regulations adopted by the State of Nevada governing paramedics and emergency medical technicians.
26. The report stated that a reasonable person would believe that Plaintiffs Delucchi and Hollis were attempting to cover up the Incident when there was no credible evidence to suggest this.

1 27. The report was written in a manner to falsely suggest to the reader that Desert View  
2 Hospital was not an appropriate hospital to handle hypovolemic shock from loss of  
3 blood, and that an appropriate facility, Summerlin Hospital in Las Vegas, was only an  
4 additional two (2) miles further distance from the location of the Incident. The report  
5 concluded without any evidence that Plaintiffs decided not to transport to Summerlin  
6 Hospital for their own personal convenience.

7 28. In fact (1) Desert View Hospital was an appropriate location for Brittanie Choyces  
8 medical condition, (2) in order get to Summerlin Hospital the ambulance would have to  
9 travel approximately two (2) miles in the wrong direction before there was a break in  
10 the divided highway which would allow the medical unit to make a U-turn on Highway  
11 160, and (3) that Desert View Hospital could be reached quicker in any event because  
12 Highway 160 leading into Pahrump is two (2) lanes in each direction whereas it narrows  
13 in many places to one (1) lane as it passes through the mountains to go back to Las  
14 Vegas.

15 29. The report falsley stated that a "probability in actuarial analysis" was conducted which  
16 determined that Plaintiffs Delucchi and Hollis would commit future acts of misconduct  
17 and/or negligence when in fact no such analysis ever took place, and an actuarial  
18 analysis can never predict future conduct in any event.

19 30. The report and recommendations of the Defendants falsely asserted to the Medical  
20 Director for PVFRS that he had authority to revoke the Plaintiffs' licenses to operate as  
21 a paramedics and/or EMT's, and induced him to do so. In fact, a Medical Director does  
22 not have that authority under the law.

23 31. The report and recommendations of the Defendants were to terminate the Plaintiffs  
24 employment and induced Plaintiffs' employer to do so.  
25

///

1 32. The Defendants' creation and submission of a knowingly false report constitutes  
2 extreme and outrageous conduct exceeding all bounds usually tolerated by decent  
3 society, and was done intentionally and/or with reckless disregard for the emotional  
4 distress that it would cause the Plaintiffs.

5 33. As a direct and proximate result of the Defendants intentional infliction of emotional  
6 distress as set forth above, Plaintiffs have suffered an/or incurred loss of employment,  
7 loss of revenue and the use of revenue; attorney fees and litigation costs in seeking to  
8 regain their employment; loss of their homes; and emotional distress.

9 34. The actions of the Defendants were fraudulent, malicious and/or oppressive so as to  
10 warrant the imposition of punitive damages under NRS 42.005.

11 WHEREFORE Plaintiffs pray for judgment against the Defendants as follows:

- 12 1. For general damages in excess of \$10,000;  
13 2. For special damages in excess of \$10,000;  
14 3. For punitive damages in excess of \$10,000;  
15 4. For attorney's fees and litigation costs incurred;  
16 5. For pre-judgment interest;  
17 6. And for such other and further equitable and/or legal relief as the Court deems just  
18 and proper.

19 DATED this 14th day of May, 2014.

20 LAW OFFICE OF DANIEL MARKS

21   
22 DANIEL MARKS, ESQ.

23 Nevada State Bar No. 002003

24 ADAM LEVINE, ESQ.

25 Nevada State Bar No. 004673

610 South Ninth Street

Las Vegas, Nevada 89101

(702) 386-0536: FAX (702) 386-6812

*Attorneys for Plaintiffs*

1 Todd R. Alexander, Esq., NSB #10846  
2 Lemons, Grundy & Eisenberg  
3 6005 Plumas Street, Suite 300  
4 Reno, Nevada 89519  
5 (775) 786-6868

6 Attorney for Defendant, Erickson, Thorpe & Swainston, Ltd.

FILED

2014 JUL 11 A 11:32

NYE COUNTY CLERK  
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

9 RAYMOND DELUCCHI and TOMMY HOLLIS,

10 Plaintiffs,

Case No. CV35969

11 v.

Dept. No. 1

12 PAT SONGER and ERICKSON, THORPE &  
13 SWAINSTON, LTD.,

14 Defendants.

15 ANSWER TO COMPLAINT

16 COMES NOW, Defendant, ERICKSON, THORPE & SWAINSTON, LTD., by and through its  
17 undersigned counsel, admits, denies, and alleges as follows:

18 1. This answering defendant is without information sufficient to form a belief as  
19 to the truth or falsity of the allegations contained in paragraph 1 and, therefore, denies the  
20 same.

21 2. This answering defendant is without information sufficient to form a belief as  
22 to the truth or falsity of the allegations contained in paragraph 2 and, therefore, denies the  
23 same.

24 3. This answering defendant is without information sufficient to form a belief as  
25 to the truth or falsity of the allegations contained in paragraph 3 and, therefore, denies the  
26 same.

27 4. This answering defendant admits the allegations contained in paragraph 4 of  
28 Plaintiffs' Complaint.

LEMONS, GRUNDY  
& EISENBERG  
6005 PLUMAS ST.  
SUITE 300  
RENO, NV 89519  
775) 786-6868

5. This answering defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5 and, therefore, denies the same.

**COUNT ONE**  
**(Defamation)**

6. This answering defendant admits the allegations contained in paragraph 6 of Plaintiffs' Complaint.

7. This answering defendant denies the allegations contained in paragraph 7 of Plaintiffs' Complaint.

8. This answering defendant denies the allegations contained in paragraph 8 of Plaintiffs' Complaint.

9. This answering defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 and, therefore, denies the same.

10. This answering defendant admits the allegations contained in paragraph 10 of Plaintiffs' Complaint.

11. This answering defendant admits the allegations contained in paragraph 11 of Plaintiffs' Complaint.

12. This answering defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 and, therefore, denies the same.

13. This answering defendant denies the allegations contained in paragraph 13 of Plaintiffs' Complaint.

14. This answering defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 and, therefore, denies the same.

15. This answering defendant denies the allegations contained in paragraph 15 of Plaintiffs' Complaint.

1           16.     This answering defendant denies the allegations contained in paragraph 16 of  
2 Plaintiffs' Complaint.

3           17.     This answering defendant denies the allegations contained in paragraph 17 of  
4 Plaintiffs' Complaint.

5           18.     This answering defendant denies the allegations contained in paragraph 18 of  
6 Plaintiffs' Complaint.

7           19.     This answering defendant denies the allegations contained in paragraph 19 of  
8 Plaintiffs' Complaint.

9                                   **COUNT TWO**  
                                 **(Intentional Infliction of Emotional Distress)**

10          20.     In answer to paragraph 20, this answering defendant adopts and incorporates  
11 by reference and makes a part hereof each and all of this answering defendant's answers to  
12 Plaintiffs' Complaint.

13          21.     This answering defendant denies the allegations contained in paragraph 21 of  
14 Plaintiffs' Complaint.

15          22.     This answering defendant is without information sufficient to form a belief as  
16 to the truth or falsity of the allegations contained in paragraph 22 and, therefore, denies the  
17 same.

18          23.     This answering defendant denies the allegations contained in paragraph 23 of  
19 Plaintiffs' Complaint.

20          24.     This answering defendant denies the allegations contained in paragraph 24 of  
21 Plaintiffs' Complaint.

22          25.     This answering defendant denies the allegations contained in paragraph 25 of  
23 Plaintiffs' Complaint.

24          26.     This answering defendant denies the allegations contained in paragraph 26 of  
25 Plaintiffs' Complaint.

26          27.     This answering defendant denies the allegations contained in paragraph 27 of  
27 Plaintiffs' Complaint.

28          28.     This answering defendant denies the allegations contained in paragraph 28 of

1 Plaintiffs' Complaint.

2 29. This answering defendant denies the allegations contained in paragraph 29 of  
3 Plaintiffs' Complaint.

4 30. This answering defendant denies the allegations contained in paragraph 30 of  
5 Plaintiffs' Complaint.

6 31. This answering defendant denies the allegations contained in paragraph 31 of  
7 Plaintiffs' Complaint.

8 32. This answering defendant denies the allegations contained in paragraph 32 of  
9 Plaintiffs' Complaint.

10 33. This answering defendant denies the allegations contained in paragraph 33 of  
11 Plaintiffs' Complaint.

12 34. This answering defendant denies the allegations contained in paragraph 34 of  
13 Plaintiffs' Complaint.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 Plaintiffs have failed to state a claim against defendant upon which relief can be  
17 granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 Defendant is informed and believes and thereupon avers that the damages sustained  
20 by the plaintiffs, if any, were caused by acts or conduct of third parties who were and are not  
21 the agents or employees of this defendant or acting on behalf of this defendant.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 At all times denying any negligence, fault or responsibility on Defendant's behalf,  
26 Defendant avers that if it is found to be negligent, at fault or otherwise responsible for  
27 Plaintiffs' alleged injuries or damages, the principles of law and equity relative to comparative  
28 negligence and fault require that the proportionate or relative degrees of negligence, fault or



responsibility of all parties involved in the incident be ascertained so that Defendant is liable to Plaintiffs, if at all, for no more than an amount equal to its proportionate relative degree of negligence, fault or responsibility, if any there is.

#### **FIFTH AFFIRMATIVE DEFENSE**

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein, in that sufficient facts were not available after reasonable inquiry upon the filing of defendant's answer. Therefore, defendant reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigation warrants such an amendment.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by Nevada's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute—NRS 41.660.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because Defendant enjoys absolute and/or qualified immunity.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Defendant is informed and believes and thereupon avers that plaintiffs failed to mitigate plaintiffs' losses and damages, if any there were.

#### **NINTH AFFIRMATIVE DEFENSE**

Without admitting plaintiffs are entitled to punitive damages, punitive damages constitute excessive fines prohibited by the United States and Nevada Constitutions. Further, NRS 42.010 does not provide adequate standards and/or safeguards for its application and is therefore void for vagueness under the due process clause of the Fourteenth Amendment to the United States Constitution and in accordance with Article 1, §8 of the Nevada Constitution.

#### **TENTH AFFIRMATIVE DEFENSE**

The defendant is informed and believes that the plaintiffs failed to plead their claims with the requisite degree of specificity.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 Without admitting any publication thereof, the statements allegedly made by this  
3 defendant, if any, were and are true, and by reason of the premises and the laws of the State  
4 of Nevada, plaintiffs are barred from any recovery herein.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 Without admitting any publication thereof, the statements allegedly made by this  
7 defendant, if any, were and are opinions, and by reason of the premises and laws of the State  
8 of Nevada, plaintiffs are barred from any recovery herein.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 NRS 41.035 limits the amount of recovery, if any, which may be awarded against a  
11 political subdivision and its agents or employees.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 To the extent that plaintiffs seek an award of punitive damages against a municipality,  
14 said complaint fails to state a claim.

15 **WHEREFORE**, this answering Defendant prays for judgment as follows:

16 1. That Plaintiffs take nothing by reason of the Complaint against this Defendant and  
17 that the same be dismissed with prejudice.

18 2. That Defendant has judgment for its costs and attorneys' fees incurred herein as  
19 provided by law.

20 3. For such other and further relief as the Court may deem just and proper.

21 **I affirm this document does not contain the social security number of any person.**

22 Dated: June 30, 2014.


23  
24 By: 

25 Todd R. Alexander, Esq.  
26 Attorney for Defendant,  
27 Erickson, Thorpe & Swainston, Ltd.  
28

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg  
3 and that on June 30, 2014, I deposited in the United States Mail, with postage fully prepaid, a  
4 true and correct copy of the within **ANSWER TO COMPLAINT**, addressed to the following:  
5

6 Daniel Marks, Esq.  
7 Adam Levine, Esq.  
8 Law Office of Daniel Marks  
9 610 South Ninth Street  
10 Las Vegas, Nevada 89101

11   
12 Susan G. Davis

# In the Fifth Judicial District Court

NYE COUNTY, NEVADA

ISSUED

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV 35969  
Dept. No. 1

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUL 02 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY

Sarah Westfall

## SUMMONS

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

**TO THE DEFENDANT:** A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

### **ERICKSON, THORPE & SWAINSTON, LTD.**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at direction of:

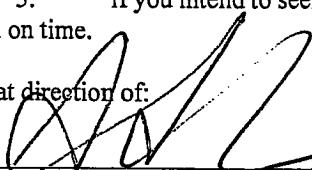
CLERK OF THE COURT

By:

Deputy Clerk  
District Court  
1520 E. Basin Avenue  
Pahrump, Nevada 89060

06-04-2014

Date

  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

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

1 AFFIDAVIT OF SERVICE

2  
3  
4  
5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6  
7 IN AND FOR THE COUNTY OF NYE

8 RAYMOND DELUCCHI and TOMMY HOLLIS,

9 Plaintiffs,

10 vs

11 PAT SONGER and ERICKSON, THORPE &  
12 SWAINSTON, LTD,

13 Defendant,

CASE NO.: CV 35969

DEPT. NO.: 1

AFFIDAVIT of SERVICE

RE: Erickson, Thorpe & Swainston,  
LTD

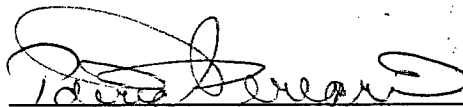
14  
15 STATE OF NEVADA )  
16 ) Ss:  
COUNTY OF WASHOE )

17 PATRICK J. PEREGRIN, hereby states that affiant is over 18 years of age, licensed to serve civil process in the State  
18 of Nevada under Nevada ID #903, and not a party to, nor interested in, the above-captioned action.

19 June 09, 2014, affiant received the 1) Summons; 2) Complaint; for service upon Erickson, Thorpe and Swainston,  
20 LTD, and on June 10, 2014 at 10:30 a.m., personally served a true and correct copy of the same upon Erickson,  
21 Thorpe & Swainston, Ltd, accepted by Office Manager Debbie Aquirre, at Erickson, Thorpe and Swainston, Ltd, 99  
22 West Arroyo St., in the City of Reno, County of Washoe, State of Nevada.

23 PURSUANT to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and  
24 correct and pursuant to NRS 239B, 045, the undersigned does hereby AFFIRM that the preceding document does not contain the  
25 social security number of any person.

26  
27 EXECUTED 20 June, 2014 by Patrick J. Peregrin.

28 

Patrick Peregrin Nevada Judicial Services  
9732 Ste Rte 445, Sparks, NV., 89441 775-329-9944

# In the Fifth Judicial District Court

NYE COUNTY, NEVADA

ISSUED

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV 35969  
Dept. No. 1

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUL 02 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY Sarah Westfall

## SUMMONS

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

**TO THE DEFENDANT:** A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

### **ERICKSON, THORPE & SWAINSTON, LTD.**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at direction of:

CLERK OF THE COURT

By: Pete Postare

06-04-2014

Deputy Clerk  
District Court  
1520 E. Basin Avenue  
Pahrump, Nevada 89060

Date

Daniel Marks  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

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

1 AFFIDAVIT OF SERVICE

2  
3  
4  
5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6  
7 IN AND FOR THE COUNTY OF NYE

8 RAYMOND DELUCCHI and TOMMY HOLLIS,

9 Plaintiffs,

10 vs

11 PAT SONGER and ERICKSON, THORPE &  
12 SWAINSTON, LTD,

13 Defendant,

CASE NO.: CV 35969

DEPT. NO.: 1

AFFIDAVIT of SERVICE

RE: Erickson, Thorpe & Swainston,  
LTD

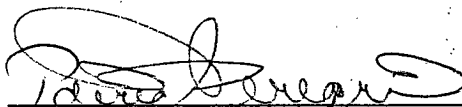
14  
15 STATE OF NEVADA )  
16 COUNTY OF WASHOE ) Ss:

17 PATRICK J. PEREGRIN, hereby states that affiant is over 18 years of age, licensed to serve civil process in the State  
18 of Nevada under Nevada ID #903, and not a party to, nor interested in, the above-captioned action.

19 June 09, 2014, affiant received the 1) Summons; 2) Complaint; for service upon Erickson, Thorpe and Swainston,  
20 LTD, and on June 10, 2014 at 10:30 a.m., personally served a true and correct copy of the same upon Erickson,  
21 Thorpe & Swainston, Ltd, accepted by Office Manager Debbie Aquirre, at Erickson, Thorpe and Swainston, Ltd, 99  
22 West Arroyo St., in the City of Reno, County of Washoe, State of Nevada.

23 PURSUANT to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and  
24 correct and pursuant to NRS 239B, 045, the undersigned does hereby AFFIRM that the preceding document does not contain the  
25 social security number of any person.

26  
27 EXECUTED 20 June, 2014 by Patrick J. Peregrin.



Patrick Peregrin Nevada Judicial Services  
9732 Ste Rte 445, Sparks, NV., 89441 775-329-9944

LIPSON, NEILSON, CL, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

**MDSM**

JOSEPH P. GARIN, ESQ.  
NEVADA BAR NO. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR NO. 11981  
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500  
Fax: (702) 382-1512  
[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)  
[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

*Attorneys for Defendant,*  
PAT SONGER

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUL 24 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY

**IN THE FIFTH JUDICIAL DISTRICT COURT**

**IN AND FOR THE COUNTY OF NYE**

RAYMOND DELUCCHI and TOMMY  
HOLLIS,

Plaintiffs,

v.

PAT SONGER and ERICKSON, THORPE &  
SWAINSTON, LTD.,

Defendants.

CASE NO: 35969  
DEPT NO: 1

**DEFENDANT PAT SONGER'S  
SPECIAL MOTION TO DISMISS  
PURSUANT TO NRS § 41.660**

**RULING REQUIRED WITHIN SEVEN  
JUDICIAL DAYS PER NRS §  
41.660(f)**

Defendant, PAT SONGER, by and through his attorneys of record, the law firm of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C., hereby submit DEFENDANT PAT  
SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS § 41.660, and move  
this Court to dismiss this matter with prejudice based on Nevada's anti-SLAPP statute,  
NRS § 41.660.

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Defendant Songer bases this Motion on NRS § 41.660, the attached memorandum of points and authority, and any oral argument that the Court may entertain in this matter.

DATED this 23<sup>rd</sup> day of July, 2014.

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

Phone: (702) 382-1500

[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

*Attorneys for Defendant,  
PAT SONGER*


#### **NOTICE OF MOTION**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that counsel for Defendants, will bring the foregoing MOTION TO DISMISS on for hearing before the above-entitled Court, Department 1, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, at the hour of \_\_\_\_\_, \_\_\_\_m., or as soon thereafter as counsel may be heard.

DATED this 23<sup>rd</sup> day of July, 2014.

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

Phone: (702) 382-1500

[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

*Attorneys for Defendant, PAT SONGER*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. Introduction

Nevada has a no tolerance policy for strategic lawsuits against public participation. Nevada provides complete immunity from civil liability for a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern. Here, Pat Songer was hired by the Town of Pahrump's agent to investigate and prepare a written report regarding Pahrump's concerns over potential emergency personnel misconduct in providing assistance to a woman suffering a miscarriage. Songer's report was a good faith communication in furtherance of the right to free speech in direct connection with Pahrump's concern over potential misconduct. Therefore, Songer is protected by Nevada law and this lawsuit must be dismissed with prejudice pursuant to Nevada's anti-SLAPP statute NRS § 41.440.

### II. Relevant Factual Background

This case arises from an investigation surrounding the events on the evening of May 25, 2012, on Highway 160. Raymond Delucchi and Tommy Hollis (Collectively "Plaintiffs") were paramedics and returning to their station in Pahrump. On that evening they had an interaction with a patient that eventually led to an investigation conducted by Defendant Erickson, Thorpe & Swainston, Ltd., and Defendant Pat Songer. Plaintiffs allege defamation and intentional infliction of emotion distress, and seek compensatory damages and punitive damages. Despite Plaintiffs allegations in the Complaint regarding the report, which was a good faith communication in furtherance of free speech, Songer is protected by NRS § 41.660, thus this lawsuit violates Nevada law and must be dismissed.

#### A. Facts regarding Highway 160 incident

On or about May 25, 2012, Brittanie Choyce and her husband James Choyce flagged down Delucchi and Hollis, who were driving towards Pahrump in their ambulance. What happened at the scene has been highly contested; however, Plaintiffs have admitted that they were pulled over by the Choyces. It is undisputed that Brittanie was experiencing a miscarriage of her 17 ½ week-old, stillborn child. It is also undisputed that James was

1 driving her to Las Vegas because she had been directed to go to Las Vegas to seek further  
2 treatment regarding her pregnancy. Brittnie was scheduled to undergo an evacuation on  
3 May 26, 2012, however, her body started delivering the stillborn child the night before the  
4 appointment.

5 Plaintiffs and the Choyces' disagree as to what transpired that evening on the  
6 highway. Plaintiffs claim they were concerned for their safety and offered to take Brittnie to  
7 the nearby Pahrump hospital. The Choyces' claimed that they were refused service.  
8 Regardless of which is indeed fact, what is clear is that Plaintiffs did not transport Brittnie  
9 and that she required five blood transfusions and had five blood clots after the miscarriage.

10 Brittnie's mother contacted the Pahrump Valley Fire-Rescue Services on or about  
11 May 30, 2012, to complain about the treatment her daughter had received. Brittnie was then  
12 interviewed by phone, and later in person, by Lieutenant Steve Moody and Fire Chief Scott  
13 Lewis.

14 **B. Highway 160 Investigation and conflict**

15 Based on complaint by the Choyce family, Lt. Moody and Fire Chief Lewis began an  
16 internal investigation against Delucchi and Hollis. At the time, Delucchi was President of the  
17 Fire Fighter's Union and claimed that Fire Chief Lewis was retaliating against him with the  
18 investigation. Delucchi filed an internal complaint against Lewis, which created a conflict of  
19 interest and eventually led to the retention of Erickson, Thorpe & Swainston to conduct a  
20 third-party investigation.

21 **C. Mr. Songer was retained by Pahrump's counsel to conduct an**  
22 **investigation**

23 As part of the third-party investigation that ETS was retained to conduct, Becky  
24 Bruch, Esq., eventually retained Pat Songer, the Director of Emergency Services at  
25 Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation. Songer  
26 has over 22 years of experience in emergency services. On or about June 27, 2012,  
27 attorney Rebecca Bruch contacted Songer to investigate the encounter between Delucchi  
28 and Hollis and the Choyces on Highway 160. See, Declaration of Pat Songer ("Dec.

Songer”), attached hereto as Exhibit A, ¶4. Thus, Pahrump, through its agent Ms. Bruch, requested a written communication from Songer regarding the incident on Highway 160.

Songer conducted his investigation and collected all relevant information that was reasonably available to him. Dec. Songer, Ex. A. ¶17. This included relying on his investigation, the reports of the incident prepared by Lewis and Moody after their interview with the Choyce family, and his own interviews with Delucchi and Hollis. Dec. Songer, Ex. A, ¶19-10. After collecting all available information, Songer prepared a written report containing the facts he had gathered during his investigation and prepared his conclusions based on those facts. Dec. Songer, Ex. A, ¶18. At all times, Songer acted in good faith and did not disseminate any information that he knew to be false. Dec. Songer, Ex. A, ¶16, 18, 19. Ultimately, Delucchi and Hollis were terminated, in part, based on the findings in the report. See, Complaint ¶18.

**III. Procedural requirements for Special Motion To Dismiss pursuant to NRS § 41.660 require a hearing within seven judicial days from service and Plaintiffs must present clear and convincing evidence of a probability of prevailing**

When a party, such as Songer, files a Special Motion to Dismiss, NRS § 41.660 states to the steps the Court, and Plaintiffs, must take for the claim to survive. Nev. Rev. Stat. § 41.660 (2013).<sup>1</sup> First, the Court must determine whether the report was based upon a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern. NRS § 41.660(3)(a). As further demonstrated below, the report was based upon a good faith communication as defined by NRS § 41.637. In determining whether the report was in good faith, the Court may consider Songer’s attached Declaration. NRS § 41.637(d); see Dec. Songer, Ex. A. The Nevada Supreme Court has stated that the District Court “shall treat the special motion to dismiss as a motion for summary judgment, and its granting the motion is an adjudication upon the merits.” *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009).

<sup>1</sup> The statute requires that a Special Motion to Dismiss be filed within 60 days after being served with the Complaint. NRS § 41.660(2). Songer was served on July 4, 2014, thus this motion is timely.

As Songer will undoubtedly meet his burden of showing the communication to be in good faith, the burden shifts to Plaintiffs to show by **clear and convincing evidence** a probability of prevailing on the claim. NRS § 41.660(3)(b). Plaintiffs cannot overcome the special motion to dismiss "on the gossamer threads of whimsy, speculation and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005). Instead, Plaintiffs must provide more than general allegations and conclusions and must submit specific factual evidence "demonstrating the existence of a genuine factual issue." *Id.*

Given that the purpose of a special motion to dismiss is to quickly and efficiently filter out unmeritorious claims in an effort to protect citizens from costly retaliatory lawsuits, NRS § 41.660(f) requires that the Court rule on this Motion within seven judicial days upon service to the Plaintiffs. NRS § 41.660(f); *see e.g., John v. Douglas County School Dist.*, 125 Nev. 746, 219 P.3d 1276, 1282 (2009).

IV. **Songer's report to the Town of Pahrump was a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern and thus this lawsuit is proscribed by Nevada law and must be dismissed**

Nevada has expressly prohibited meritless lawsuits that seek civil liability against a person for their involvement in public affairs. Nevada's Anti-SLAPP laws are designed to protect the public from frivolous lawsuits that are used to "censor, chill, intimidate or punish persons for involving themselves in public affairs." *See* 1997 Nev. Stat., ch. 387, preamble, at 1367. Anti-SLAPP immunity applies when there is a "good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern." NRS § 41.637. This means that the communication was made to a government body regarding an official proceeding or on a subject that the government would be reasonably concerned about. The statute states that a good faith communication is as follows:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
2. ***Communication of information*** or a complaint ***to a*** Legislator, ***officer or employee of*** the Federal Government, ***this state*** or a political

subdivision of this state, **regarding a matter reasonably of concern to the respective governmental entity;**

3. **Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law;** or

4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

NRS § 41.637(2013)(emphasis added).

Here, Songer's report regarding Plaintiffs' conduct on Highway 160, falls squarely within the purview of NRS § 41.637. The written report is a good faith communication because it (1) communicated information regarding a matter of reasonable concern to Pahrump; and (2) was made in direct connection with Pahrump's internal investigation regarding Plaintiffs' potential misconduct. As further demonstrated below, Songer's report was a good faith communication and this Motion should be granted.

**A. Songer's report to Pahrump communicated truthful information regarding a matter of reasonable concern to Pahrump and was made without knowledge of falsehood**

A plain reading of Nevada's anti-SLAPP statutes makes it evident that the good faith communication needs to be related to a reasonable concern that the government agency may have. NRS § 41.637 specifically defines a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern as a "communication of information ... to a Legislator, officer or employee of ... this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity." See, NRS § 41.637.

**1) Mr. Songer conducted an investigation at the request of Pahrump's retained counsel**

To be clear, the Town of Pahrump through its retained counsel, ETS, sought and requested Songer's communication, the report, because Pahrump was concerned about Plaintiffs' actions on Highway 160. Thus, the communication in the report was regarding a matter reasonably of concern to Pahrump. It is reasonable for a town, such as Pahrump, to have a reasonable concern when its emergency response personnel fail to

1 aid a woman within their jurisdiction during a miscarriage taking place in her vehicle.  
2 When the people responsible with aiding others in a medical emergency fail to do just  
3 that—aid a woman in a medical emergency—it raises reasonable concerns for any  
4 government agency. The concerns include, but are not limited to, the competence of the  
5 emergency personnel, the potential exposure and litigation, and the facts underlying the  
6 alleged incident.

7 **2) Plaintiffs' alleged conduct of abandoning a woman suffering a**  
8 **miscarriage on the side of the road qualifies as a reasonable**  
9 **concern**

10 Songer's report addressed the facts on the incident, evaluated the veracity of all the  
11 parties and their version of events, and questioned the appropriateness of Plaintiffs' conduct  
12 given the circumstances. In other words, Songer's report addressed a matter of reasonable  
13 concern to Pahrump and at its request. Songer reviewed all the documents reasonably  
14 available to him and interviewed Delucchi and Hollis. In fact, both Delucchi and Hollis  
15 admitted that there was patient contact, but that they felt "the scene wasn't safe enough" for  
16 them to approach Ms. Choyce and that "the driver kept our attention." See, Pat Songer's  
17 Report, attached hereto as Exhibit B, Facts 3:14 and 4:12. Given the: 1) conflicting stories  
18 between the Choyce family and Delucchi and Hollis, and 2) circumstances that reasonably  
19 suggest some potential negligence, it was reasonable for Pahrump to undergo an  
20 investigation of the incident.

21 Given the grave and disturbing allegations of misconduct involving a woman suffering  
22 a miscarriage—a woman who later required five blood transfusions because she lost so  
23 much blood—it would have been unreasonable for Pahrump to not conduct an investigation.  
24 However, Pahrump did conduct an investigation which shows that the incident was a  
25 reasonable concern to the town.

26 Because the requested report involved Pahrump's reasonable concern over the  
27 Highway 160 incident, Songer's report qualifies as a good faith communication in  
28 furtherance of the right to free speech in direct connection with an issue of public concern.

1 Therefore, the Court should grant this Special Motion to Dismiss and dismiss this matter  
2 with prejudice.

3 **B. Songer's report was made in direct connection with the Town of**  
4 **Pahrump's concerns regarding Delucchi and Hollis' actions on Highway**  
5 **160 and the disciplinary action taking place**

6 In addition to the report being a good faith communication regarding a matter of  
7 reasonable concern to Pahrump, the report is also a statement made in direct connection  
8 with an issue under consideration by the town relating to an official proceeding. NRS §  
9 41.637(3) specifically defines a good faith communication in furtherance of the right to free  
10 speech in direct connection with an issue of public concern as a "written ... statement  
11 made in direct connection with an issue under consideration by a[n] executive office or...  
12 any other official proceeding authorized by law." NRS § 41.637(3).

13 It is undisputed that Pahrump retained Erickson, Thorpe & Swainston, Ltd. because  
14 Pahrump needed an outside entity to coordinate and oversee the investigations into the  
15 Highway 160 incident and the internal cross-complaints filed by Delucchi and Chief Lewis.  
16 The firm, in turn, retained Songer to conduct an investigation on the Highway 160 incident.  
17 Thus, Songer's report was *made in direct connection with an issue*, the Highway 160  
18 incident, *under consideration* by Pahrump, regarding *an official proceeding*, the disciplinary  
19 actions of the Plaintiffs. The report was used by Pahrump and PVFRS in the disciplinary  
20 proceedings against Delucchi and Hollis, which was an official proceeding authorized by  
21 law. Therefore, the report qualifies as a good faith communication in furtherance of the  
22 right to free speech based on it being a written statement made in direct connection with  
23 an issue under consideration by Pahrump and used in the disciplinary hearings of  
24 Delucchi and Hollis.

25 As the report has yet another basis for being a protected communication under  
26 NRS § 41.660, the Court should grant this Motion and dismiss the case against Songer.

27 **V. Conclusion**

28 NRS § 41.650 provides immunity from any civil action based on a person's good faith  
communication in furtherance of the right to petition or the right to free speech in direct



1 connection with an issue of public concern. Here, Songer's report was not only a good faith  
2 communication, but it was specifically requested by the Town of Pahrump through its  
3 agents. If the Court allows this SLAPP lawsuit to go forward it opens the door for all neutral  
4 third parties that are contracted by a government agency to be sued by disgruntled  
5 employees. Pat Songer did not seek out this assignment, but was approached by  
6 Pahrump's agent, Becky Bruch, because of his vast experience in emergency services. He  
7 conducted an investigation and reviewed all documents that were reasonably available to  
8 him in making his report and did so in good faith. There can be no question that the  
9 allegations raised against Delucchi and Hollis of essentially abandoning a woman during a  
10 miscarriage so severe that she required five blood transfusions was a matter of public  
11 concern. Nevada has prohibited this type of lawsuit because it seeks to "punish [individuals]  
12 for involving themselves in public affairs." This lawsuit seeks to punish Pat Songer for being  
13 asked to investigate, review, and offer his opinions, in a matter that Pahrump was  
14 reasonably concerned with, which is precisely why this Court must dismiss this matter  
15 pursuant to NRS § 41.660. Therefore, Defendant Pat Songer requests this Motion be  
16 granted in total and Plaintiffs case be dismissed with prejudice.

17 DATED this 23<sup>rd</sup> day of July, 2014.

18 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

19  
20 By:   
21 JOSEPH P. GARIN, ESQ.

22 NEVADA BAR No. 6653

23 SIRIA L. GUTIERREZ, ESQ.

24 NEVADA BAR No. 11981

25 9900 Covington Cross Drive, Suite 120

26 Las Vegas, Nevada 89144

27 Phone: (702) 382-1500

28 Fax: (702) 382-1512

[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

*Attorneys for Defendant,  
PAT SONGER*

LIPSON, NEILSON, COL F. SELTZER, GARIN, P.C.  
9900 Covington ; Drive, Suite 120  
Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document,

**DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS**  
**PURSUANT TO NRS § 41.660**

filed in Case Number: 35969

☒ Document does not contain the social security number of any person

**- OR -**

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

**- or -**

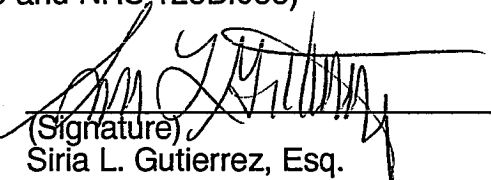
☐ For the administration of a public program or for an application for a federal or state grant.

**- or -**

☐ Confidential Family Court Information Sheet

(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 23, 2014

  
(Signature)  
Siria L. Gutierrez, Esq.

*Attorney for Defendant, PAT SONGER*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July, 2014, service of the foregoing  
**DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS §**  
**41.660** was made by depositing a true and correct copy of the same in the United States  
mail, with postage fully prepaid, addressed to:

Daniel Marks, Esq.  
Adam Levine, Esq.  
Law Offices of Daniel Marks  
610 South Ninth Street  
Las Vegas, NV 89101

*Attorneys for Plaintiffs*

Todd R. Alexander, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, 3<sup>rd</sup> Flr.  
Reno, NV 89519

*Attorneys for Defendant,  
Erickson, Thorpe & Swainston, Ltd.*



An Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

# EXHIBIT A

# EXHIBIT A

**DECLARATION OF PAT SONGER**

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF HUMBOLDT )

I, PAT SONGER, declare under penalty of perjury as follows:

1. I am the administrative director for Humboldt General Hospital in Winnemucca, Nevada.

2. I have been named as a defendant in the lawsuit asserted by Plaintiffs Raymond Delucchi and Tommy Hollis, filed as Case No. CV35969 in the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye.

3. At the time of the events in question in the aforementioned lawsuit, I was the Director of Emergency Medical Services at Humboldt General Hospital.

4. On or about June 27, 2012, attorney Rebecca Bruch contacted me to investigate an encounter between Delucchi and Hollis and James and Brittnie Choyce, which occurred on Highway 160, when James and Brittnie were on their way to a Las Vegas hospital.

5. I was asked to review the facts that had already been gathered by Fire Chief Scott Lewis and Lt. Steve Moody, and to conduct additional interviews as necessary to complete an investigation of the incident on June 27, 2012.

6. During the course of my investigation, I discovered evidence that led me to conclude that: a) Delucchi and Hollis had not reported the incident to anyone; b) They did not make any cell phone calls or radio transmissions about the incident to their dispatcher or to any law enforcement agency; c) They did not prepare an incident report or a patient care report; d) They did not report the incident to the on-duty Lieutenant or Fire Chief after returning to Pahrump; and e) they did not even make any such reports the following morning. It was only after their conduct was discovered through a complaint to the department and they were confronted by the department that Delucchi and Hollis finally came forward with their stories of the incident.

///

1           7. In my investigation, I believe I collected all relevant information that was  
2 then reasonably available to me.

3           8. After collecting all available information, I prepared a written report  
4 containing the facts I had gathered in my investigation and the conclusions I reached by  
5 virtue of my investigation. I am unaware of any other evidence that was withheld, and I  
6 have not been advised of the existence of any information that would have caused me  
7 to modify my written report. A true and correct copy of my report is attached as Exhibit  
8 6 to Erickson, Thorpe & Swainston's Special Motion to Dismiss and Exhibit A to  
9 Defendant Pat Songer's Special Motion to Dismiss.

10          9. In reaching my findings and conclusions, I relied on my investigation which  
11 included review of the reports of the incident prepared by Lewis and Moody, after their  
12 interviews with James and Brittnie Choyce.

13          10. I also relied on my own interviews with Delucchi and Hollis. I also drew  
14 my conclusions in part based on the fact that Delucchi and Hollis had not reported the  
15 incident to anyone on the night in question or the following morning.

16          11. As an investigator, I acted in good faith and believe that my role required  
17 me to, among other things, use my best judgment to determine the credibility of  
18 witnesses based not only on the witnesses' characteristics, but also on the plausibility of  
19 their respective accounts of the events in question. I performed this task to the best of  
20 my ability and at all times acted in good faith.

21          12. I concluded, among other things, that the story proffered by Delucchi and  
22 Hollis was not plausible and that Delucchi and Hollis were not credible witnesses.

23          13. I understood that Delucchi and Hollis were obligated to report the incident  
24 promptly after it transpired and I concluded that Delucchi's and Hollis' failure to report  
25 suggested to me that they had been attempting to conceal their wrongdoing, and that  
26 concealment made them even less credible.

27       ///

28       ///

1           14. I further concluded that Delucchi and Hollis had breached the standard of  
2 care<sup>1</sup> applicable to emergency medical services personnel, that their failure to prepare a  
3 Patient Care Report or Incident Report could be viewed as an attempt to cover up their  
4 wrongdoing, and that their conduct potentially exposed the Town of Pahrump to civil  
5 liability.

6           15. After my report of findings and conclusions were finalized, I was asked by  
7 Becky Burch to prepare a report of recommendations as to how the Town of Pahrump  
8 should deal with Delucchi and Hollis. I subsequently provided a report of my  
9 recommendations. A true and correct copy of my report of recommendations is  
10 attached as Exhibit 8 to Erickson, Thorpe & Swainston's Special Motion to Dismiss and  
11 Exhibit B to Defendant Pat Songer's Special Motion to Dismiss.

12           16. In making my report of recommendations, I was called upon to interpret  
13 policies, regulations, rules and protocols, and, to the best of my ability, apply those  
14 principles to the conduct exhibited by Delucchi and Hollis. I performed these tasks to  
15 the best of my ability, in good faith, and I did not disseminate any information I knew to  
16 be false.

17           17. My recommendations consisted of the actions I would have taken if  
18 Delucchi and Hollis were under my command. My recommendations included fully  
19 briefing and informing PVFRS's EMS medical director, as well as the State of Nevada  
20 EMS program manager, on the incident and the investigation. I also recommended that  
21 Delucchi and Hollis be terminated from their positions with PVFRS. My  
22 recommendations for termination were based on what I interpreted as various violations  
23 of the Town of Pahrump's personnel policies, PVFRS's rules and regulations, and  
24 PVFRS's EMS protocols.

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> I understand that standard of care in this context required: all emergency medical services personnel to  
file a report regarding any patient contact.

1           18. The information contained in my reports was truthful to the best of my  
2 knowledge, and I made no statements I knew to be false. I am unaware of any facts in  
3 the report being incorrect.

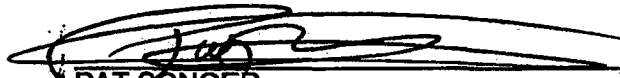
4           19. I still believe the information contained in my reports to be accurate,  
5 truthful, and supported by the evidence revealed in my investigation.

6           20. I had no knowledge or belief that any information provided to the Town of  
7 Pahrump was false.

8           21. If I was deposed or otherwise offered the opportunity to testify, I would  
9 testify that I believed my report and recommendations were truthful, accurate and  
10 supported by the evidence.

11           I declare under penalty of perjury that the foregoing is true and correct.

12           Executed on July 18, 2014.

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15 PAT SONGER  
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# EXHIBIT B

# EXHIBIT B

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### Points of Interview with Complainants

#### A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

#### B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

#### C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

### Review of Documents

1339 Harmony Street, Winnemucca, Nevada 89445  
Tel: 775-623-2247

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### A. External Complaints

### B. Resumes

1. Raymond Delucchi, EMT-Advanced (Paramedic)
2. Tommy Hollis, EMT-Intermediate
3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate

### C. Pahrump Valley Fire-Rescue Services

1. Job Description for Firefighter/Paramedic
2. Job Description for Firefighter/EMT-I Transport

### D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)

### E. International Association of Fire Fighters Local 4068 & Town of Pahrump, Collective Bargaining Agreement

### F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources

### G. Pahrump Valley Fire-Rescue Services Rules and Regulations

### H. Pahrump Valley Fire-Rescue Services EMS Protocols

### I. Pahrump Valley Fire-Rescue Services Rules and Regulations

## Interview

1339 Harmony Street, Winnemucca, Nevada 89445  
Tel: 775-623-2247

## Pat Songer

### Facts From Pahrump Valley Fire-Rescue Services Investigation

Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".  
"The scene wasn't safe enough to make contact with the passenger".

### Interview

Tommy Hollis, Firefighter/EMT-Intermediate

1339 Harmony Street, Winnemucca, Nevada 89445  
Tel: 775-623-2247

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
5. EMT-Intermediate Hollis stated Timeframe took "2 minutes".
6. EMT-Intermediate Hollis restated "miscarriage", at the ambulance window by a male.
7. Asked, what dictates a Special Circumstance Report to be filled out. Answer by EMT-Intermediate Hollis "Erratic Situation", and "at the Lieutenant or Chief's request".
8. Asked, what dictates a Patient Care Report (PCR) to be filled out. Answer by EMT-Intermediate Hollis "patient contact".
9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid"
12. Asked, have you filled out a PCR since that date? Answer by EMT-Intermediate Hollis "no".

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Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

1. The Complainants could have been more believable for the following reasons 2-13.
2. There was "Patient Contact". Contrary to what the two (2) Firefighter/EMS personnel want us to believe, because they both went to Brittney's front passenger door where she was seated. The PVFRS employee's statement "What's going on" at the right side of the vehicle in close proximity to the front passenger door, combined with both Brittney's statement (see #3. below), and James Choyce's statement (see # 4 below) constitutes Patient Contact.
3. In the Allegations by Complainant Brittney

"What's going on", stated by the Paramedic while at the passenger/patient's front passenger window denotes "patient contact".

Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis, have a more believable and plausible pattern to it. Brittney explains in detail what the "bald" person (Paramedic Delucchi) stated ("What's going on") to her and her response to that (See Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis). An EMS expert will tell you that the words that were stated by Brittney would be a typical response to Paramedic Delucchi's question. Paramedic Delucchi's statement that all the passenger did was cry is not believable nor what a bleeding miscarriage lady would be saying or doing. She would be verbalizing everything (and possibly more) as in the statement by Brittney. Additionally, for the two Firefighter/EMS employees to have credibility and be considered believable, then STAR CARE (As in the PVFRS Rules and Regulations) would have to be demonstrated by the "A" and the "R" (in STAR), and the "C", "A", "R", and "E" (in CARE). And in this case six (6) out of the eight (8) STAR CARE topics were disregarded.

Moreover, failure by both Fire/EMS personnel together or individually to document the details of this encounter in a PVFRS's Patient Care Report, or PVFRS's Special Circumstance Report (Incident Report) form will be viewed as a cover up by the two (2) Firefighter/EMS personnel.

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Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

4. In the allegations by complainant James Choyce

"The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

This demonstrates that Paramedic Delucchi was in fact close enough to the patient to make a callous statement "it wasn't that much blood". Moreover, Paramedic Delucchi did make "Patient Contact".

5. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".

Therefore, Paramedic Delucchi, by the National Standards of Care from the Department of Transportation (DOT) for EMT-Basic, and or EMT-Paramedic didactic, clinical, and or field education should have responded appropriately. Additionally, STAR CARE (see #3) which is a part of PVFRS Rules and Regulations were continuously disregarded by both EMS providers. Moreover, a "Miscarriage" is a serious situation which can/may lead to a life threatening situation called Hemorrhagic Shock (loss of blood/bleeding), resulting in possible death.

6. Paramedic Delucchi stated, "The whole incident took 60 seconds". EMT-Intermediate Hollis stated "2 minutes". Paramedic Delucchi stated, I was speaking to the driver not the patient". "The scene wasn't safe enough to make contact with the passenger".

If you look at all the conversations detailed by all four people on scene that night, then compile them into a conversational screen play format the true on scene time probably exceeded 5 minutes.

7. All the questioning regarding the Patient Care Report, the Special Circumstance Report, and or any other reports or documentation for Dispatch, Medical, and or Operations that was not nor has been filled out as of the date of our interviews is severely damaging. The foundation of all the legal chapters in every EMT-Basic, EMT-Intermediate, and all EMT-Paramedic book and courses emphasizes the need to document. Not documenting all aspects in a lengthy narrative within the Patient Care Report, exposes the town, service, and EMT's to litigation.

Pat Songer  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

What they did, by doing nothing may be perceived by any reasonable person as an attempt to cover up that whole situation. What they should have done was disclose and report the entire situation; then they are believable.

8. As far as EMT-Intermediate Tommy Hollis, while he is subordinate to a Paramedic regarding patient care, and is to follow a Paramedic's direction, he is not to follow those directions if they do not follow the National Standards of Care as outlined in all EMS educational materials. These standards can be found in all published DOT approved EMS course textbooks. Therefore, all Volunteer and Professional EMS personnel (PVFRS is a Professional EMS Service) have a Responsibility and "Duty to Act" which EMT-Intermediate Tommy Hollis and Paramedic Delucchi failed to perform as a professional EMS provider and team. Additionally, EMT-Intermediate Tommy Hollis was the Senior PVFRS employee on that ambulance. Therefore, EMT-Intermediate Tommy Hollis did not properly supervise that ambulance's activity/operation and report as the senior PVFRS employee in accordance with PVFRS Rules and Regulations, and the National Standards of Care.
9. In EMT-Intermediate Tommy Hollis's "second interview", "by Bill Kohbarger", on page (no page numbers are documented) 8 at the bottom, when asked by "BK" "(Chuck)". "You have no problem writing Incident Reports at any time." Answer: "They are a key thing in court." This demonstrates knowledge of a supervising ambulance team leader responsibility regarding what is proper and the right thing to do for this event, IE: file an Incident Report, which was not filed that day.
10. The more damaging fact discovered in our investigation was the fact that; Summerlin Hospital in Las Vegas Nevada (Where Brittney's Physician wanted her to go, and an "appropriate hospital") was only approximately 33 miles away from their location. In comparison, Desert View Regional Medical Center in Pahrump, Nevada was approximately 31 miles away in the opposite (North) direction, and not an "Appropriate Hospital" to transport to.
11. "Appropriate Hospital Destination" as denoted in the National DOT Standards of Care, is a hospital that can appropriately care for a/your patient's medical needs. Desert View Regional Medical Center, in Pahrump, Nevada is not an "Appropriate Hospital" for an Obstetrical emergency of this nature.



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Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

Desert View Regional Medical Center, in Pahrump, Nevada does not have an Obstetrician specially trained and board-certified on call 24/7; nor do most small hospitals across America. Summerlin Hospital in Las Vegas Nevada is a major receiving hospital with many specialty board-certified Physicians, including Obstetricians. Additionally, EMS personnel in America are fully aware by their DOT education as to what constitutes an "Appropriate Hospital Destination".

Both EMT-Intermediate Tommy Hollis, the PVFRS Ambulance leader/supervisor; PVFRS Paramedic Delucchi, and all other properly educated EMS personnel regarding "Appropriate Hospital Destination" during their EMS Education and Certification.

Based on my interviews and review of documents, I concluded that the EMS crew (Paramedic and EMT-I) did not want to take the patient to Summerlin Hospital in Las Vegas, Nevada, but instead to Desert View Regional Medical Center, in Pahrump, Nevada, the closest hospital to the EMS crew's fire station, for the EMS crews personal convenience.

12. No effort on either provider's part was made to contact law enforcement, another ambulance service, Medical Control, and or PVFRS's supervisory personnel. Moreover, both individual's failure and flagrant disregard to report by filing proper documentation to PVFRS as part as their Rules and Regulations, PVFRS EMS Protocols, State of Nevada Reporting criteria for Patient Contact, and Radio Failure with Medical Control.
13. This mindset of both Paramedic Delucchi and EMT-Intermediate Tommy Hollis is that they used good sound judgment, which we cannot find/identify in either all the documentation provided by PVFRS and or in our Interviews or investigation. Additionally, their refusal to acknowledge any wrongdoing; demonstrates a pattern of behavior and professional conduct that may be repeated in the future. Moreover, they showed no remorse for anything that transpired. This was their demeanor, and mindset at the interviews. Therefore, their attitude leads me to believe that there may be repeated poor judgment in the future resulting in ramifications for the Town of Pahrump. Probability in Actuarial Analysis tells us that it's not if, but when the next event/incident will happen.

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Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

We would be more than happy to assist, coordinate, and or lead the Town of Pahrump, the PVFRS's Medical Director, and or anyone else you desire during this process on your behalf.

**Our Immediate Recommendations for the Town of Pahrump is to:**

1. Medical Director: Have the Fire Chief (or his Agent) fully inform and brief PVFRS's EMS Medical Director regarding:
  - a. The incident
  - b. The severity
  - c. Current investigations
  - d. Investigations findings
  - e. Possible litigation
  - f. Actions taken (see g., 1))
  - g. Actions he/she as Medical Director may/should take immediately:
    - 1) As Medical Director PVFRS I have temporary revoked Paramedic Raymond Delucchi's, and EMT-Intermediate Tommy Hollis's authorization to practice under my license, pending their investigation(s) outcome.
    - 2) Medical Director notifies the State of Nevada EMS Program Manager Patrick Irwin of his action (See 1) above).
    - 3) Medical Director desires to actively cooperate with the State of Nevada's investigation.
2. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump: Have their Agent fully inform and brief the State of Nevada EMS Program Manager Patrick Irwin regarding:
  - a. The incident
  - b. The severity
  - c. Current investigations
  - d. Investigations findings
  - e. Possible litigation
  - f. Actions taken
  - g. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump's desires to actively cooperate with State of Nevada EMS Program Manager Patrick Irwin, and the State of Nevada's investigation.

Pat Songer  
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Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

3. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
  - a. For PVFRS Firefighter/Paramedic Raymond Delucchi's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
    - 1) Termination for the listed reasons the Town of Pahrump, PVFR, and Agreements/Contracts denote:
      - a) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
      - b) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.4, "administrative leave, without pay"
    - 2) Termination for the listed reasons, the PVFRS Rules and Regulations:
      - a) 02.03.01, Line:
        - 1] D., H., K.
      - b) 02.03.02
      - c) 02.03.03, Willful and flagrant disregard for reporting and documenting
      - d) 02.03.04, Willful and flagrant disregard for reporting and documenting
      - e) 02.03.05
      - f) 02.03.11
      - g) 02.03.14
      - h) 02.05.15
      - i) 02.05.24

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Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
  - a) Documentation (Page 14)
    - 1] 1., 2., 3., 4.
  - b) Refusal of Care (Page 18)
    - Star 11
  - c) Standard of Care (Page 20)
    - 1] Paragraph 1, and 2, Notes: Star 10, 11
  - d) Childbirth. Failure to evaluate or perform
  - e) Pre-Term Labor. Failure to evaluate or perform
  - f) Shock – Hypovolemia. Failure to evaluate or perform

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Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

4. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
  - a. For PVFRS Firefighter/EMT-Intermediate Tommy Hollis's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
    - 1) Termination for the listed reasons the Town of Pahrump, PVFR, and Agreements/Contracts denote:
      - a) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
      - b) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.4, "administrative leave, without pay"
    - 2) Termination for the listed reasons, the PVFRS Rules and Regulations:
      - a) 02.03.01, Line:
        - 1] D., H., K.
      - b) 02.03.02
      - c) 02.03.03, Willful and flagrant disregard for reporting and documenting
      - d) 02.03.04, Willful and flagrant disregard for reporting and documenting
      - e) 02.03.05
      - f) 02.03.11
      - g) 02.03.14
      - h) 02.05.15
      - i) 02.05.24

Pat Songer  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
- a) Documentation (Page 14)
    - 1] 1., 2., 3., 4.
  - b) Refusal of Care (Page 18)
    - Star 11
  - c) Standard of Care (Page 20)
    - 1] Paragraph 1, and 2, Notes: Star 10, 11
  - d) Childbirth. Failure to evaluate or perform
  - e) Pre-Term Labor. Failure to evaluate or perform
  - f) Shock – Hypovolemia. Failure to evaluate or perform

ORIGINAL

ISSUED

# In the Fifth Judicial District Court

NYE COUNTY, NEVADA

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV 35969  
Dept. No. 1

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUL 25 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY  
Patricia Couture

## SUMMONS

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

**TO THE DEFENDANT:** A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

### **PAT SONGER**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

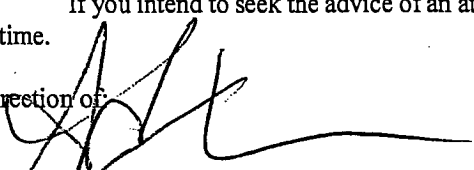
a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

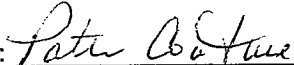
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at direction of:

  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

CLERK OF THE COURT

By:  06-04-2014  
Deputy Clerk Date  
District Court  
1520 E. Basin Avenue  
Pahrump, Nevada 89060

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

# Affidavit of Process Server

IN THE FIFTH JUDICIAL DISTRICT COURT, NYE COUNTY, NEVADA

(NAME OF COURT)

DELUCCHI

vs SONGER

CV35969

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

Deputy Gody Peck

being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served PAT SONGER

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) Summons and Complaint

by leaving with Pat Songer

☐ Residence NAME RELATIONSHIP At

☒ Business 118 E. Haskell Street ADDRESS CITY/STATE  
Winnemucca, NV 89445 CITY/STATE

On July 4, 2014

DATE

AT 1500

TIME

☐ Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on

from

CITY

STATE

ZIP

DATE

Service was Made ( ) Attempted outside the State of Nevada Not subject to NRS 648 / AB 156

## Manner of Service:

☒ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of \_\_\_\_\_ and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion  
☐ Address Does Not Exist ☐ Other \_\_\_\_\_

Service Attempts: Service was attempted on: (1) \_\_\_\_\_

DATE

TIME

(2) \_\_\_\_\_

DATE

TIME

(3) \_\_\_\_\_

DATE

TIME

(4) \_\_\_\_\_

DATE

TIME

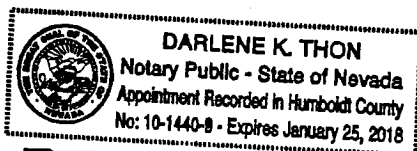
(5) \_\_\_\_\_

DATE

TIME

Description: Age \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_ Height \_\_\_\_\_ Weight \_\_\_\_\_ Hair \_\_\_\_\_ Beard \_\_\_\_\_ Glasses \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this 16th day of July, 2014, by Deputy Gody Peck H210.  
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



[Signature] 1210  
SIGNATURE OF PROCESS SERVER

[Signature]  
SIGNATURE OF NOTARY PUBLIC  
NOTARY PUBLIC for the state of Nevada

FORM 2

NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS



OPPS  
LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536: FAX (702) 386-6812  
*Attorneys for Plaintiffs*

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUL 29 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY

**Sarah Westfall**

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV35969  
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

**OPPOSITION TO DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS  
PURSUANT TO NRS 41.660.**

COMES NOW Plaintiffs Raymond Delucchi and Tommy Hollis by and through undersigned  
counsel Adam Levine, Esq. of the Law Office of Daniel Marks and hereby opposes Defendant Pat  
Songer's Special Motion to Dismiss Pursuant to NRS 41.660.

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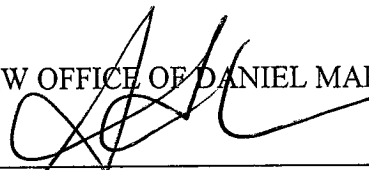
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1 The grounds for Plaintiffs' Opposition are set forth in the attached Memorandum of Points and  
2 Authorities.

3 DATED this 28<sup>th</sup> day of July, 2014.

4 LAW OFFICE OF DANIEL MARKS

5   
6 DANIEL MARKS, ESQ.  
7 Nevada State Bar No. 002003  
8 ADAM LEVINE, ESQ.  
9 Nevada State Bar No. 004673  
10 610 South Ninth Street  
11 Las Vegas, Nevada 89101  
12 (702) 386-0536: FAX (702) 386-6812  
13 *Attorneys for Plaintiffs*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF UNDISPUTED MATERIAL FACTS**

16 It is undisputed that the Town of Pahrump retained Defendant Erickson, Thorpe & Swainston  
17 (hereafter "ETS"), who hired Defendant Pat Songer (hereafter "Songer") to conduct an investigation  
18 into a report/complaint about the Plaintiffs. (Testimony of Pat Songer, In re Grievances of Tommy  
19 Hollis and Raymond Delucchi August 12, 2013 attached hereto as Exhibit "1" at pp. 142). Songer was  
20 given instructions by ETS attorney Rebecca Bruch that the Town wanted Bruch "to direct this  
21 investigation as far as being the person [Songer will] report to". (E-mail of June 27, 2012 attached  
22 hereto as Exhibit "2").

23 August 2, 2012 Bruch e-mailed Songer asking him to "please call me before you write the  
24 report, so I have an idea where it is going". (E-mail of August 2, 2012 attached as Exhibit "3"). Songer  
25 subsequently forwarded his draft report to Bruch who substantially rewrote or interlineated it. (See  
Testimony of Songer Exhibit "1" at pp. 145-146; see partial copy of interlineated draft report at  
Exhibit "4").

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1 Eventually, a finalized version of the Report was given to the Town of Pahrump in September  
2 2012. The Report was filled with false and defamatory statements including, but not limited to, that the  
3 Plaintiffs were guilty of “intimidation” of James and Brittanie Choyce, that they falsified records to  
4 cover up their misdeeds, and that they decided not to transport Brittanie Choyce to Las Vegas for their  
5 own convenience. (See Report at Exhibit “5”). As a result of Songer’s recommendations contained  
6 within his falsified Report Plaintiffs were suspended without pay and subsequently terminated from  
7 their employment. (See letters of September 13, 2012 and September 18, 2012 from Town Manager  
8 Kohbarger to Plaintiffs attached as Exhibits “6” and “7”). Plaintiffs were reinstated after a neutral  
9 arbitrator mutually selected by the Town and IAFF Local 4068 examined all of the evidence and  
10 concluded that the Bruch/Songer report contained “material” and “intentional misrepresentations”,  
11 “covertly relie[d] on hearsay statements” and was not “a fair and objective report by a disinterested  
12 third party.” (Exhibit “8” at pp. 17-18, 32).

13 **II. DEFENDANT’S DEFAMATORY STATEMENTS DO NOT FALL WITHIN THE**  
14 **PROTECTIONS OF NEVADA’S ANTI-SLAPP STATUTES**

15 Nevada’s anti-SLAPP statute is intended to protect “well-meaning citizens who petition [the]  
16 government and then find themselves hit with retaliatory suits”. *Johnson v. Douglas County School*  
17 *District*, 125 Nev. 746, 753, 219 P.3d 1276 (2009). The purpose of the anti-SLAPP is to protect “good-  
18 faith communications in furtherance of the right to petition” it also provide immunity from liability for  
19 “those who petition all departments of the government for redress”. *Id.*; NRS 41.637. As emphasized  
20 by the Nevada Supreme Court:

21 More importantly, the anti-SLAPP statute only protects citizens who petition the  
22 government from civil liability arising from *good-faith communications to a government*  
23 *agency*. NRS 41.637. Thus, Nevada’s anti-SLAPP statute is not an absolute bar against  
24 federal substantive claims; rather, it bars claims from persons who seek to abuse other  
25 citizens’ rights to petition their government, and it allows meritorious claims against  
citizens who do not petition the government in *good faith*.

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1 *Id.* (emphasis in original). Thus, to fall within the protections of the statute the communication must  
2 have been a “good faith communication in furtherance of the right to petition”. 125 Nev. at 752.

3 Under the 2012 version of Nevada’s anti-SLAPP which applies to this case, a Special Motion  
4 to Dismiss is to be treated as a motion for summary judgment.<sup>1</sup> NRS 41.660(3)-(4); *John v. Douglas*  
5 *County School Dist.*, 125 Nev. at 753. Accordingly, all of the evidence must be viewed in a light most  
6 favorable to the Plaintiffs. *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005).

7 **A. Communications Under A Contract For Hire Are Not Protected By anti-SLAPP**  
8 **Statutes.**

9 Songer is not entitled to the protections of Nevada’s anti-SLAPP statute because his  
10 communications were not in connection with his First Amendment right to petition the government. He  
11 was not acting as a “citizen” seeking to have the Town of Pahrump in its capacity as a sovereign act on  
12 his behalf, or on behalf of another. He was hired and paid by the Town to do a job. This falls outside of  
13 the protections of the anti-SLAPP statutes.

14 Many states have anti-SLAPP statutes substantially similar to Nevada’s. The Massachusetts  
15 Supreme Court’s decision under Massachusetts’ anti-SLAPP statute in *Kobrin v. Gastfriend*, 443  
16 Mass. 327, 821 N.E.2d 60 (2005) is illustrative and on point. In *Kobrin*, a psychiatrist was investigated  
17 in a disciplinary action. In connection with that investigation an expert witness was hired by the Board  
18 of Registration in Medicine to assist in the investigation and render an expert opinion regarding the  
19 plaintiff’s medical practices. 821 N.E.2d at 62.

20 Based upon a false affidavit submitted by the expert witness hired by the Board, the Board  
21 summarily suspended the plaintiff’s license. An administrative law magistrate who later heard the  
22 evidence cleared the plaintiff. The plaintiff subsequently filed suit against the defendant for expert  
23

24 <sup>1</sup> As discussed below, Nevada’s anti-SLAPP were amended effective October of 2013. However, the allegedly protected  
25 speech at issue occurred in 2012. Accordingly, it is 2012 version of the statute which is applicable as there is nothing within  
the 2013 amendments stating that they were intended to be applied retroactively to speech which occurred prior to the  
amendments.

1 witness malpractice/negligence, defamation, malicious prosecution and interference with contractual  
2 relations. *Id.* The defendant filed a special motion to dismiss under the anti-SLAPP statute which was  
3 granted. *Id.* at 62-63.

4 The Supreme Judicial Court of Massachusetts *reversed*. The Supreme Court recognized that the  
5 statute is “designed to protect overtures to the government by parties petitioning in their status as the  
6 citizens. It is not intended to apply to those performing services for the government as contractors.” *Id.*  
7 at 64. The Court concluded:

8 No definition of the phrase will encompass every case that falls within the statute’s  
9 reach, and some difficult factual situations will have to be assessed on a case-by-case  
10 basis. What we seek to do is to limit the statute’s protection, in accordance with the  
legislative intent, to the type of petitioning activity the Constitution envisions in which  
parties petition their government is citizens, not as vendors of services.

11 821 N.E.2d 64 at fn 8. Likewise, in *Fustolo v. Hollander*, 455 Mass. 861, 920 N.E.2d 837 (2010) the  
12 Massachusetts Supreme Court reiterated that the protections under anti-SLAPP would not apply to a  
13 print journalist sued for defamation because the statements made in a journalistic capacity were not as  
14 a citizen petitioning the government under the First Amendment.

15 Any communications by ETS and Songer were not in the capacity of citizens. ETS and Songer  
16 were vendors hired by the Town of Pahrump. Because their false Report was issued in their capacities  
17 as paid vendors, and not as citizens petitioning the government, neither is entitled to the protection the  
18 statute.

19 **B. Defendant’s Citation To The 2013 Amendments To NRS 41.637 et seq Are**  
20 **Misplaced As The Tortious Communications Occurred in 2012.**

21 Defendant’s Motion cites statutory language such as a seven (7) day limit to rule on the motion,  
22 and May “clear and convincing evidence” standard. However, this language is the result of the 2013  
23 amendments to the statute. (Exhibit “9”). As noted by the Legislative Counsel’s Digest the law as it  
24 existed in 2012 only immunized communications “in furtherance of the right to petition”. Because  
25 communications “with an issue of public interest” unconnected to the right of petition was not

1 immunized in September 2012, Songer is not entitled to the benefit of the statutory amendments.  
2 Courts apply statutes prospectively unless the legislature clearly manifests an intent for retroactive  
3 application or the statute's purpose cannot otherwise be satisfied. *Landgraf v. USI Film Prods.*, 511  
4 U.S. 244, 271 (1994); *McKellar v. McKellar*, 110 Nev. 200, 203, 871 P.2d 296, 298 (1994). Nothing  
5 within the 2013 statutory amendments suggest that they are to be applied retroactively.

6 Moreover, the communications were not made "in direct connection with an issue of public  
7 interest and a place open to the public or in a public forum" as required by NRS 41.637(4). It was a  
8 *private* report given to the Town Manager. Personnel matters are not "an issue of public interest" or "in  
9 a public forum". For that reason, personnel investigations are not subject to the requirement of  
10 Nevada's open meeting laws and are exempted from public records requests. See NRS 239.010 and  
11 241.030(a). Likewise, in *Hunt v. F.B.I.*, 972 F.2d 286 (9th Cir. 1992) the Ninth Circuit held that there  
12 is not a public interest in the disciplinary investigation of a low-level employees. To the contrary, the  
13 federal courts have routinely recognized that a government employee "has a privacy interest in any file  
14 that 'reports on an investigation that could lead to the employee's discipline or censure.' " *Mueller v.*  
15 *U.S. Dep't of the Air Force*, 63 F.Supp.2d 738, 742 (E.D.Va.1999).

16 California's anti-SLAPP statute is virtually identical to Nevada's insofar as the definition of  
17 protected activity is concerned. California Code of Civil Procedure section 425.16 is virtually identical  
18 to NRS 41.637. On April 15, 2014 of the California Court Appeals issued its most recent anti-SLAPP  
19 opinion in *Talega Maintenance Corporation v. Standard Pac. Corporation*, 225 Cal. App. 4th 722, 170  
20 Cal. Rptr. 3d 453 (2014). In *Talega* the Court addressed what is "an issue of public interest" or "a  
21 manner reasonably of concern to the respective governmental entity" for purposes of anti-SLAPP. In  
22 rejecting an overbroad construction of public interest the Court stated:

23 Courts have generally rejected attempts to abstractly generalize an issue in order to  
24 bring it within the scope of the anti-SLAPP statute. For example, in the context of  
25 subdivision (e)(3), where the statement must concern an issue of public interest, the  
court in *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172  
Cal.App.4th 1561, 1570, 92 Cal.Rptr.3d 227, stated, "While employee mobility and

1 competition are undoubtedly issues of public interest when considered in the abstract,  
2 one could arguably identify a strong public interest in the vindication of any right for  
3 which there is a legal remedy. 'The fact that "a broad and amorphous public interest"  
4 can be connected to a specific dispute is not sufficient to meet the statutory  
5 requirements of the anti-SLAPP statute. [Citation.] By focusing on society's general  
6 interest in the subject matter of the dispute instead of the specific speech or conduct  
7 upon which the complaint is based, defendants resort to the oft-rejected, so-called  
8 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is  
considered] synonymous with the greater whole.' [Citation.] In evaluating the first  
prong of the anti-SLAPP statute, we must focus on 'the specific nature of the speech  
rather than the generalities that might be abstracted from it.'" Similarly, here, our focus  
is not on some general abstraction that may be of concern to a governmental body, but  
instead on the specific issue implicated by the challenged statement and whether a  
governmental entity is reviewing that particular issue. On the record before us, this  
requirement is not satisfied.

9 170 Cal Rptr. 3rd at 462.

10 For conduct to constitute a matter of public interest it must "impact a broad segment of society  
11 and/or that affect the community in a manner similar to that a government entity". *Id.* Songer has  
12 vexatiously attempted to utilize "a broad and amorphous public interest" of the sort rejected by courts  
13 in order to chill the Plaintiff's opportunity to seek proper redress through the courts for the Defendants'  
14 intentionally false Report.

### 15 C. Anti-SLAPP Does Not Apply To The Improper Withholding Of Information

16 The Report submitted by Bruch/Songer was written so as to deceive the reader and falsely  
17 suggest that Songer had either interviewed James and Brittanie Choyce and/or relied on an interview of  
18 the Choyces by Lieutenant Moody. In fact, Songer never interviewed or spoke with the Choyces.  
19 (Testimony of Songer Exhibit "1" at pp 180, 183, 185). Likewise, there was no statement recorded by  
20 Lieutenant Moody. Instead, the Report made credibility determinations based upon notes allegedly  
21 taken by the Fire Chief Lewis in a meeting with the Choyces without disclosing this fact to the  
22 recipients/readers of the Report. After evaluation at arbitration the arbitrator concluded:

23 Songer's report, on its face, contains material misrepresentations. First, the report states  
24 that Mrs. Choyce's statements were *recorded* by Lieutenant Moody whereas both  
25 parties acknowledge there is no written or recorded statement by Mrs. Choyce that pre-  
dates her testimony at the arbitration hearing. The report also reflects that Mr. Choyce  
was interviewed although it is undisputed that Mr. Choyce never gave an interview

1 either by way of a written or recorded statement. Thus, Songer not only formulated Mrs.  
2 Choyce's statements for purposes of his report based on what was written in Chief  
3 Lewis' notes, but he also prepared a report that does *not* disclose the statements  
4 attributed to Mr. and Mrs. Choyce are hearsay statements. Songer provided no  
5 explanation for these material misrepresentations and could not explain some of his  
6 recommendations.

7 (Exhibit "8" at p. 17 emphasis in original). The arbitrator further noted "While documenting his  
8 report to falsely reflect that Mrs. Choyce's statement was recorded by Lieutenant Moody and that Mr.  
9 Choyce was interviewed, Songer reached his conclusions without independently evaluating the  
10 credibility of the complainants." (Exhibit "8" at p. 18). The arbitrator found this conduct as being done  
11 "covertly". (Exhibit "8" at p. 32)

12 In the recent case of *Talega Maintenance Corporation v. Standard Pac. Corporation, supra*,  
13 the California Court of Appeals held that "withholding information" is not "written or oral statements"  
14 for purposes of anti-SLAPP protection. Accordingly, to the extent that the withholding of information  
15 regarding the fact that the Report's conclusions were not based upon actual interviews with the  
16 Choyces, Plaintiff's claim for Intentional Infliction of Emotional Distress is not subject to the anti-  
17 SLAPP laws.

18 **D. Defendants Cannot Establish That The Statements In Songer's Report Were**  
19 **Truthful Or Made Without Knowledge Of Its Falsehood.**

20 The Defendants will not be entitled to re-litigate whether Delucchi and Hollis committed the  
21 violations for which they were falsely accused in the Report. That issue was already submitted to  
22 binding arbitration. The arbitrator determined that Delucchi and Hollis did not commit the violations  
23 for which they were accused in the Report.

24 In *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) the Nevada Supreme  
25 Court set forth proper factors for "issue preclusion" formerly known as "collateral estoppel":

"(1) the issue decided in the prior litigation must be identical to the issue presented in  
the current action; (2) the initial ruling must have been on the merits and have become  
final; ... (3) the party against whom the judgment is asserted must have been a party or



1 in privity with a party to the prior litigation”; and (4) the issue was actually and  
2 necessarily litigated.

3 124 Nev. at 1054, 194 P.3d at 713. Issue preclusion applies to arbitration proceedings. *Int’l Assoc.*  
4 *Firefighters v. City of Las Vegas*, 107 Nev. 906, 911, 823 P.2d 877, 880 (1991).

5 All of the criteria for issue preclusion are met. First, the issue decided in the arbitration is the  
6 same as presented in this case: Did Hollis and Delucchi commit the offenses for which they were  
7 accused by Defendants. Second, the arbitrator’s ruling was on the merits and has become final.

8 Third, the Defendants were in privity with the Town of Pahrump in the arbitration proceedings.  
9 There was a privity of contract whereby the Town hired the Defendants to conduct its investigation and  
10 prepare its fact findings. The Town called Songer as its primary witness and built its case upon his  
11 investigation, Report and testimony. Finally, the issue as to whether Delucchi and Hollis were guilty of  
12 the accusations made against them by the Defendants was actually and necessarily litigated.

13 To meet the definition of a “Good faith communication in furtherance of the right to petition”  
14 within the meaning of NRS 41.637, the communications must be “truthful” or “made without  
15 knowledge of its falsehood”. There is no protection for false speech. Because the arbitrator already  
16 determined that the accusations were false, and the result of “material” and “intentional  
17 misrepresentations”, neither Songer or ETS can meet the threshold determination by a preponderance  
18 of the evidence that the claim was based upon a “good faith communication in furtherance of the right  
19 to petition” within the meaning of the statute.

20 **II. EVEN IF ISSUE PRECLUSION DID NOT APPLY, THE PLAINTIFFS WILL**  
21 **CLEARLY PREVAIL ON THE MERITS.**

22 Under the version of NRS 41.600 in place in 2012 when the communications occurred, the  
23 Special Motion to Dismiss is to be treated as a motion for summary judgment. Accordingly, all  
24 Plaintiff must do is demonstrate a genuine issue of material fact to defeat the motion. The 2013

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1 amendments require that the plaintiff established by clear and convincing evidence probability of  
2 prevailing on the claim. As set forth above, it is the 2012 version of the statute which governs this case.

3 While this action is governed by the 2012 version of the anti-SLAPP statutes, it must be  
4 emphasized that the Plaintiffs can demonstrate by clear and convincing evidence the probability of  
5 prevailing on their claims. With regard to what the arbitrator found to be an intentional  
6 misrepresentation with regard to the fact that Songer never actually interviewed the Choyces, Songer  
7 conceded that Bruch knew that he never interviewed the Choyces. (Exhibit "1" at p. 148).

8 With regard to the Report's conclusion that Delucchi and Hollis violated Town of Pahrump  
9 Personnel Policy 11.1.1.7 for "intimidation" (Exhibit "5"), Songer admitted in his arbitration  
10 testimony that he had no actual evidence that Delucchi or Hollis intimidated anyone, and had no  
11 explanation as to why that accusation was in the Report. (Exhibit "1" at pp. 208-209).

12 The Songer/Bruch Report falsely accused Delucchi and Hollis of refusing to transport Brittanie  
13 Choyce to a hospital in Las Vegas, and instead only offered to transport the Choyces to Desert View  
14 Hospital in Pahrump, for their own personal convenience despite knowing that Desert View was not an  
15 appropriate location. (Exhibit "5"). Attached hereto as Exhibits "10" and "11" are the testimony of  
16 Delucchi and Hollis. They testified that they simply offered to take the Choyces to Desert View in an  
17 attempt to get James Choyce to calm down, and that immediately thereafter James Choyce yelled  
18 "Fuck Desert View" (or words to that effect) and sped off before anything else could be discussed.  
19 (Exhibit "10" at pp 591-592; Exhibit "11" at pp 524-526). Songer admitted that he was told by  
20 Delucchi and Hollis that James Choyce drove off after they made the offer to transport to desert View  
21 in Pahrump and that he didn't have any evidence to the contrary. (Exhibit "1" at pp. 199- 201).

22 While the Songer/Bruch Report made a false accusation without any evidence to dispute  
23 Delucchi's and Hollis' account due to Brittanie Choyce's refusal to cooperate with the investigation,  
24 Ms. Choyce did appear to testify at the arbitration more than one year later. (Exhibit "12"). Brittanie

25 ///

1 Choyce confirmed that her husband yelled “fuck you” and sped off as opposed to explaining why he  
2 didn’t believe that Desert View would be appropriate. (Exhibit “12” at pp. 412, 418).

3 The Songer/Bruch Report falsely accused Delucchi and Hollis of dishonesty and a “cover up”  
4 because they did not prepare a Patient Care Report (PCR) or a Special Circumstance Report (SCR).  
5 However, PCR’s are only required if there is a “patient”.

6 Whether someone is a “patient” is governed by NAC 450B.180. That regulation defines  
7 “patient” as “any person who is sick, injured, wounded, or otherwise incapacitated or helpless and who  
8 is carried in an ambulance or air ambulance or is cared for at the scene of an emergency by a basic,  
9 intermediate or advanced emergency medical technician.” The definition requires more than a person  
10 who is sick, injured, wounded, or otherwise incapacitated; to constitute a “patient” the person must  
11 also be transported in an ambulance or air ambulance, or cared for at the scene.

12 Brittanie Choyce was not a “patient” within the meaning of NAC 450B.180 so as to require  
13 completion of a Patient Care Report. Because James Choyce drove away before Hollis or Delucchi  
14 could assess her, or even had a name, she was not “cared for at the scene”. It should be pointed out that  
15 the arbitrator reached the exact same conclusion. (Exhibit “8” at p. 35). By his own admission  
16 Defendant Songer was the Director of Emergency Medical Services at Humboldt General Hospital.  
17 (See Declaration of Songer attached in support of the Special Motion to Dismiss). As such, Songer  
18 would have to be familiar with the provisions of NAC 450B which govern his profession.

19 Likewise, Delucchi and Hollis did prepare a SCR when asked to do so by their Lieutenant.  
20 (Exhibit “13”). As noted by the arbitrator, there was no rule or regulation which required them to  
21 complete such a report. (Exhibit “8” at 34-35).

22 Based upon addressed defamatory statements in the Songer/Bruch Report alone, Plaintiffs will  
23 certainly prevail on the merits.

24 ///

25 ///

1 **III. IF THE 2013 STATUTORY AMENDMENTS ARE UTILIZED BY THIS COURT THE**  
2 **PLAINTIFFS ARE ENTITLED TO AN AWARD OF ATTORNEYS FEES AND UP TO**  
3 **\$10,000 UNDER NRS 41.670.**

4 As set forth above, a Report given to the Town of Pahrump in 2012 cannot be subject to the  
5 2013 Statutory Amendments to Nevada's Anti-SLAPP legislation. However, if the 2013 amendments  
6 are applied, it is the Plaintiffs who are entitled to the statutory sanctions.

7 The 2013 Amendments contain what is sometimes referred to as a "SLAPP back" provision  
8 whereby if a special motion to dismiss is frivolous or vexatious, the prevailing party may be awarded  
9 the reasonable attorney's fees in an amount up to \$10,000. See NRS 41.670 (2) and (3).

10 Songer's Special Motion to Dismiss is frivolous and vexatious. Songer knew that his Report  
11 was false when he wrote it. Songer knew that the arbitrator he testified before had already determined  
12 six (6) months earlier that Delucchi and Hollis did not abandon the Choyces, and it was undisputed that  
13 James Choyce made the decision to terminate the encounter. (Exhibit "8"). However, in an attempt to  
14 avoid responsibility for his defamatory statements he asserts in paragraph 19 of his Declaration "I still  
15 believe the information contained in my reports to be accurate". He makes this false statement in his  
16 Declaration despite the fact that the knowledge under of that there was no evidence or basis to support  
17 his defamatory accusation that Delucchi and Hollis were guilty of violating the Town of Pahrump's  
18 policy against "intimidation". (Exhibit "1" at pp. 208-209).

19 As set forth by *Johnson v. Douglas County School District, supra* the anti-SLAPP statute only  
20 protects those who petition the government in good faith, and further permits "meritorious claims  
21 against citizens who do not petition the government in *good faith*." Simply put, anti-SLAPP does not  
22 permit a law firm or investigator hired by the government to submit a knowingly false and defamatory  
23 Report, and then allow those persons to hide behind the protections of the anti-SLAPP statutes.  
24 Because Songer knew that Delucchi and Hollis had been cleared of the false and defamatory  
25 accusations made by Songer and ETS by a neutral arbitrator in January of 2014, the fact that he would

///


1 seek to reassert those same discredited accusations demonstrates the frivolous and vexatious nature of  
2 this Special Motion.

3 **IV. CONCLUSION**

4 For all of the reasons set forth above the Special Motion to Dismiss must be denied.

5 DATED this 28th day of July, 2014.

6 LAW OFFICE OF DANIEL MARKS

7   
8 DANIEL MARKS, ESQ.

9 Nevada State Bar No. 002003

10 ADAM LEVINE, ESQ.

11 Nevada State Bar No. 004673

12 610 South Ninth Street

13 Las Vegas, Nevada 89101

14 (702) 386-0536: FAX (702) 386-6812

15 *Attorneys for Plaintiffs*

16 **CERTIFICATE OF MAILING**

17 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on  
18 the 28th day of July, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a  
19 sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the foregoing  
20 OPPOSITION TO DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUAN  
21 TO NRS41.660, to the addresses as follows:

22 Dave Grundy, Esq.  
23 Todd Alexander, Esq.  
24 LEMONS, GRUNDY & EISENBERG  
25 6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
*Attorneys for Defendant ETS*

Joseph P. Garin, Esq.  
Siria L. Gutierrez, Esq.  
LIPSON, NEILSON, COLE, SELTZER GARIN  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Defendant Pat Songer*

26   
27 An employee of the  
28 LAW OFFICE OF DANIEL MARKS

## **EXHIBIT “1”**

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TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

August 12, 2013

9:59 A.M.

270 Highway 160

Pahrump, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422  
logged

Rocket Reporting  
702.8Rocket (702.876.2538)

CC TO CLIENT 8/21/13  
INITIALS AC  
Condensed  
via email  
66

## 1 APPEARANCES:

2 For the Town of Pahrump:

3 RICHARD G. CAMPBELL, JR., ESQ.  
4 ARMSTRONG TEASDALE  
5 50 West Liberty Street  
6 Suite 950  
7 Reno, Nevada 89501  
8 775.322.7400  
9 775.322.9049 Fax  
10 rcampbell@armstrongteasdale.com  
11 -- and --  
12 REBECCA BRUCH, ESQ.  
13 ERICKSON, THORPE & SWAINSTON  
14 99 West Arroyo Street  
15 Reno, Nevada 89509  
16 775.786.3930  
17 rbruch@etsreno.com

11 For the Grievants Tommy Hollis and Raymond Delucchi:

12 ADAM LEVINE, ESQ.  
13 LAW OFFICES OF DANIEL MARKS  
14 530 South Las Vegas Boulevard  
15 Las Vegas, Nevada 89101  
16 702.386.0536  
17 702.386.6812 Fax  
18 alevine@danielmarks.net

16 The Arbitrator:

17 CATHERINE HARRIS, ESQ.  
18 5960 South Land Park Drive  
19 Suite 255  
20 Sacramento, California 95822-3313  
21 disputeresolutions@att.net

20 Also Present:

21 Raymond Delucchi  
22 Tommy Hollis  
23 Dean Fletcher  
24 William J. Snow  
25



I N D E X

<u>Witness</u>	<u>Page</u>
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1 PAHRUMP, NEVADA; AUGUST 12, 2013

2 2:11 P.M.

3 -o0o-

4 THE ARBITRATOR: Back on the record  
5 after our luncheon recess.

6 Does the Town have another witness?

7 MR. CAMPBELL: Yes. We'd like to call  
8 Pat Songer to the stand.

9 THE ARBITRATOR: Could we get a spelling  
10 on the last name.

11 MR. CAMPBELL: S-O-N-G-E-R.

12 THE ARBITRATOR: You may be seated.

13 PAT SONGER,  
14 having been called as a witness and having been  
15 first duly sworn, was examined and testified as  
16 follows:

17 THE ARBITRATOR: Thank you. And if you  
18 would state your name for the record, please.

19 THE WITNESS: Pat Songer.

20 THE ARBITRATOR: Thank you. We have  
21 your spelling. Go ahead.

22

23 DIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Mr. Songer, can you tell us your present

1 place of employment?

2 A. Humboldt General Hospital.

3 Q. What are your job duties there?

4 A. I'm the administrative director for the  
5 hospital.

6 Q. And can you explain that in a little  
7 more detail.

8 A. Basically, I oversee three or four  
9 different departments in the hospital, one of them  
10 being the ambulance service.

11 Q. And how long have you had that position?

12 A. That position, I've had two months. I  
13 recently was promoted. I was the director of EMS  
14 for the hospital, overseeing the ambulance  
15 department.

16 Q. And how long were you the director of  
17 EMS at Humboldt?

18 A. Eight years.

19 Q. And then prior to the Humboldt General  
20 Hospital, where did you work?

21 A. TriState CareFlight.

22 Q. And what were your job duties there?

23 A. I was the medical oversight of  
24 operations for TriState CareFlight.

25 Q. Okay. And then did that involve some

1 EMT responsibilities?

2 A. Yes. I'm a flight medic also.

3 Q. And prior to that time? Let's just go  
4 back one more job.

5 A. Sure. I was the part owner of Big Sky  
6 Paramedics. That was located in Great Falls,  
7 Montana and Sandpoint, Idaho.

8 Q. What did you do in that position?

9 A. I was the chief operating officer for  
10 the company.

11 Q. And did you have hands-on EMT  
12 experience?

13 A. I was also a field medic too.

14 Q. Okay. And then did you have any other  
15 responsibilities, other than the Humboldt General  
16 Hospital currently, as far as running medical  
17 facilities?

18 A. No, sir.

19 Q. You're involved in the Burning Man  
20 event?

21 A. Yes, I am, yeah. Part of the hospital,  
22 though.

23 Q. And tell us what that is.

24 A. I am the incident commander for the  
25 Burning Man organization for the medical hospital --

1 mobile medical hospital at the Burning Man event.

2 Q. So you're in charge of the EMTs?

3 A. In charge of the pre-hospital operations  
4 and the hospital operations for Black Rock City.

5 Q. Tell me a little bit about your EMT  
6 background. When did you first become an emergency  
7 medical technician?

8 A. I believe my first -- my EMT basic  
9 course was 1991, volunteered for a volunteer  
10 ambulance service, then became a firefighter. In  
11 about 1994, I went off to paramedic school and  
12 became a paramedic and then started my own ambulance  
13 company with a partner for about ten years and then  
14 TriState CareFlight and then became the director of  
15 EMS at Humboldt General Hospital after that for  
16 eight years.

17 Q. I think you said even up to one of your  
18 latest jobs, you were still doing pretty much EMT  
19 procedures in the field?

20 A. I still do. I still field supervise and  
21 provide oversight and medical procedures in the  
22 field.

23 Q. And in your present position, you're in  
24 a supervisory capacity over EMTs, their job  
25 functions, how they do their job functions?

1 A. Yes, sir.

2 Q. Disciplinary type actions against them?

3 A. Yes.

4 Q. If you look to Exhibit B, which is your  
5 resume, is that pretty much up-to-date and details  
6 all of your background and experience, educational  
7 and/or special training and experience?

8 A. Which exhibit?

9 Q. I'm sorry. 2.

10 THE ARBITRATOR: I don't have anything  
11 under Exhibit 2, so at some later point, you might  
12 want to get me a copy. Thank you.

13 MR. CAMPBELL: Okay.

14 MR. LEVINE: I'm sorry. I have -- the  
15 resume?

16 MR. CAMPBELL: Yeah.

17 MR. LEVINE: Okay. I've got it.

18 THE WITNESS: That is current from my  
19 most recent promotion to administrative director.

20 MR. CAMPBELL: Here you go.

21 THE ARBITRATOR: Thank you. I've just  
22 now been supplied with the resume, which is  
23 Exhibit 2. Thank you.

24 BY MR. CAMPBELL:

25 Q. We're here today obviously because of an

1 incident involving Mr. Delucchi and Mr. Hollis.  
2 When were you first contacted to be part of that  
3 process?

4 A. I believe it was on or about June 27.

5 Q. And do you remember who gave you the  
6 assignment?

7 A. Rebecca Bruch.

8 Q. And what were you told to do?

9 A. Initially I was asked to review the  
10 facts and do some interviews pertaining to a matter  
11 of an ambulance incident that happened.

12 Q. Okay. And later did that scope of your  
13 assignment on this project change?

14 A. As the project progressed, I was asked  
15 to also make a recommendation of what we would do if  
16 these were employees of my organization.

17 Q. Okay. And who made that recommendation?

18 A. I made that recommendation.

19 Q. Okay. Who made the recommendation that  
20 you change the scope of your --

21 A. Oh, I'm sorry. Rebecca Bruch.

22 Q. Did you ever -- in the course of your  
23 investigation, did you ever talk to Bill Kohbarger?

24 A. No, I did not.

25 Q. During the course of your investigation,

1 or even before, did you ever talk to Chief Lewis?

2 A. Not prior to the investigation. I met  
3 Chief Lewis the day I came down here and did  
4 interviews briefly, introduced -- Chief Lewis  
5 introduced himself as the fire chief.

6 Q. During the course of that meeting, did  
7 you have any discussions with him about your  
8 investigation of where it was going or what you were  
9 finding?

10 A. No, just introduced as I was down here  
11 to collect the facts of the investigation.

12 Q. Did Chief Lewis ever reach out to you or  
13 did anybody try to shape your opinion or your  
14 findings in that that report?

15 A. No. That was the only meeting I had  
16 with Chief Lewis was just the introduction.

17 Q. And did Ms. Bruch ever attempt to steer  
18 you in any particular fashion on how to make final  
19 recommendations on your report?

20 A. No, she did not.

21 Q. Okay. So tell me basically what you did  
22 in your investigation.

23 A. We initially started reviewing HR  
24 records of both the individuals involved in the  
25 incident, reviewed policies and procedures from the



1 Town of Pahrump, received policies and procedures  
2 from the fire department, the -- Town of Pahrump  
3 Fire Department. We then interviewed both the  
4 individuals and reviewed their interviews.

5 Q. When you say "individuals," you're  
6 talking about Mr. Hollis and Mr. Delucchi?

7 A. Yes, sir. Interviewed both of the --  
8 interviewed both those individuals and then compared  
9 those interviews to Chief Lewis's interviews and the  
10 notes taken by the Town manager.

11 Q. Okay. Anything else that you can  
12 recall?

13 A. I compared those -- we also reviewed NRS  
14 and NAC, seeing if there was anything violation  
15 of -- from my interpretation of Nevada statute.

16 Q. In your supervisory capacity as both in  
17 your own business or for Humboldt General Hospital,  
18 have you had to discipline EMTs that are under your  
19 supervision?

20 A. Yes, I have.

21 Q. How many times have you done that?

22 A. Multiple times.

23 Q. Over 50?

24 A. I wouldn't say that much, but I would  
25 say, you know, 25 times. 25 plus times.

1 Q. If you could look to the smaller of the  
2 two binders and look at Exhibit Number T. Do you  
3 have that in front of you?

4 A. I do.

5 Q. During the course of your investigation,  
6 you did contact Miss Bruch on some occasions about  
7 this -- about the way the report was addressing; is  
8 that correct?

9 A. Contact who?

10 Q. Ms. Bruch.

11 A. Yes.

12 Q. And at some point, did you give  
13 Ms. Bruch a draft of your report?

14 A. Yes. We presented with a -- we  
15 presented her with a draft for review to make sure  
16 we were in accordance with the nature of the  
17 investigation.

18 Q. And is Exhibit T some interlineations  
19 that Ms. Bruch made on one of your early drafts that  
20 suggested some language change?

21 A. Yes, they are.

22 THE ARBITRATOR: I'm sorry. Exhibit  
23 which?

24 MR. CAMPBELL: Exhibit T.

25 THE ARBITRATOR: Okay.

1 BY MR. CAMPBELL:

2 Q. Have you had a chance to take a look at  
3 that document, Mr. Songer?

4 A. I have, yes.

5 Q. Do any of those interlineations made by  
6 Ms. Bruch -- did that change your underlying opinion  
7 that you ultimately reached in this case?

8 A. No. The intent was not to change my  
9 opinion. It was just to clean up the document so  
10 it's presentable.

11 Q. So if we look at those, each change, you  
12 think it was more grammatically or a wording change?

13 A. Yeah, it was probably -- like,  
14 90 percent of it was grammatical and then making  
15 sure that we were -- what we were verbally saying  
16 was also being put in writing appropriately.

17 Q. Okay. And you -- other than those  
18 interlineations, had Ms. Bruch ever told you that  
19 this is how the report -- I want the report to come  
20 out? These are the conclusions I want you to make?

21 A. No. The report was left solely in my  
22 hands.

23 Q. And so the conclusions in the final  
24 report, with the exception of some suggestions on  
25 language, were entirely yours?

1 A. They were entirely mine.

2 Q. And they were as a result of your  
3 independent investigation and your review of the  
4 documents and people you talked to that you just  
5 testified to.

6 A. Yes, sir.

7 Q. Now, you said, I think, part of that  
8 investigation was that you also interviewed  
9 Mr. Hollis and Mr. Delucchi?

10 A. I did.

11 Q. And how long had you interviewed each  
12 gentleman?

13 A. I believe each interview lasted 35,  
14 40 minutes.

15 Q. Okay. And did you do them separately?

16 A. Yes, I did them separately.

17 Q. And did you reach any conclusions as to  
18 their credibility in the version of the events that  
19 they were telling you?

20 A. I did.

21 Q. And what were those conclusions?

22 A. That their credibility couldn't be  
23 justified in this -- in the actions that they took  
24 on this day.

25 Q. Okay. And that would be more detailed

1 in the findings if we go through your report?

2 A. Yes, it would.

3 Q. Okay. Let's have your report up in  
4 front of you now, which I believe is Exhibit 4. Is  
5 that in front of you?

6 A. Yes.

7 Q. Just generally take me through -- it  
8 looked like there's three different sections of the  
9 report. The facts, the recommendations -- facts,  
10 conclusions, and recommendations. What are you  
11 doing with the facts?

12 A. We just wanted to state the facts that  
13 we -- that myself, during the investigation, came up  
14 with and just state those in a very clear and  
15 distinct way so there was no bias either way on who  
16 was saying what, just exactly what was said in the  
17 event of the investigation.

18 Q. Okay. And so that's -- if we went  
19 through those facts line by line, that would be just  
20 your conclusions as to what you viewed as a result  
21 of your investigation from a factual perspective.

22 A. Yes, it was.

23 Q. And then the second part, I think that's  
24 entitled Conclusions.

25 A. Yes.

1 Q. Okay. Tell me what you were intending  
2 to do there with conclusions.

3 A. The content of the conclusions was just  
4 to summarize the facts and give my viewpoint of what  
5 the facts stated, to state what the conclusions of  
6 the investigation were on what happened in this  
7 incident.

8 Q. Okay. And so if we read through that  
9 line by line, that would be kind of your -- just so  
10 we're clear, how's how you concluded some of the  
11 events should be interpreted under a factual  
12 investigation and based on your experience and  
13 review of certain documents.

14 A. That's correct.

15 Q. Okay. And then finally, your last  
16 section is Conclusions.

17 A. Recommendations.

18 Q. Recommendations. I'm sorry.

19 A. So the recommendations were, in my  
20 perspective, what I would have done if these  
21 individuals were underneath my organization, how we  
22 would have handled the situation.

23 Q. Okay. And did you know that this report  
24 was going to be ultimately used by the Town of  
25 Pahrump in dealing with Mr. Hollis and Mr. Delucchi?

1 A. Yes, we did.

2 Q. Okay. And who told you that?

3 A. Becky told us.

4 Q. Let me ask you this: Before we get into  
5 the meat of your -- of the recommendations section,  
6 I do want to spend a little more detail on that.

7 You know from your investigation that  
8 Chief Lewis and Lieutenant Moody had made notes of  
9 an actual interview with the Choyces.

10 A. That's correct.

11 Q. Okay. And you read that; right?

12 A. I did.

13 Q. Okay. And you saw what he had noted and  
14 you understood that this was notes that Lewis and  
15 Moody had made; right?

16 A. That's correct.

17 Q. And did you understand that Lewis and  
18 Moody had actually gone out, interviewed these  
19 people, talked to them, and then recorded what those  
20 meetings -- what transpired in those meetings?

21 MR. LEVINE: Objection to the form of  
22 the question. When you say "and then recorded,"  
23 it's my understanding it was an unrecorded  
24 interview.

25 MR. CAMPBELL: Recorded in so much that

1 he wrote it down.

2 MR. LEVINE: All right.

3 THE ARBITRATOR: Okay. Just notes, not  
4 a statement.

5 MR. CAMPBELL: Yeah.

6 THE ARBITRATOR: Right? Okay.

7 THE WITNESS: That was my understanding.

8 BY MR. CAMPBELL:

9 Q. And you also -- in your review, you  
10 reviewed the statements, either the written incident  
11 report by Mr. Hollis and Mr. Delucchi and/or the  
12 transcripts of the interviews with them?

13 A. I did.

14 Q. And then you also interviewed them  
15 directly one-on-one by yourself.

16 A. I did.

17 Q. If you were to assume that everything  
18 that Mr. Hollis and Mr. Delucchi said was an  
19 accurate version of what happened that night and  
20 totally discounted what Chief Lewis's notes said  
21 about his interview with the Choyces -- are you with  
22 me so far?

23 A. Yes, I am.

24 Q. -- would your conclusions have changed?

25 A. No, it would not.



1 Q. Let's go to your recommendations, then.

2 A. Okay.

3 Q. Your first recommendation was to inform  
4 the medical director. Why do you make that  
5 recommendation?

6 A. As paramedics and EMTs, we operate as an  
7 extension of the physician in the state of Nevada.  
8 We are physician extension providers. We have to  
9 operate as a -- we have to operate under their  
10 license, under their medical direction. So we  
11 cannot -- we cannot operate, provide medicine,  
12 without a medical -- without medical direction or  
13 without the permission of the medical director to  
14 operate, either verbally or with written protocols.

15 Q. And that's something that the medical  
16 director has to do in order for an EMT in the state  
17 to do --

18 MR. LEVINE: Objection. Leading.

19 BY MR. CAMPBELL:

20 Q. -- to do certain protocols?

21 THE ARBITRATOR: Yeah, I think it would  
22 be better if you avoid leading. But I can't imagine  
23 that that's a hotly contested point, is it?

24 MR. CAMPBELL: I'll rephrase.

25 THE ARBITRATOR: Okay.

1 BY MR. CAMPBELL:

2 Q. What was your understanding of what the  
3 medical director has to do as far as authorizing  
4 EMTs to do certain things?

5 A. The medical director must authorize  
6 their license to practice medicine in the state of  
7 Nevada, so you have to be authorized by a signed  
8 signature saying that you have the ability to  
9 operate underneath his medical license in the state  
10 of Nevada.

11 Q. Is that somewhere on an application form?

12 A. That is on an attendant's license, so in  
13 the state of Nevada, to operate in the back of an  
14 ambulance, you have to be licensed as an attendant.

15 Q. When you file an application with the  
16 state, somewhere on that application, is there a  
17 signature line?

18 A. There's a signature line for the medical  
19 director to sign off on.

20 THE ARBITRATOR: If I could just get  
21 clear on something that's been bothering me. I've  
22 heard "attendant," I've heard "EMT," and I've heard  
23 "paramedic." So at some point, I would like to have  
24 some clarity about what each of those terms means in  
25 Nevada, because it varies from state to state.

1 MR. CAMPBELL: Okay.

2 THE ARBITRATOR: 'Cause I know that the  
3 two grievants are -- one is an EMT/paramedic, I  
4 believe, and the other one is an EMT at a lower  
5 level, I think.

6 MR. LEVINE: Intermediate. We'll  
7 address it, if not through the witnesses, through  
8 the briefing, because the regs that define and --  
9 all of those are already in evidence.

10 THE ARBITRATOR: Okay.

11 MR. CAMPBELL: And one of my questions  
12 to Mr. Songer later on will explain that.

13 THE ARBITRATOR: Okay. I just like  
14 people to know if I have questions at that time so I  
15 can get them answered.

16 BY MR. CAMPBELL:

17 Q. While we're there right now, why  
18 don't -- do you understand the difference between  
19 your experience between an EMT-intermediate an  
20 EMT/paramedic and an attendant?

21 A. Yes, I do.

22 Q. Can you explain those.

23 A. In the state of Nevada, you are  
24 certified as a paramedic, an advanced, and  
25 EMT-intermediate, or an EMT-basic. That is the

1 certification after you receive a course. It does  
2 not require, to my knowledge, a medical director's  
3 signature because the medical director signs off on  
4 the course. Once you pass the test, you can apply  
5 for your certification from the State of Nevada as  
6 an EMT, EMT-intermediate, or EMT-advanced, which is  
7 a paramedic in the state of Nevada.

8 To operate on an ambulance, you have to  
9 receive an attendant certificate that allows you the  
10 right to be in the back of an ambulance and attend  
11 to a patient, and that attendant's license is what  
12 the physician controls.

13 Q. Okay.

14 THE ARBITRATOR: Excuse me. Is that  
15 just in the back of an ambulance? What about at a  
16 scene or --

17 THE WITNESS: In an ambulance  
18 completely.

19 THE ARBITRATOR: It's only in an  
20 ambulance.

21 THE WITNESS: In an ambulance.

22 THE ARBITRATOR: Okay. Thank you.

23 Go ahead.

24 BY MR. CAMPBELL:

25 Q. Does the medical director have, like, a

1 continuing jurisdiction over an EMT under his  
2 authority?

3 MR. LEVINE: Objection. That's going to  
4 call for a legal conclusion, and I think that should  
5 be the subject of briefing on the statutes.

6 THE ARBITRATOR: Well, I guess if you  
7 just modified it to ask what is his understanding  
8 of --

9 MR. LEVINE: That's a different  
10 question.

11 THE ARBITRATOR: That's a different  
12 question, and I certainly wouldn't mind hearing what  
13 his understanding is on that.

14 MR. CAMPBELL: I'll rephrase.

15 BY MR. CAMPBELL:

16 Q. What's your understanding of a medical  
17 director continuing oversight over an EMT that he's  
18 been basically signed off on?

19 A. It's my understanding in the state of  
20 Nevada that the medical director has the authority  
21 to revoke or grant permission for a paramedic to --  
22 or EMT to operate underneath his license, the  
23 license of a paramedic. If they do not have that  
24 permission, you're -- in essence, you're not a  
25 licensed provider in the state of Nevada.

1           There's nothing -- from what -- my  
2 conclusion is that licenses you to provide medicine  
3 without a valid license. We do not go through the  
4 state board of medical examiners. We go through a  
5 different board. And to practice medicine, you have  
6 to be operating as an extension of the physician;  
7 hence we are physician extenders in the state of  
8 Nevada.

9           Q.       If an EMT doesn't have that doctor slip,  
10 let's call it, does that mean they can't do anything  
11 on the job? Are there other job functions they can  
12 do?

13          A.       When you have a certificate to operate  
14 at the intermediate level, the paramedic level, you  
15 have to have a sign-off by a physician. I believe  
16 at the basic level, you might still be able to  
17 operate. I'd have to review that, but both of these  
18 individuals -- one was a paramedic, one was an  
19 intermediate. So if you do not have that slip,  
20 you'd be practicing medicine without a license.

21          Q.       And you reviewed the job descriptions  
22 for Mr. Hollis and Delucchi?

23          A.       I did.

24          Q.       And in your opinion, did the action by  
25 the medical director in this case impair their

1 ability to do their job as described under their job  
2 description?

3 A. Yes, it did.

4 Q. And then if you go down to -- we're  
5 still in that 1 on your recommendations. It says  
6 under G1, as medical director, I have temporarily  
7 revoked Hollis and Delucchi's authorization to  
8 practice under my license. Is that what you were  
9 talking about in your recommendation there?

10 A. That is what I was talking about.

11 Q. Okay. And then under 2, you talk about  
12 the -- your recommendation is that the Town of  
13 Pahrump inform and brief the State of Nevada EMS  
14 program. Why do you make that recommendation?

15 A. That recommendation was made because the  
16 State of Nevada then has to do their own independent  
17 investigation to see whether or not they violated  
18 any professional practice standards and violated any  
19 NRS, NAC, and they can make the recommendation to  
20 revoke their certificate as a paramedic or  
21 intermediate in the state of Nevada.

22 Q. Okay. And how is that process initiated  
23 at the State level?

24 A. Through a request from the department.

25 Q. But does a fire service or a town have

1 to make the complaint to the State first?

2 A. No. The complaint could come from the  
3 public, but typically the complaint comes from  
4 the -- or the request for investigation comes from  
5 the director of the service, the HR department, or  
6 the medical director. The medical director can also  
7 make that complaint to the state since he is the  
8 licensed medical director with the state.

9 Q. Okay. And that's what you're talking  
10 about in your recommendation number 2, to have  
11 someone notify the State?

12 A. Yes.

13 Q. And then if you go to paragraph 3, what  
14 recommendation are you making here as to -- I guess  
15 this would be Mr. Delucchi.

16 A. The recommendation here was because of  
17 his willful and flagrant disregard of Town of  
18 Pahrump's personnel policies for termination.

19 Q. And what personnel policies or other  
20 documents were you talking about here?

21 A. We were referring to rules and  
22 regulations, the protocols, that the Pahrump Valley  
23 fire department adheres to, their standards of care,  
24 which is part of their protocols, their  
25 against-medical-advice protocol and, I believe,



1 their documentation protocol.

2 Q. So if we look at 2, under that  
3 recommendation, what we're talking about here are  
4 the rules and regulations, just for the record. So  
5 you're talking about -- if you look in the big  
6 binder, it would be Exhibit Number 7.

7 A. Yes, that is correct.

8 Q. So I won't make you go through all  
9 those, but your report -- if we cross-check your  
10 report with Exhibit Number 7, these are the rules  
11 and regulations you felt were violated by these two  
12 gentlemen.

13 A. That's correct.

14 Q. Let's go to the next page, which would  
15 be the heading number 3, termination for the listed  
16 reasons. The EMS protocols.

17 A. Yes.

18 Q. Are you there?

19 Tell me what the EMS protocols are.  
20 What are you referring to?

21 A. So in the state of Nevada, a paramedic  
22 or an intermediate operates underneath a protocol,  
23 either a verbal protocol or a verbal statement from  
24 a physician, or a written protocol that is signed  
25 off that directs a paramedic or an intermediate how

1 to treat a patient on a scene. These are the  
2 protocols that are signed off by a physician and is  
3 their authority to operate underneath that  
4 physician's license. So these are the protocols  
5 that we refer to. They also guide ethical and moral  
6 guidance along with refusals of care, standards of  
7 care. And then specific to the medical protocol in  
8 this instance was childbirth, preterm labor, and  
9 shock.

10 Q. And I think if we look to those  
11 pictures, we are talking about Exhibit Number 14?

12 A. That's correct.

13 Q. I'd like to go in a little more detail  
14 with you on these protocol violations. The first  
15 one was A, documentation. And so that would be in  
16 Exhibit Number 14. Can you point me to the protocol  
17 for documentation.

18 A. I believe page 14 is their documentation  
19 protocol.

20 Q. Okay. And in your opinion, why did  
21 Mr. Hollis and Mr. Delucchi violate this EMS  
22 protocol as far as documentation?

23 A. The first guideline is a patient care  
24 report must be completed for all patients. The  
25 patient is now defined as the subject of an EMS

1 call, whether or not they're transported. I believe  
2 that guideline was violated. Number two is usually  
3 if the patient has any complaint or injury and  
4 refuses transport, then complete the PCR as an AMA,  
5 against medical advice, was violated.

6 And then let's see. Under -- I believe  
7 it also ties back into the public assist. Public  
8 assist or public service is a documented fire call.  
9 If the patient shows any signs of injury, a complete  
10 evaluation of the patient as well as the  
11 circumstances requiring the need for assistance.

12 Q. Let's go back up to number 1. When you  
13 stated that that protocol was violated, who was the  
14 patient you're referring to?

15 A. The patient would have been the female  
16 on this scene that was complaining of a miscarriage.

17 Q. Okay. Why do you define her as a  
18 patient?

19 A. She was defined by the husband, by the  
20 husband's statement that my wife is having a  
21 miscarriage, so that was an establishment of a  
22 patient, that there was a patient that needed  
23 treatment or looking into.

24 Q. In your opinion, you don't have to  
25 actually make physical contact with a patient and

1 talk to them or establish communications to have  
2 them classified as a patient, in your opinion?

3 A. No, you do not. The establishment of a  
4 patient is that communications with the patient or  
5 the knowledge of a patient that is a victim -- a  
6 patient could be trapped, couldn't be seen. We  
7 practice medicine over the barricade where you don't  
8 see a patient but verbal orders are given because  
9 you're in knowledge of what's going on.

10 Q. In your review of the documentation and  
11 the interviews, did Mr. Hollis and Mr. Delucchi know  
12 that the patient was having a miscarriage?

13 A. Yes, they did.

14 Q. Where do you see that knowledge come  
15 from?

16 A. From the statement made by the husband  
17 of the victim, stating that the patient -- or the  
18 statement that his wife was having a miscarriage.

19 Q. Did Mr. Hollis and Delucchi agree that  
20 they heard that statement?

21 A. Yes, they did.

22 Q. From reviewing the statement, do you  
23 know if either Mr. Hollis or Mr. Delucchi offered  
24 transport?

25 A. Of my review, yes, they did offer

1 transport to Pahrump.

2 Q. Okay. Does that somehow make them a  
3 patient also, the fact that they were offered  
4 transport in an ambulance?

5 A. In my opinion, if you offer somebody  
6 transport, then you have to be a patient in the back  
7 of an ambulance.

8 Q. What if somebody refuses a transport?  
9 What are you supposed to do under the protocols?

10 A. Under their protocols and guidelines,  
11 it's defined as against medical advice. So they  
12 have a guideline that dictates how that against  
13 medical advice is to be filled out, and the  
14 patient's signature is to be received or a  
15 consultation with the physician is to be received.

16 Q. Okay. So it was your conclusion that  
17 even assuming their version of the facts as to, you  
18 know, what was told, to who, and when and how close  
19 they got to the car, is it your opinion that they  
20 still needed to document this incident?

21 A. Yes. Even if this incident was an  
22 unusual occurrence, this incident was an incident.  
23 Some sort of documentation needed to be completed to  
24 this incident to let somebody know that this  
25 incident happened, and this incident needed to be

1 reported to somebody.

2 Q. Okay. And what were your factual  
3 findings as to any reporting of this incident by  
4 either of these two gentlemen?

5 A. No reporting was done to this incident.

6 Q. None whatsoever?

7 A. None whatsoever.

8 Q. No telephone calls?

9 A. No telephone calls.

10 Q. No radio calls?

11 A. No radio calls.

12 Q. No report to the chief?

13 A. No report to any of their upper command  
14 positions.

15 Q. Now, you know there was a report later  
16 on that they filed; right?

17 A. I believe there was a report filed after  
18 a complaint was received, so there was a report  
19 filed at the request of one of their superiors.

20 Q. Okay. And then would that be Exhibit --  
21 I believe that's --

22 MR. LEVINE: It's A in my book, I  
23 believe.

24 BY MR. CAMPBELL:

25 Q. -- A.

1 A. Yes, that's correct.

2 Q. So to your understanding, that was after  
3 the complaint was made and they were informed that a  
4 complaint had been made?

5 A. Yes. It's my understanding that was  
6 after the complaint was made.

7 Q. Prior to that time, your factual  
8 findings and conclusions, they had not told anybody  
9 about this incident.

10 A. That was my understanding, yes.

11 Q. Let's go to your next recommendation  
12 which is under B, refusal of care. It's back to  
13 your recommendations, Exhibit Number 4.

14 A. So our recommendation was, in essence,  
15 that a patient was established and that an offer was  
16 made to transport a patient. So if an offer is made  
17 to transport a patient, then there needs to be some  
18 sort of documentation why this patient was not  
19 transported. Either there was a situation that  
20 arose that they could not get a refusal on this  
21 patient or there was consultation made with online  
22 medical control as to a reason not to transport the  
23 patient.

24 Q. And are you referring to page 18 in the  
25 protocol of Exhibit Number 14?

1           A.       Yes, I am. And so this addressed any  
2 crew member may complete a refusal of care chart?

3           Q.       What are you referring to in B when you  
4 say "star 11"?

5           A.       I believe it's the 11th star down on the  
6 notes. Yes. It outlined what needs to be  
7 documented on a PCR, that a patient care report  
8 needed to be documented. The risk of not seeking  
9 treatment, patient's understanding of these risks of  
10 refusing advice, to call 911 if any changes, any  
11 instructions given to the patient's family or  
12 guardian, who the patient was left in care of, and  
13 patient's ability to competently sign their name.

14          Q.       And you're talking about the bottom  
15 bullet point?

16          A.       Yes.

17                   THE ARBITRATOR: Off the record for just  
18 a moment.

19                   (At this time, a recess was  
20 taken.)

21                   THE ARBITRATOR: Back on the record.

22 BY MR. CAMPBELL:

23          Q.       Mr. Songer, let's move down to C on your  
24 recommendations, the standard of care, and that  
25 would be page 20 of Exhibit Number 14; correct?



1           A.       This is the standard of care guideline  
2       for the fire service, so we believe that everything  
3       past scene safety was basically not adhered to in  
4       this policy. So there was --

5                   MR. LEVINE: I'm sorry. What Exhibit?

6                   MR. CAMPBELL: Exhibit Number 14, which  
7       is the protocols.

8                   MR. LEVINE: 14? I'm sorry.

9                   THE ARBITRATOR: Page 20.

10                  MR. LEVINE: I'm sorry. I was looking  
11       at Exhibit 20. Sorry. Go on. I'm there.

12       BY MR. CAMPBELL:

13                  Q.       Let me ask you this, Mr. Songer: Why do  
14       you believe or why was your recommendation that they  
15       had violated this protocol and the standard of care?

16                  A.       Part of this guideline says:

17                            "All crew members are  
18       expected to function as a team.  
19       While the highest level of  
20       licensure/certification is  
21       ultimately responsible for the  
22       care of the patient, they are not  
23       required to perform all patient  
24       care or documentation. Crew  
25       members are encouraged to allow

1           their fellow crew members to  
2           function up to their level of  
3           expertise and training. All crew  
4           members are responsible for  
5           helping to educate other crew  
6           members continuously to help  
7           promote lifelong learning."

8           I don't believe that the teamwork was  
9           adhered to here. One of the individuals was the  
10          lead in the patient care, and the other individual  
11          was actually the captain or the lead in the chain of  
12          command.

13          Q.       Okay. And then the next protocol in  
14          your recommendation was childbirth. You don't have  
15          the notation, but there's a specific protocol in  
16          Exhibit 14 for childbirth; right?

17          A.       Yes, there is.

18          Q.       And what's the page reference number?

19          A.       Page 45. No. That's not it. 46.  
20          Page 46 is the childbirth neonatal resuscitation  
21          policy which -- or protocol, which none of this was  
22          adhered to. They didn't even get into this policy  
23          or protocol because a physical exam was not  
24          completed.

25          Q.       Okay. So you believe that they should

1 have followed this protocol again, even assuming  
2 from what we know that they were informed there was  
3 a miscarriage happening. But assuming they didn't  
4 actually get in close contact, you think this  
5 protocol still applies?

6 A. This protocol should have still been  
7 followed.

8 Q. And that's because of the notification  
9 of the miscarriage --

10 A. That's correct.

11 Q. -- in and of itself would carry this  
12 protocol?

13 A. Yes, in and of itself, the notification,  
14 it would have been the -- if the patient's bleeding  
15 vaginally, moderate or heavy, this protocol would  
16 need to have been followed.

17 Q. So you'd have to establish -- would you  
18 have to establish that if you knew there was a  
19 miscarriage?

20 A. You would have to establish that there  
21 was heavy bleeding, yes, you would.

22 Q. Can a miscarriage be a life-threatening  
23 event?

24 A. Yes. It can be a hemorrhagic shock  
25 issue.

1 Q. And what happens there?

2 A. A patient would basically bleed out and  
3 die from shock.

4 Q. Your next recommendation was E, preterm  
5 labor.

6 A. Let's see. 60.

7 Q. Page 60 of Exhibit 14. Again, same  
8 question. Why do you think that --

9 A. 61. Sorry. Off by one.

10 Again, a statement was made that my wife  
11 is having a miscarriage, which could also be an  
12 indication for preterm labor so -- and this  
13 guideline determined that the patient is in preterm  
14 labor. They did not adequately assess if this  
15 patient was in preterm labor or if there was  
16 bleeding going on.

17 Q. And then finally, your last  
18 recommendation related to the shock?

19 A. Correct. 65.

20 Q. Page 65 of Exhibit 14.

21 A. So after the establishment of a patient  
22 by the verbal contact with the spouse and physically  
23 being able to see the patient in the seat, they made  
24 no determination whether there was or was not  
25 evidence of cardiogenic shock. So a complete

1 assessment wasn't done to make that determination,  
2 but according to what we found, there definitely was  
3 some sort of shock in place.

4 Q. What are the signs of shock?

5 A. Extreme bleeding, paleness, dizziness,  
6 shortness of breath.

7 Q. Anything else?

8 A. Lethargic.

9 THE ARBITRATOR: I'm sorry. So you're  
10 saying that protocol should have been followed, the  
11 shock protocol?

12 THE WITNESS: This protocol should  
13 have -- they should have determined if they should  
14 have -- they should have made the determination if  
15 this protocol should have been followed at that time.

16 THE ARBITRATOR: You're not saying it  
17 should have been followed. You're saying it should  
18 have been -- it should have been at least considered  
19 or ruled out.

20 THE WITNESS: That's correct.

21 THE ARBITRATOR: Or something like that.

22 THE WITNESS: Correct, right.

23 THE ARBITRATOR: Okay.

24 BY MR. CAMPBELL:

25 Q. Again, I think your testimony was that

1 you interviewed both Mr. Hollis and Mr. Delucchi; is  
2 that correct?

3 A. That's correct.

4 Q. In your interview, did you form an  
5 opinion as to whether they were familiar with these  
6 EMS protocols?

7 A. Yes, we did.

8 Q. And what was your conclusion on that?

9 A. That they were familiar with them.

10 Q. And you talked about those protocols  
11 with them in your interview?

12 A. We did.

13 Q. These recommendations are identical for  
14 both Mr. Hollis and Mr. Delucchi; is that correct?

15 A. Yes, they were.

16 Q. You've read the statements from the  
17 interviews from Mr. Hollis and Delucchi, and  
18 apparently you interviewed them yourself, and those  
19 statements raise an issue that they had concern  
20 about their safety.

21 A. That's correct.

22 Q. Okay. Is that -- in your experience as  
23 an EMT, is that sometimes a valid concern?

24 A. I believe it is a valid concern.

25 Q. Okay. And how do you address that

1 concern in the field?

2 A. As EMTs, as paramedics, as firefighters,  
3 our job is inherently risky. We need to do what we  
4 can to mitigate those risks and to provide an  
5 adequate -- adequately safe scene to mitigate the  
6 emergency that we're responding to, the emergency  
7 that we're at.

8 I don't believe in this incident that  
9 these -- that the risks of the scene being unsafe  
10 were mitigated appropriately. This was not an  
11 unusual occurrence in an event where individuals are  
12 excited because of an injury or illness to one of  
13 their loved ones.

14 Q. Have you run across that in your  
15 individual practice?

16 A. Yes, countless times.

17 Q. You run across very agitated husbands or  
18 spouses when their other spouse or significant other  
19 is injured.

20 A. On a very regular basis, we do.

21 Q. Okay. And in your job, you have to deal  
22 with that on a pretty regular basis?

23 A. Yes, we do.

24 Q. You saw their version of the story in  
25 their statements, that they were first pretty much

1 flagged down and pulled over. What does it indicate  
2 to you that they took the time to actually pull over  
3 the vehicle?

4 A. That they were concerned about an issue,  
5 some sort of an emergency. They're in an emergency  
6 vehicle, so the reality is that if you're being  
7 flagged down, you're being flagged down for an  
8 emergency.

9 Q. And I think the next sequence in the  
10 version is that the driver came up to them and  
11 communicated into the driver's side window -- the  
12 driver of the other vehicle communicated with the  
13 driver of the ambulance.

14 A. That's correct.

15 Q. Okay. And you remember that, among  
16 those two, about him saying my wife's having a  
17 miscarriage?

18 A. Yes.

19 Q. Did you believe that, in and of itself,  
20 is enough to justify some type of fear response or  
21 safety issue?

22 A. I believe that in itself does not  
23 justify a fear response. I believe that justifies  
24 that there's an establishment of a patient, there's  
25 an establishment of an emergency that is happening



1 that needs to be addressed appropriately.

2 Q. What does it tell you, in your opinion,  
3 that they actually got out of the ambulance and  
4 approached the car?

5 A. That they were concerned that there was  
6 an emergency happening.

7 Q. Do you believe that they were validly  
8 concerned about their safety?

9 A. Yes, I do.

10 Q. Do you believe their actions after the  
11 driver drove off corroborated that they were validly  
12 concerned about their safety?

13 A. No, I do not believe that.

14 Q. What do you mean by that?

15 A. I believe that if they validly believed  
16 that there was a concern for their life safety on an  
17 event, that that was a reportable event. And  
18 ethically and morally, we have a responsibility then  
19 to report that event so that we don't put other  
20 public in jeopardy. And by not reporting this event  
21 in those instances, we jeopardize -- they, I feel,  
22 jeopardized the safety of the public, and it is our  
23 job to protect the public.

24 Q. And that's as easy as making a call to  
25 another police officer or the highway patrol or

1 something like that?

2 A. Yes. At their agency, like most  
3 agencies, they have multiple ways to report events  
4 that happen via radio, cell phone, different forms  
5 of communication.

6 Q. So you think it was incumbent on them  
7 that, if they really truly believed that their  
8 safety was an issue, to follow up with a telephone  
9 call or something.

10 A. Yes. It was incumbent upon them to  
11 report -- I believe it was their duty to act. Part  
12 of their duty to act is to report life safety  
13 events.

14 Q. Did the fact that they did not report  
15 color your opinion as to whether or not -- the  
16 credibility of the version of the story they told  
17 you?

18 A. I believe it reflects upon the ethical  
19 ability of an individual to do their job and report  
20 appropriately, and it brings into question whether  
21 or not you have the ethical competency to report  
22 when there are questionable situations and your  
23 ability to be truthful and honest in all your  
24 patient care reports and what happens inside and  
25 outside of an ambulance.

1                   We work in an environment where we're  
2 alone with a patient a lot of times, and that brings  
3 into question -- if you cannot be forthcoming on the  
4 credibility of an incident or what has happened, and  
5 the perception is that you're covering something up,  
6 that you've done wrong.

7           Q.       Both Mr. Hollis and Mr. Delucchi said  
8 they were standing five to ten feet off to what  
9 would be the right-hand front of the front of the  
10 car.

11          A.       That's correct.

12          Q.       Is there any reason, in your  
13 investigation, why they couldn't have gone up to the  
14 driver's or the passenger's side window and actually  
15 looked in and conversed with the passenger?

16          A.       No, there was not.

17          Q.       Okay. In fact, wouldn't you be safer,  
18 if you're worried about a car running you over, to  
19 be off to the side of the car and not off to the  
20 front bumper?

21          A.       That's correct. Part of vehicle --  
22 appropriate vehicle positioning and apparatus  
23 positioning on scenes is to maintain a safe and  
24 appropriate distance from whatever scene is going  
25 on.

1 Q. And in your opinion, it would have been  
2 safe and appropriate to at least approach the  
3 passenger side of the car and engage the woman?

4 A. Yeah, it would have been appropriately  
5 safe -- I mean, the appropriate actions would have  
6 been to try to verbally mitigate the excitement of  
7 the husband, to try to appropriately physically  
8 assess the patient that he stated that he had in the  
9 car.

10 MR. CAMPBELL: Okay. That's all I have.  
11 Thank you very much.

12 THE ARBITRATOR: Cross-examination.

13 MR. LEVINE: Yes, thank you.

14

15 CROSS-EXAMINATION

16 BY MR. LEVINE:

17 Q. If I understand you correctly, you  
18 interviewed, as part of your investigation in this  
19 case, Paramedic Ray Delucchi; correct?

20 A. Yes, sir.

21 Q. And EMT-Intermediate Tommy Hollis;  
22 correct?

23 A. Yes, sir.

24 Q. You did not interview the chief,  
25 correct, per your testimony?

1 A. I did not.

2 Q. Now, when I look at your report,  
3 Exhibit 4, turn to what is the second page. It has  
4 a 1 on it, but it's actually the second page. Do  
5 you see where it says points of interview with  
6 complainants?

7 A. Yes.

8 Q. You reference a number of quotes from  
9 the complainants, Brittanie Choyce and James Choyce;  
10 correct?

11 A. Correct.

12 Q. But you didn't actually interview  
13 Brittanie Choyce or James Choyce; correct?

14 A. I did not.

15 Q. You don't know whether these statements  
16 were ever made; correct? Firsthand.

17 A. Pardon me?

18 Q. You don't even know whether these  
19 statements were accurately made.

20 A. These were statements from the  
21 complaints that were filed with, I believe, the  
22 chief or HR department.

23 Q. All I'm going to let you know is we've  
24 already had testimony that there was no written  
25 complaint or written statement or recorded

1 statement. If there was no written or recorded  
2 statement and you didn't interview James or Brittnie  
3 Choyce, where did you get these statements?

4 A. Out of the documentation that was sent  
5 to me.

6 Q. Is that Exhibit 10? I'm sorry. Not 10.  
7 Is that Exhibit 18?

8 A. I believe so. Let me read through it  
9 real quickly. Yes.

10 Q. Okay. Exhibit 18 was prepared by the  
11 chief; correct?

12 A. Correct.

13 MR. CAMPBELL: Objection. I think that  
14 mischaracterizes the testimony. It's got two names  
15 on it so -- I'll object for the record.

16 MR. LEVINE: It does have two names on  
17 it.

18 BY MR. LEVINE:

19 Q. However, if you turn to page 2, it says,  
20 "The Town manager instructed me to assign Lieutenant  
21 Moody." Given the fact that Lieutenant Moody is  
22 referred to in the third person and the author is  
23 referred to in the first person, would you conclude  
24 that this was authored by the chief?

25 A. I would not. It says lead investigator

1 Lieutenant Moody.

2 Q. All right. So then you don't actually  
3 know who wrote Exhibit 18. Is that what you're  
4 telling us?

5 A. My assumption, Lieutenant Moody wrote  
6 this.

7 Q. That's your assumption, but you don't  
8 actually know.

9 A. I'd have to review my notes to see if I  
10 asked that question, if it would have been  
11 Lieutenant Moody or not.

12 Q. Let's go a little further. If we go to  
13 page 5:

14 "At approximately 11:00,  
15 Lieutenant Moody informed me of a  
16 grievance filed by the Union  
17 against me for unspecified  
18 reasons over several dates."

19 Does that lead you to believe this was  
20 authored by Moody or by the chief, in light of that  
21 statement?

22 A. It states lead investigator was  
23 Lieutenant Moody, so I cannot conclude either way.

24 Q. So let's be really clear. Despite the  
25 fact that you wrote a page Points of Interview With

1 Complainants, you didn't interview the complainants,  
2 and you're taking their statement from a document  
3 that, per your testimony today, you don't even know  
4 who authored. Is that a fair statement?

5 A. That's a fair statement.

6 Q. You never saw a written complaint from  
7 Brittnie or James Choyce; correct? That they wrote.

8 A. No, I did not.

9 Q. You didn't get a reported statement or  
10 the chief didn't provide you with a recording of any  
11 statement by James Choyce or Brittnie Choyce; correct?

12 A. No, I did not.

13 Q. Yet when you review the second page of  
14 Exhibit 4, your Points of Interview With  
15 Complainants, a person who reads this document, this  
16 report that you prepared, wouldn't know that you  
17 didn't talk to either Brittnie or James Choyce;  
18 correct? They wouldn't know it from reviewing this,  
19 would they?

20 A. I'm not sure that that was the intent of  
21 what we put in here. The intent was of the  
22 documents reviewed and the interview. So I'm not  
23 certain I can answer that for you.

24 Q. Somebody, be it Rebecca Bruch,  
25 Dr. Slaughter the medical director, they wouldn't



1 know that you're taking these quotes from another  
2 document whose authorship you're not even sure of,  
3 would they?

4 A. Not unless they talked to me and that  
5 was part of the investigations we -- when this was  
6 delivered.

7 Q. Well, after you delivered this, did you  
8 talk with Mr. Kohbarger?

9 A. No.

10 Q. Did you talk with the chief?

11 A. No.

12 Q. Did you talk with Rebecca Bruch?

13 A. Yes.

14 Q. Did you tell her that you never actually  
15 interviewed James Choyce or Brittnie Choyce in the  
16 course of your investigation?

17 A. Yes.

18 Q. And notwithstanding -- did she tell you  
19 to document that or not document that in the report?

20 A. I do not recall.

21 Q. Did she tell you to go back and  
22 interview them?

23 A. No.

24 Q. Why didn't you interview them?

25 A. At the time, the interviews were

1 attempted to be set up by the HR director of the  
2 Town of Pahrump, and they could not be set up.  
3 There was no return phone calls, to my recollection.

4 Q. They wouldn't cooperate?

5 A. That was to my recollection, that they  
6 would not. I don't know if they wouldn't cooperate  
7 or they were not able to be contacted.

8 Q. Well, did you yourself try to contact  
9 them?

10 A. No, I did not.

11 Q. If we could turn to -- just a moment.  
12 Here it is.

13 If we go to Exhibit 3, I will represent  
14 to you that Exhibit 3 is a series of E-mails from  
15 your file that were provided to us through counsel  
16 for the Town, and I want to, since they're not Bates  
17 stamped or sequentially numbered, I want to --

18 A. What section, sir?

19 Q. Go to the second-to-the-last E-mail in  
20 Exhibit 3. Okay. It's an E-mail to you July 20  
21 from Terry Bostwick -- who you recognized as being  
22 human resources; correct?

23 A. Yes, ma'am.

24 Q. Okay.

25 "Hi, Pat. Just wanted to

1 let you know that Lieutenant  
2 Moody is prepared to spend  
3 whatever time needed with you on  
4 7-31. Tommy Hollis will meet  
5 with you at 8:30 A.M. and Ray  
6 Delucchi will meet with you at  
7 10:30 A.M."

8 You didn't actually interview Lieutenant  
9 Moody, did you?

10 A. No, sir.

11 Q. Even though he was prepared to spend  
12 whatever time necessary; correct?

13 A. Correct.

14 Q. And then you were informed that:

15 "The complainants initially  
16 expressed willingness to be  
17 interviewed again; however, they  
18 have not returned either of my  
19 phone messages to provide them  
20 with an actual date/time/  
21 location. If you wish to try,  
22 Brittanie's number is" -- --  
23 And it gives you a phone number; right?

24 A. Right.

25 Q. But per your own testimony,

1 notwithstanding the fact that on July 20, which  
2 would be 11 days before your interview with my  
3 clients per your own testimony, even though you had  
4 the number; you never tried to call her back.

5 A. I did not.

6 Q. And you submitted your report in final  
7 without making such an effort; correct?

8 A. That's correct.

9 Q. Let's talk about your interviews with  
10 Tommy Hollis and Ray Delucchi. Those occurred on  
11 July 31, 2012. Am I correct?

12 A. Correct.

13 Q. And you interviewed them separately?

14 A. That's correct.

15 Q. You recorded them; correct?

16 A. That's correct.

17 Q. So for Hollis and Delucchi, you did take  
18 recorded interviews.

19 A. Yes, correct.

20 Q. I'll represent to you that when we  
21 requested those, we did not get full recordings.  
22 Was there a reason for that?

23 A. I turned in all the recordings I had.

24 Q. They were partial. They were cut off.  
25 Is there an explanation? Do you know why that was?

1 A. I did not know they were.

2 Q. Okay. During -- I'm going to go over my  
3 notes of those -- the portions that were made  
4 available to us.

5 THE ARBITRATOR: I'm sorry. The  
6 portions of the recordings?

7 MR. LEVINE: Of the interviews with my  
8 clients that were made available to us.

9 THE ARBITRATOR: Okay. But you're  
10 talking about recordings?

11 MR. LEVINE: Recordings, yes.

12 THE ARBITRATOR: Okay.

13 MR. LEVINE: In fact --

14 THE ARBITRATOR: Are those in the  
15 record?

16 MR. LEVINE: They are. Would you prefer  
17 that they be played rather than I question them?

18 THE ARBITRATOR: No. I just want to  
19 know where they were in the record so I can  
20 cross-reference when I study the case.

21 MR. LEVINE: The partials are in five  
22 files, and they are at Exhibit Q.

23 THE ARBITRATOR: Thank you.

24 BY MR. LEVINE:

25 Q. Mr. Songer, when you interviewed Ray, he

1 informed you that he was trying to initially calm  
2 the driver down, and he mentioned to you he didn't  
3 know if he was going to get robbed at the site. Do  
4 you recall that?

5 A. I do.

6 Q. He told you that they approached the  
7 vehicle with caution five to ten feet away because  
8 the driver was erratic and screaming and had gone  
9 back into the passenger seat; correct?

10 A. Correct.

11 Q. At no point -- based on the interviews  
12 and the notes, at no point did the driver go and  
13 open the passenger door to provide them with access  
14 to the woman in the front seat; correct?

15 A. Correct.

16 Q. He went back to the driver's side and  
17 got in the car; correct?

18 A. Correct.

19 Q. You were informed by Mr. Delucchi that  
20 the whole incident -- the interaction with the  
21 driver only lasted about 60 seconds; correct?

22 A. Correct.

23 Q. And he specifically corrected you, when  
24 you referenced to a patient, that there was no  
25 patient contact -- there was no patient at this

1 point because he hadn't made contact with the person  
2 in the front seat; correct?

3 A. That was his opinion.

4 Q. That was his position; right?

5 A. That was his opinion.

6 Q. And he stuck to that throughout his  
7 interview; correct?

8 A. That was his opinion, yes.

9 Q. Okay. He told you that all of the  
10 conversation was with him and the driver, not him  
11 and the passenger; correct?

12 A. I believe so.

13 Q. He told you it was also dark; correct?

14 A. Yes.

15 Q. He told you he could make out the fact  
16 she was crying but couldn't make out anything else  
17 from where he was five to ten feet away; correct?

18 A. Yes.

19 Q. What he told you with regard to  
20 transport to Pahrump was that that was a statement  
21 made to the driver, not the passenger, and that was  
22 made in an effort to get the driver, who was yelling  
23 and screaming, to calm down; correct?

24 A. I don't believe it was an effort to get  
25 the driver to calm down. I believe it was an effort

1 to inform the patient where they were willing to go.

2 Q. No. Mr. Delucchi told you that he made  
3 the statement to the driver to get the driver to  
4 calm down.

5 A. I don't recall. I believe the statement  
6 was made to inform the patient or the family where  
7 they were willing to go.

8 MR. LEVINE: All right. Then I am, with  
9 the arbitrator's indulgence, going to play a portion  
10 of Exhibit Q.

11 THE ARBITRATOR: All right. Let's go  
12 off the record to set that up.

13 (A discussion was held off the  
14 record.)

15 THE ARBITRATOR: Back on the record for  
16 purposes of identifying the recording that's about  
17 to be played.

18 MR. LEVINE: Exhibit Q is a number of  
19 MPEG 4 and MP3 sound files that were provided by the  
20 counsel for management. The Songer interviews are  
21 recordings 1 through 5. I'm about to play file 5,  
22 which is a portion of the interview with Ray  
23 Delucchi up.

24 THE ARBITRATOR: All right. We'll be  
25 off the record to hear that recording.



1 (A discussion was held off the  
2 record.)

3 THE ARBITRATOR: Back on the record.

4 MR. LEVINE: I'm going to start at  
5 approximately the four-minute mark, but my intent is  
6 to play it through about 8:34.

7 THE ARBITRATOR: Okay. So off the  
8 record again.

9 (An audio recording was  
10 played.)

11 THE ARBITRATOR: Back on the record.

12 BY MR. LEVINE:

13 Q. Mr. Songer, does that refresh your  
14 recollection as to what Mr. Delucchi told you in the  
15 interview, that the offer to transport was made to  
16 the driver in an attempt to calm him down?

17 A. That refreshes my memory.

18 Q. Yes. And per what you just heard, he  
19 also told you he never spoke with the person in the  
20 front seat; correct?

21 A. That's correct.

22 Q. And he told you --

23 THE ARBITRATOR: You mean -- I'm  
24 sorry -- the person in the front seat?

25 MR. LEVINE: In the passenger seat in

1 the front seat.

2 THE ARBITRATOR: Is that what you  
3 understood, the passenger seat?

4 THE WITNESS: Yes.

5 BY MR. LEVINE:

6 Q. The woman in the passenger seat, he  
7 never spoke with her; correct?

8 A. Correct.

9 Q. And he specifically told you that he did  
10 not consider her a patient but a potential patient;  
11 correct?

12 A. That was his opinion, yes.

13 Q. And that was because he was unable to do  
14 an independent assessment to see if, in fact, there  
15 really was a miscarriage or if she really was in  
16 need of medical attention; correct?

17 A. I believe he had the ability to do so.

18 Q. He told you he was five to ten feet away  
19 and he couldn't see; correct?

20 A. He identified that there was a crying  
21 person in the seat.

22 Q. You'd agree with us that a person can be  
23 crying for reasons unrelated to a medical condition;  
24 correct?

25 A. Correct, yes.

1 Q. He made it very clear to you that he was  
2 unable to do an assessment to determine whether or  
3 not she even needed medical attention; correct?

4 A. He made it clear to me that his opinion  
5 was that there was -- that he could not do an  
6 assessment, although he had already completed  
7 assessment by visually seeing that patient and  
8 knowing that the husband had -- or significant other  
9 had established that relationship already.

10 Q. Mr. Songer, you keep using the word  
11 "patient." You reviewed the contract, the  
12 collective bargaining agreement, didn't you?

13 A. I did not.

14 Q. You did not.

15 I'll represent to you that it's been  
16 established that under the contract, the parties are  
17 to adhere to the statutes and regulations relating  
18 to firefighters. That wouldn't be a surprise to  
19 you, would it?

20 A. That would not.

21 Q. And you yourself have reviewed statutes  
22 and regulations issued under the Nevada Revised  
23 Statutes and Nevada Administrative Code as it  
24 relates to emergency medical providers; correct?

25 A. I have.

1 Q. That's Chapter 450B; correct?

2 A. Yes, sir.

3 Q. And 450B specifically defines who is a  
4 patient; correct?

5 A. Yes, it does.

6 Q. Please turn to -- I would have asked you  
7 the question if I wasn't ready to back it up.

8 Please turn to Exhibit V as in Victor.

9 I'm showing you NRS Chapter 450B. I'm not expecting  
10 you to have it memorized, but you're generally  
11 familiar with it; correct?

12 A. Correct.

13 Q. And if you take a look at 450B.180,  
14 which would be around I would say page 7 or 8 in  
15 your book.

16 THE ARBITRATOR: Page 6 down at the  
17 bottom.

18 MR. LEVINE: It's page 6 in yours?

19 THE ARBITRATOR: On mine.

20 MR. LEVINE: It's page 6 on mine also.  
21 We had a numbering issue before.

22 THE WITNESS: Page 6.

23 BY MR. LEVINE:

24 Q. Do you have NAC 450B.180?

25 A. Page 6?

1 Q. Yes. Do you have the regulation there  
2 where it says "Patient"?

3 A. Yes.

4 Q. And a patient is defined as:

5 "Any person who is sick,  
6 injured, wounded, or otherwise  
7 incapacitated or helpless and who  
8 is carried in an ambulance or air  
9 ambulance or is cared for at the  
10 scene of an emergency by a basic,  
11 intermediate, or advanced  
12 emergency medical technician."

13 Correct?

14 A. Correct.

15 Q. Now, the person was not transported;  
16 correct?

17 A. Correct.

18 Q. And per the testimony of Ray Delucchi  
19 and Tommy Hollis, who you both interviewed, she  
20 wasn't treated by either of them; correct?

21 A. Correct.

22 Q. So if they're not transported and  
23 they're not treated, then by at least the definition  
24 under Chapter 450B, which is used under the  
25 collective bargaining agreement, she's not a

1 patient.

2 A. According to this, it says "or is cared  
3 for at the scene of an emergency." She was cared  
4 for.

5 Q. She didn't tell you that, did she?

6 A. No, she did not.

7 Q. And Ray Delucchi and Tommy Hollis  
8 specifically denied caring for her. They said they  
9 couldn't get close enough to do so and that they  
10 never talked to her. They only talked to the  
11 husband; correct?

12 A. In my opinion, care was attempted.

13 Q. That's your opinion.

14 A. That's my opinion. Care was attempted  
15 or they would not have pulled over if there was no  
16 care being acknowledged.

17 Q. So is it your opinion that the mere act  
18 of pulling over is giving care?

19 A. The mere act of pulling over is in  
20 response to an emergency.

21 Q. In fact, what they told you was the fact  
22 that they pulled over was because the driver almost  
23 ran them off the road.

24 A. Okay. Why would you pull over if you  
25 almost got ran off? Why would you not go for help?

1 Q. Didn't they also tell you that they were  
2 concerned that maybe what was going on is they might  
3 be being set up for a robbery?

4 A. Then why would you exit the vehicle I  
5 guess would be my answer to that.

6 Q. They didn't exit the vehicle until after  
7 he came up and after they told him to back away;  
8 correct?

9 A. It's my understanding they exited the  
10 vehicle after they were informed that the patient  
11 was having a miscarriage.

12 Q. And after they told him to calm down and  
13 back away; correct?

14 A. Correct.

15 Q. Okay. And you would acknowledge for us,  
16 based on your experience, even if it doesn't --  
17 hasn't happened to you in your service, ambulances  
18 are, from time to time, the targets of robbery  
19 because they carry controlled substances; correct?

20 A. I would agree.

21 Q. Now, if we go back to Exhibit 4, turn to  
22 page 4?

23 A. Page 4?

24 Q. Yeah. I'm sorry. You have multiple  
25 page 4s within Exhibit 4, so since they're not

1 sequentially numbered, it's page 9. I think it's  
2 entitled Conclusions From, and it has a  
3 paragraph 12 -- part of paragraph 11 and 12 and 13.

4 A. Correct.

5 Q. Okay. The last paragraph of what would  
6 be paragraph 11:

7 "Based on my interviews and  
8 review of documents, I concluded  
9 that the EMS crew (paramedic and  
10 EMT-I) did not want to take the  
11 patient to Summerlin Hospital in  
12 Las Vegas, Nevada, but instead to  
13 Desert View Regional Medical  
14 Center in Pahrump, Nevada, the  
15 closest hospital to the EMS  
16 crew's fire crew station, for the  
17 EMS crew's personal convenience."

18 A. Correct.

19 Q. Mr. Delucchi didn't tell you that, did  
20 he?

21 A. No.

22 Q. Mr. Hollis didn't tell you that, did he?

23 A. No.

24 Q. And we've already established that you  
25 didn't interview anybody else, so what interviews



1 led you to that conclusion?

2 A. That my conclusion was based on the  
3 statement made that they could take him to Pahrump.

4 Q. Okay. But you have already heard that  
5 the statement was made to the husband to get him --  
6 or the boyfriend or husband to get him to calm down  
7 per what we just listened to; correct?

8 A. Correct.

9 Q. Was there anything further that led you  
10 to the conclusion that this was all being done for  
11 their personal convenience?

12 A. That the -- that they could transport  
13 to --

14 Q. Desert Regional.

15 A. For their personal convenience?

16 Q. Desert Regional. You wrote that they  
17 wanted to go to Desert Regional for their personal  
18 convenience, and you said it was based on interviews  
19 and review of documents. We've already established  
20 it doesn't come from the interviews, so what --

21 A. The establishment that the patient's  
22 husband, significant other, wanted to go elsewhere  
23 and that's what invoked the excitement, that's what  
24 invoked the confrontation and was not mitigated at  
25 that point is where I base that conclusion.

1 Q. But that didn't come from the -- without  
2 being overly argumentative, that didn't come from  
3 the patient's husband, did it?

4 A. What did not come from the patient's  
5 husband?

6 Q. The statement that -- what you just  
7 said, since you never talked to the patient's  
8 husband. You never talked to James Joyce.

9 A. Correct.

10 Q. So you have only the statements of Tommy  
11 Hollis and Ray Delucchi that they offered to get him  
12 to calm down, and that's when he put the car in the  
13 gear and drove away.

14 A. Correct.

15 Q. That's the only actual evidence you  
16 have; correct?

17 A. Correct.

18 Q. You discussed during, direct examination  
19 contacting, law enforcement and your thoughts on  
20 contacting law enforcement.

21 Based on the interviews that you did  
22 with Delucchi and Hollis, which are the only  
23 interviews you did, they didn't have a name;  
24 correct?

25 A. Correct.

1           Q.     They didn't have a license plate;  
2 correct?

3           A.     Correct.

4           Q.     They didn't even have a make and model  
5 of the vehicle that they could identify; correct?

6           A.     Correct.

7           Q.     So what is it that you think they could  
8 effectively communicate to law enforcement if they  
9 can't identify a name, a license plate, or a make  
10 and model?

11          A.     An erratic vehicle that almost drove  
12 them off the road.

13          Q.     Okay. And how would law enforcement be  
14 able to take action to identify what this vehicle is  
15 if you don't have a name, a driver's license, or a  
16 make and a model?

17          A.     If it was driving erratically, you would  
18 assume that the vehicle would continue to drive  
19 erratically and there was an incident that happened  
20 that was reportable. If it's reportable, if there  
21 was an intent to cause harm to these individuals,  
22 then it should be reported. There's a duty to act.  
23 If they are going to cause harm, if this vehicle has  
24 the ability to cause harm to other vehicles on the  
25 road, there's a duty to act in the state of Nevada.

1 Vehicles are reported all the time to NHP without  
2 make, model, license plate number.

3 Q. Do you know whether or not that stretch  
4 of highway is even patrolled at 1:00 A.M. by NHP?

5 A. I believe that NHP has a duty officer on  
6 that can be called out at all times and at each end  
7 there are sheriff's deputies that are on.

8 Q. It would take 40 minutes for a call-out  
9 to occur; correct?

10 A. That's your opinion.

11 Q. Did you ever make any inquiries of NHP  
12 to get information to the contrary as to how long  
13 the call-out would be?

14 A. No, I did not.

15 Q. All right. Paragraph 13, you wrote:

16 "The mindset of both  
17 Paramedic Delucchi and  
18 EMT-Intermediate Tommy Hollis is  
19 that they used good sound  
20 judgment, which we cannot  
21 find/identify in either all the  
22 documentation provided by PVFRS  
23 and or in our interviews or  
24 investigation. Additionally,  
25 their refusal to acknowledge any

1                   wrongdoing demonstrates a pattern  
2                   of behavior and professional  
3                   conduct that may be repeated in  
4                   the future. Moreover, they  
5                   showed no remorse for anything  
6                   that transpired. This was their  
7                   demeanor and mindset at the  
8                   interviews. Therefore, their  
9                   attitude leads me to believe that  
10                  there may be repeated poor  
11                  judgment in the future, resulting  
12                  in ramifications for the Town of  
13                  Pahrump. Probability in  
14                  actuarial analysis tells us that  
15                  it's not if but when the next  
16                  event/incident would happen."  
17                  That's what you wrote; correct?

18                A.       Correct.

19                Q.       How are you able to do a probability and  
20                  actuarial analysis based on an interview of two  
21                  people who tell you that we just had this weird  
22                  thing happen to us in the dark on the mountain?

23                A.       I'm not. That was my opinion.

24                Q.       When you refer to their demeanor and  
25                  mindset -- I'm not going to go back and play all the

1 other tapes. It was similar to what Mr. Delucchi  
2 said to you, which was we were concerned and we  
3 weren't going to approach; therefore, we thought we  
4 used our best judgment. Correct?

5 A. Correct.

6 Q. And you did get the protocols and the  
7 standard operating guidelines; correct?

8 A. Correct.

9 Q. And those protocols and standard  
10 operating guidelines emphasized first and foremost  
11 what?

12 A. Scene safety.

13 Q. That's correct. You referred to STAR  
14 CARE; correct?

15 A. That's correct.

16 Q. The S in STAR is for safety; correct?

17 A. That is correct.

18 Q. If they cannot establish scene safety to  
19 their satisfaction, they're not supposed to do  
20 anything more; correct?

21 A. They are supposed to follow the complete  
22 STAR CARE guideline that's in their protocols and  
23 procedures. You don't stop at S. You make --

24 Q. But if it's not safe, you can't go on to  
25 do the rest, can you?

1           A.       You can go on and do the rest of STAR  
2 CARE.

3           Q.       Even if it's not safe?

4           A.       Absolutely. You have a duty to report.

5           Q.       Do you know whether that comports with  
6 the actual training they got?

7           A.       With the actual -- I'm sorry. Repeat  
8 the question.

9           THE ARBITRATOR: Excuse me. You cut him  
10 off when he was --

11          MR. LEVINE: I'm sorry. I apologize.

12          THE ARBITRATOR: -- saying you can go  
13 ahead and complete the STAR CARE and then there's a  
14 duty of report, and then you kind of cut him off.

15                 Were you finished with your answer  
16 there?

17          THE WITNESS: In their policies and  
18 procedures under the STAR CARE protocol, it does not  
19 mean that, if they are using the acronym of STAR  
20 CARE, whether their actions were safe for me, for my  
21 colleagues, for my professionals, and for the  
22 public. If you read safe -- were my actions safe  
23 for me, for my colleagues, for professionals, and  
24 for the public, I don't believe it was safe for the  
25 public to leave an erratic driver left alone in the

1 middle of the night heading to Vegas with the  
2 potential of hurting other patients or people.

3 BY MR. LEVINE:

4 Q. Please turn in the protocols -- you're  
5 in Exhibit 14 already -- to the definitions. I  
6 think it's on page 13.

7 A. Okay.

8 Q. Do you see where it says Scene Safety  
9 under definitions?

10 A. Yes.

11 Q. Okay.

12 "Scene safety refers to the  
13 establishment of a safe working  
14 environment for yourself, your  
15 partner, bystanders, and for your  
16 patients. Scene safety must be a  
17 number one priority at all  
18 times."

19 Correct?

20 A. Correct.

21 Q. And what you were told by both Hollis  
22 and Delucchi in separate interviews was that the  
23 driver put the car in gear and drove away before  
24 they were able to establish scene safety to their  
25 satisfaction; correct?



1 A. Correct.

2 Q. All right. I'd like to go through some  
3 of the conclusions that you reached in your report,  
4 'cause you identified a number of policies and  
5 procedures. I think they're identical for both  
6 Mr. Delucchi and Mr. Hollis, so could you turn to  
7 that in Exhibit 4.

8 A. Okay.

9 Q. You reference under personnel policies,  
10 rules and regulations, and protocols, there's a 1  
11 that says, "Termination for the listed reasons of  
12 the Town of Pahrump" -- do you see that? -- "PVFR,  
13 and agreement/contracts denote" -- do you see that?

14 A. Page 4?

15 Q. There's a 4 on the bottom of the page.  
16 It's where you list the policies and procedures that  
17 you believe were violated.

18 A. Okay.

19 Q. I'd like to walk you through those.

20 The first one references 11.1.1, 1, 2,  
21 and 11.1.17. Do you see that?

22 A. Yes.

23 Q. Okay. Let's -- I want you to keep your  
24 finger there and then flip to where I believe those  
25 are, and that's going to be in Exhibit 5, personnel

1 policies. And if you could turn to page 91 using  
2 the page numbers at the bottom.

3 Is that the 11.1.1 you were referencing?

4 A. I believe so.

5 Q. You reference 11.1.1.7, intimidation as  
6 a violation, correct, in your report?

7 A. I do.

8 Q. Who did they intimidate? Where did that  
9 come from?

10 A. I don't recall how I numbered these. I  
11 don't recall without looking back through my notes  
12 on that one.

13 Q. Well, Mr. Delucchi didn't tell you that  
14 he intimidated anybody, did he?

15 A. No.

16 Q. Mr. Hollis didn't tell you that he  
17 intimidated anybody, did he?

18 A. No.

19 Q. And you didn't conduct any other  
20 interviews; correct?

21 A. Correct.

22 Q. So you don't know where that came from?

23 A. I do not recall at this time.

24 Q. Did the chief tell you that he had been  
25 intimidated by Ray Delucchi?

1 A. No, he did not.

2 Q. Did somebody tell you that the chief  
3 filed a personal complaint against Mr. Delucchi as  
4 Union president for intimidation and bullying?

5 A. No, he did not.

6 Q. But sitting here today, then, you can't  
7 explain why you found them guilty of violating the  
8 intimidation clause in the list of disciplinary  
9 actions?

10 A. No. I don't recall if I had put that in  
11 there because they were in fear of being intimidated  
12 or not. I do not remember why I put that in there.

13 Q. Well, if an outside person is going to  
14 read this and rely upon it, doesn't this read as if  
15 you are identifying that they violated that this is  
16 grounds for disciplinary action?

17 A. That would be correct.

18 Q. And you'd agree with me that there's no  
19 evidence to support disciplinary action for  
20 intimidation that you can identify.

21 A. I can't identify it for this one.

22 Q. Okay. Let's go to 11.1.1.11:

23 "Dishonesty, including  
24 intentionally or negligently  
25 providing false information,

1 intentionally falsifying records,  
2 employment applications, or other  
3 documents."

4 What document did they falsify?

5 A. I didn't say they falsified documents.

6 It was negligently provided false information.

7 Q. What false information did they provide?

8 A. I don't believe so -- the false  
9 information I believe they violated here was not  
10 reporting.

11 Q. Okay. But there's a difference between  
12 not reporting and intentionally falsifying a record;  
13 correct?

14 A. I believe when they -- in their  
15 documentation, they were falsifying what they were  
16 saying, that there was not a patient in this  
17 incident.

18 Q. Okay. So the accusation of falsifying  
19 documents is based upon their stated belief that  
20 there was no patient; correct?

21 A. That's correct.

22 Q. In fact, what they did tell you in their  
23 interviews was that with 20/20 hindsight, they  
24 probably should have called your lieutenant; correct?

25 A. We all wish we had 20/20 hindsight.

1           Q.       Well, they told you that the only thing  
2 they could think of doing differently was maybe  
3 calling their lieutenant; correct?

4           A.       Maybe calling the lieutenant.

5           Q.       And you found -- you concluded they also  
6 violated subsection 12:

7                    "Willfully or intentionally  
8                   violating or failing to comply  
9                   with the Town" --

10           THE ARBITRATOR: Excuse me. When you're  
11 talking about calling the lieutenant, you're talking  
12 about a lieutenant on duty or a lieutenant who is  
13 off duty?

14                   MR. LEVINE: Lieutenant on duty.

15                   THE ARBITRATOR: Somebody is on duty?

16                   THE WITNESS: Correct.

17                   THE ARBITRATOR: You're talking about  
18 calling somebody on duty.

19                   MR. LEVINE: Right.

20                   THE ARBITRATOR: Is that what we're all  
21 understanding?

22                   MR. CAMPBELL: Yes.

23                   THE ARBITRATOR: Thank you.

24           BY MR. LEVINE:

25           Q.       Just so we're clear, when you

1 specifically asked them do you think you should have  
2 done anything different and they said no, with the  
3 exception of maybe calling our lieutenant, that's  
4 what they told you?

5 A. Correct.

6 Q. Yet you concluded that that response  
7 was, to go back to the prior page, that they showed  
8 no remorse.

9 A. Correct.

10 Q. Now, if we go through -- continuing to  
11 go through what you believe they violated, you make  
12 a reference to 11.1.4, that's just a procedure for  
13 putting somebody on administrative leave; correct?  
14 It's not a grounds for discipline; correct?

15 A. Correct.

16 Q. Then you go down to the rules and  
17 regulations; right? 02.03, and those will be found  
18 in Exhibit 7. Let me see if I can find Exhibit 7.  
19 2.03.02. Actually, you start with 1, subsection D,  
20 H, and K, and that would be, I think, on the fourth  
21 page of Exhibit 7. Okay. Are you there?

22 A. On the fourth page?

23 Q. Yes.

24 A. Which one?

25 Q. You have 2.03.01D, which is, "Negligence

1 or indifference in performance of a duty." You  
2 listed that; correct?

3 A. Correct.

4 Q. Then you list subsection H,  
5 "Falsification or destruction of records, reports,  
6 or documents." What records did they falsify?

7 A. It was my opinion that they fell under  
8 the no records were created, so it's falsification  
9 that nothing was done.

10 Q. So it's a failure to report, not a  
11 falsification.

12 A. Correct.

13 Q. All right. Do you understand the  
14 difference between a failure to report and a  
15 falsification?

16 A. I do.

17 Q. A failure to report is not doing  
18 something. A falsification is creating an  
19 intentionally false document, and they didn't do  
20 that, did they?

21 A. Correct.

22 Q. Okay. Subsection K: "Any flagrant  
23 violation of the department's rules." I don't think  
24 that tells us much.

25 Let's go to item B, 02.03.02, that will

1 be right below what we just looked at.

2 A. Right.

3 Q. Okay.

4 "Any department member that  
5 observes a violation of the  
6 department's rules and  
7 regulations or standard operating  
8 guidelines shall bring the  
9 violation to the attention of the  
10 officer in charge."

11 A. Correct.

12 Q. Well, who violated that?

13 A. Both of them.

14 Q. Mr. Delucchi didn't tell you that  
15 Mr. Hollis did anything wrong, did he?

16 A. They both are aware of the policy and  
17 procedures of the Pahrump Fire Department, so they  
18 both had the duty to report.

19 Q. That's to report if they believe that  
20 there's a patient; correct?

21 A. No.

22 Q. No, not correct?

23 A. It would be any department member that  
24 observes violation of the department's rules and  
25 regulations. An incident report or an unusual



1 occurrence report should have been filed in this  
2 incident.

3 Q. Do you know what the custom and practice  
4 is in Pahrump for those sorts of incident reports?

5 A. According to them, they file unusual  
6 incident reports, and I believe it was called an  
7 unusual report or incident report.

8 Q. Right. And what they told you was they  
9 were filed only very occasionally. They see a lot  
10 of stuff, but it's only rare that they file them;  
11 correct?

12 A. I believe they said that they do file  
13 them.

14 Q. As a matter of fact, didn't Mr. Delucchi  
15 tell you he's only filed one or two in his entire  
16 career?

17 A. I don't recall.

18 Q. Let's go to 02.03.03, which is the next  
19 one that you list. If we look at 02.03.03:

20 "Department members shall  
21 use the chain of command when  
22 expressing their displeasure or  
23 concerns about the rules and  
24 regulations or standard operating  
25 guidelines or other written

1 directives."

2 A. Right.

3 Q. Where did Mr. Delucchi or Mr. Hollis  
4 violate the chain of command by expressing  
5 displeasure?

6 A. (Reading:)

7 "Department members shall  
8 use the chain of command when  
9 expressing their displeasure or  
10 concerns about the rules and  
11 regulations or standard operating  
12 guidelines or other written  
13 directives."

14 There was displeasure with a STAR CARE  
15 algorithm. They both stated that they were  
16 unfamiliar or not very familiar with the STAR CARE,  
17 and that was never reported to their superiors.

18 Q. Okay. But that's not an expression of  
19 displeasure. What that is is that they just told  
20 you that they weren't trained on them or they didn't  
21 have much training on it; right?

22 A. I believe that was a displeasure.

23 Q. Okay. So if they tell you, hey,  
24 management isn't training us adequately and they  
25 tell that to you, they're in violation of the rules

1 and regulations for breaching chain of command. Is  
2 that your opinion?

3 A. Yes.

4 Q. Okay. Let's go to 2.03.04:

5 "Department members shall  
6 use the chain of command when  
7 airing their concerns about  
8 department-related matters,  
9 including the conduct of other  
10 department members."

11 Where did they breach chain of command?

12 A. Again, there was no reporting or  
13 anything about their policies and procedures that  
14 they seemed to be unfamiliar with, especially when  
15 it relates back to the STAR CARE policy.

16 Q. 2.03.05, that is:

17 "In all matters having a  
18 potential to affect the  
19 department in any way, proposed  
20 or contemplated by any member, or  
21 group of members, the matter  
22 shall be submitted to the" chief  
23 of police [sic] "before any  
24 action is taken."

25 How did they violate that?

1 A. To the fire chief.

2 Q. That's what it says.

3 A. I'm sorry. You said chief of police.

4 Q. I'm sorry. Fire chief. I apologize.

5 A. In all matters having the potential to  
6 affect the department. This has the potential to  
7 affect the department, and it was never reported.  
8 The incident had potential to affect the department,  
9 obviously, and it was never reported.

10 Q. So really all these violations that  
11 you're tagging them on is just the fact that they  
12 didn't do a special circumstance report; right?  
13 That's it?

14 A. That's correct.

15 Q. 2.03.11:

16 "Department members shall  
17 not be involved in any activity  
18 that could disrupt department  
19 morale or bring discredit to the  
20 department or any department  
21 member."

22 A. Not reporting and following the policies  
23 and procedures definitely.

24 Q. Again, it's not doing an unusual  
25 circumstance report.

1           A.       Right, not following policies and  
2 procedures of their department.

3           Q.       All right.

4           THE ARBITRATOR: I take it "special  
5 circumstance," "unusual circumstance," and "unusual  
6 occurrence" are all the same thing.

7           MR. LEVINE: I think they are used  
8 interchangeably.

9           THE ARBITRATOR: Okay. Is that --  
10 everybody agree on that?

11          MR. CAMPBELL: Yes.

12          MR. LEVINE: Yes.

13          THE ARBITRATOR: All right.

14 BY MR. LEVINE:

15          Q.       2.03.14:

16                "Department members shall  
17 not attempt to suppress, modify,  
18 or interfere with any written  
19 communications."

20                Well, they didn't suppress or modify  
21 anything. They just decided they didn't need to  
22 fill out a report; correct?

23          A.       So in my opinion, that suppresses any  
24 written communications that they were supposed to  
25 do.

1           Q.       Okay. Let's go to -- next you identify  
2       02.05.15, and that will be about three or four pages  
3       further under guideline 02.05 entitled General  
4       Rules.

5                   Is the arbitrator there?

6           THE ARBITRATOR: I thought you said  
7       02.05.15.

8           MR. LEVINE: Yes, 02.05. We were at the  
9       02.03s. The. 2.05 --

10          THE ARBITRATOR: Yeah, I think I'm  
11       there.

12          MR. LEVINE: Okay.

13       BY MR. LEVINE:

14           Q.       You found them guilty of violating  
15       2.05.15:

16                   "Department members shall  
17       not use profane or indecent  
18       language while on duty. Members  
19       shall be respectful of internal  
20       and external customers and shall  
21       refrain from using terms of  
22       endearment such as honey,  
23       sweetie, et cetera."

24           A.       No, I did not find them guilty. It  
25       says, "Members shall be respectful of internal and

1 external customers," and I don't believe, in this  
2 instance, they were respectful of the customers that  
3 they were providing service to.

4 Q. You say you felt that they were not  
5 respectful to the customers.

6 A. That's correct.

7 Q. But again, that's not what Delucchi told  
8 you in the interview; correct? He didn't tell you  
9 that he was disrespectful, did he?

10 A. No, he did not.

11 Q. Hollis didn't tell you that; correct?

12 A. No, he did not.

13 Q. And you didn't interview anybody else;  
14 correct?

15 A. Correct.

16 Q. 02.05.24. This one really struck me.

17 "Department members shall  
18 maintain a professional attitude  
19 as well as maintaining  
20 appropriate hygiene while on  
21 duty."

22 Was there something wrong with their  
23 hygiene?

24 A. Where did you go? 05?

25 Q. You had said that they violated

1 02.05.24. When I go to 02.05.24, it says:

2 "Department members shall  
3 maintain a professional attitude  
4 as well as maintaining  
5 appropriate hygiene while on  
6 duty."

7 A. And your question is about their  
8 hygiene?

9 Q. Was there a hygiene problem?

10 A. I didn't state there was a hygiene  
11 problem.

12 Q. Okay. Well, you don't actually specify  
13 in here --

14 A. I stated that -- I'm sorry. Which one  
15 was it? "Department member shall maintain a  
16 professional attitude." I don't believe this was a  
17 professional attitude, the way this scene was  
18 handled.

19 Q. And again, not to beat a dead horse,  
20 that is based not on actual interviews that you  
21 took. That's based on something other than the  
22 interviews.

23 A. Yeah, this is based on my actual  
24 interviews of the two individuals involved.

25 Q. Well, Mr. Delucchi --



1           A.       I don't believe the scene was handled  
2 appropriately --

3           Q.       Mr. Delucchi and Mr. Hollis disagreed  
4 with you, and they told you they thought they  
5 handled themselves well, given the safety concerns  
6 that they had; correct?

7           A.       That's fine.

8                   MR. LEVINE: Okay. Arbitrator's  
9 indulgence. Let me check my notes.

10 BY MR. LEVINE:

11           Q.       You talked about the protocols that you  
12 felt they should have -- the EMS protocols they  
13 should have followed for, I think, hypovolemic  
14 shock, childbirth.

15           A.       Correct.

16           Q.       Again, if what Mr. Delucchi and what  
17 Mr. Hollis told you is accurate, they never got a  
18 chance to assess whether the female in the front  
19 seat was, in fact, in shock; correct?

20           A.       I believe that they had a patient. They  
21 had a chance to assess that patient.

22           Q.       My question was, if what they told you  
23 was accurate, they didn't; correct?

24           A.       That's your speculation.

25           Q.       Okay. Same thing with hypovolemic

1 shock. If they didn't have an opportunity to assess  
2 her because James Choyce put the car in gear and  
3 drove away before they could do so, they can't know  
4 whether she's in shock; correct?

5 A. I think --

6 MR. CAMPBELL: I think that's misstating  
7 his testimony and argumentative. I think his  
8 testimony is clear that they have the duty to  
9 determine that.

10 THE ARBITRATOR: Okay. Well, he's  
11 emphasizing his points. You're emphasizing yours.

12 BY MR. LEVINE:

13 Q. If what Mr. Hollis and Mr. Delucchi told  
14 you in your interviews is, in fact, true, they  
15 didn't have an opportunity to assess to determine  
16 whether or not Brittnie was, in fact, in hypovolemic  
17 shock?

18 MR. CAMPBELL: Argumentative. That's  
19 clearly argumentative, but classifying it as a true  
20 statement --

21 THE ARBITRATOR: Well, I don't know that  
22 we have really had -- we haven't established it on  
23 the record how long it takes to make an assessment  
24 of that, but I think his question is if you assume  
25 everything that the grievants said was true, is this

1 correct, and I think that's an appropriate question,  
2 so I'll allow it.

3 Go ahead.

4 BY MR. LEVINE:

5 Q. If what they tell you is true, that they  
6 never got closer than five to ten feet away,  
7 couldn't see in the vehicle, and couldn't see  
8 anything other than the fact that there's a female  
9 who is crying that they didn't speak to, they  
10 wouldn't have been in a position to determine  
11 whether she was, in fact, in hypovolemic shock;  
12 correct?

13 A. That's not true. Physical appearance,  
14 visual appearance is an assessment.

15 Q. They told you it was dark and they  
16 couldn't see; correct?

17 A. They could see well enough to see the  
18 patient was crying.

19 Q. But --

20 A. That is a physical condition.

21 Q. You would agree with me that a person  
22 can be crying but not be in hypovolemic shock;  
23 correct?

24 A. I would agree with that.

25 Q. They could be crying for any other

1 numbers of reasons; correct?

2 A. I would agree to that.

3 Q. She could have been crying because she  
4 was in an argument with her husband; correct?

5 A. Correct.

6 Q. She could be crying because her husband  
7 is acting crazy and she's scared; correct?

8 A. That's correct.

9 Q. She could be crying because her husband  
10 might be plotting a robbery for all anybody knows;  
11 correct?

12 A. That's correct.

13 Q. And in fact, I would also be correct  
14 that in the course and scope of your investigation,  
15 you never were actually able to independently verify  
16 whether or not Brittanie Choyce did, in fact, have  
17 any sort of miscarriage?

18 A. I was presented with pictures of the  
19 miscarriage.

20 Q. Okay. But you never talked to Brittanie  
21 to find out whether that's hers, whether it's  
22 accurate, whether she took it; correct?

23 A. I did not.

24 Q. Can you explain to us why, when we  
25 requested your entire file, we did not get those

1 pictures?

2 A. They were not given to me.

3 Q. Oh, so you didn't have them as part of  
4 your investigative file.

5 A. I did not.

6 Q. So you were shown --

7 THE ARBITRATOR: I'm sorry. What are we  
8 talking about? Pictures of a miscarriage, you mean  
9 just -- I'm not understanding that. Pictures of  
10 a --

11 MR. LEVINE: I'm not understanding it  
12 either.

13 THE ARBITRATOR: Okay. What do you mean  
14 by that?

15 THE WITNESS: I don't remember who. I  
16 believe HR -- when we talked with HR, they presented  
17 us with pictures of the miscarriage. I think it was  
18 part of the --

19 THE ARBITRATOR: You mean of the -- of  
20 the woman or of the car, or what are we talking  
21 about?

22 THE WITNESS: I believe of the  
23 miscarriage itself.

24 THE ARBITRATOR: Okay. In other words,  
25 whatever passed from her body, that was

1 photographed.

2 THE WITNESS: Correct. And the blood on  
3 the seat was apparently photographed.

4 THE ARBITRATOR: Okay. But are you  
5 saying you saw that?

6 THE WITNESS: Yes.

7 THE ARBITRATOR: Okay. But it didn't  
8 become part of the file?

9 THE WITNESS: Yeah. It was not left  
10 with me.

11 THE ARBITRATOR: Okay. Go ahead.

12 BY MR. LEVINE:

13 Q. All right. So it didn't become part of  
14 your file, so it wasn't obviously given to us. And  
15 again, you had no opportunity to question Brittanie  
16 Choyce about that; correct?

17 A. No.

18 Q. No, not correct, or no, you didn't have  
19 a --

20 A. I did not question her about that.

21 MR. CAMPBELL: I want to make an  
22 objection here. It was given to Counsel. These  
23 pictures were given to Counsel.

24 MR. LEVINE: I don't believe I saw them  
25 but --

1 All right. I don't have anything  
2 further.

3 THE ARBITRATOR: Any redirect?

4 MR. CAMPBELL: Yes, I do. Arbitrator's  
5 indulgence.

6 THE ARBITRATOR: Let's take a little  
7 break before we do the redirect.

8 (A recess was taken from 4:09  
9 to 4:17 P.M.)

10 THE ARBITRATOR: We're back on record  
11 after a very short break, and by agreement of the  
12 parties, we are going to interrupt the testimony of  
13 Mr. Songer, and we are going to call two witnesses  
14 very briefly. Each one will testify as to their  
15 employment backgrounds and their experience in the  
16 firefighting field, and then by agreement of the  
17 parties, we're going to continue each of these  
18 witnesses' testimony until tomorrow, when their  
19 testimony will be completed telephonically.

20 Is that the stipulation?

21 MR. CAMPBELL: Yes.

22 MR. LEVINE: Yes.

23 THE ARBITRATOR: Okay. So we are going  
24 out of order by agreement of the parties and with  
25 the approval of the arbitrator.

1                   So Mr. Levine, would you like to call  
2 your first witness.

3                   MR. LEVINE: Why don't we start with  
4 Dustin.

5  
6                   DUSTIN KNUTSON,  
7 having been called as a witness and having been  
8 first duly sworn, was examined and testified as  
9 follows:

10

11                   DIRECT EXAMINATION

12 BY MR. LEVINE:

13               Q.       Mr. Knutson, where are you employed?

14               A.       With the Pahrump Valley Fire and Rescue.

15               Q.       And how long have you been employed with  
16 Pahrump Valley Fire and Rescue?

17               A.       Eight years now.

18               Q.       And what position do you hold with  
19 Pahrump Valley Fire and Rescue?

20               A.       Firefighter/EMT-intermediate.

21               Q.       EMT-intermediate?

22               A.       Yes, sir.

23               Q.       And were you employed with Pahrump  
24 Valley Fire and Rescue as an EMT-intermediate on  
25 May 31, 2012?



1           A.       Yes, sir.

2           MR. LEVINE: All right. That's all I  
3 have for him, and I'm going to now just ask the same  
4 for Noe. If I can have him sworn.

5           THE ARBITRATOR: And you have his  
6 contact information for tomorrow?

7 BY MR. LEVINE:

8           Q.       Dustin, what is the best number to call  
9 you at tomorrow?

10          A.       That would be my cell phone. It's  
11 775-253-0910.

12          Q.       Okay. Is there -- do you anticipate  
13 being in any areas where you're not going to have  
14 adequate coverage tomorrow?

15          A.       I would hope not, no.

16          MR. LEVINE: Okay. If we don't get you  
17 the first time, we'll try you back throughout the  
18 day.

19          THE ARBITRATOR: Thank you very much.  
20 And does that conclude your --

21          MR. LEVINE: Yes.

22          THE ARBITRATOR: All right. And  
23 obviously, cross-examination will be postponed until  
24 tomorrow.

25          MR. CAMPBELL: Yes.

1 THE ARBITRATOR: Okay. Thank you,  
2 Mr. Knutson.

3 And the Union is now calling?

4 MR. LEVINE: Noe Martinez.

5  
6 NOE MARTINEZ,  
7 having been called as a witness and having been  
8 first duly sworn, was examined and testified as  
9 follows:

10 THE ARBITRATOR: State your name for the  
11 record, please.

12 THE WITNESS: Noe Martinez.

13 THE ARBITRATOR: Thank you.

14 Please proceed.

15

16 DIRECT EXAMINATION

17 BY MR. LEVINE:

18 Q. And Mr. Martinez, where are you  
19 currently employed?

20 A. Pahrump Valley Fire Rescue.

21 Q. And how long have you been employed with  
22 Pahrump Valley Fire and Rescue?

23 A. Roughly about a year and eight months.

24 Q. And in what capacity are you employed?

25 A. I'm a firefighter/EMT-intermediate.

1 Q. And were you employed as a firefighter/  
2 EMT-intermediate on May 31, 2012?

3 A. Yes, sir.

4 Q. Okay. Were you on duty that day? I can  
5 ask you that tomorrow.

6 I'll pass the witness.

7 THE ARBITRATOR: Okay. Thank you,  
8 Mr. Martinez.

9 MR. LEVINE: Can I get a number? Oh, I  
10 think I have it. Is it 702-415-5719?

11 THE WITNESS: That's correct, sir, yes.  
12 That's my cell phone.

13 THE ARBITRATOR: Thank you both very  
14 much.

15 (A discussion was held off the  
16 record.)

17 THE ARBITRATOR: So Mr. Songer, if you  
18 would resume the witness stand for your redirect.

19  
20 PAT SONGER,  
21 having been recalled as a witness and having been  
22 previously duly sworn, was examined and testified  
23 further as follows:

24 THE ARBITRATOR: Mr. Campbell, you may  
25 proceed.

## REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Songer, I think we heard on one of the tapes of the interview that we listened to, and maybe it was a question that Mr. Levine posed also, but was it your understanding in the interview that Mr. Hollis and Mr. Delucchi were concerned that they might be robbed?

A. Yeah, they were concerned that they might be robbed.

Q. And that's a valid concern about robbery of an ambulance?

A. I think in relationship to a circumstance, that it's a valid concern if there's some establishment that they might be robbed, but there was an establishment that there was an emergency right off the bat.

Q. I think there was also maybe in question that Mr. Choyce could have pulled out a gun on them.

A. That's correct.

Q. Did you hear that also? Or that Mrs. Choyce was in fear for her life because Mr. Choyce had beat her up.

A. That's correct.

Q. Okay. With the establishment of that --

1 those gentlemen's mindset that they had those types  
2 of fears, in your opinion, would that make it even  
3 more paramount that they call outside help?

4 A. Absolutely. Before exiting a vehicle,  
5 you should notify somebody that you're being  
6 contacted -- that some sort of contact is being made  
7 with you so that you can start help coming or that  
8 somebody knows what your last known position is in  
9 the field.

10 Q. Okay. Now, Mr. Levine questioned you,  
11 they didn't have the make or model of the car, so it  
12 would be fruitless to call, which was basically the  
13 gist of his question.

14 Do ambulances have flashlights in them?

15 A. They do.

16 Q. If it was pretty dark out, would it be  
17 pretty good protocol to pull out the flashlight when  
18 you're going up to a dark -- in a dark area?

19 A. Yes, there should be something to  
20 establish it.

21 Q. And I think the testimony was that the  
22 lights were on, the ambulance lights. Would that  
23 light up a scene also?

24 A. There are rear load lights on an  
25 ambulance, I believe, that were activated.

1 Q. So that would throw some light on the  
2 scene?

3 A. That would throw some light on the  
4 scene.

5 Q. At least enough light from five to ten  
6 feet away to see the passenger inside -- inside the  
7 car, crying.

8 A. That's correct.

9 Q. Okay. You said it would be -- it would  
10 still be adamant for someone to make a call even if  
11 they didn't know the make or model of a car; right?

12 A. To protect the public, to protect the  
13 scene, if they're concerned about scene safety or  
14 life safety of others around them, it's our duty to  
15 act and to protect our customers, our patients, or  
16 the public.

17 Q. Do you think that with the ambulance  
18 lights on and the way that these men were standing  
19 and the testimony that Mr. Choyce pulled out as they  
20 were standing right next to the car and drove by  
21 them, that they couldn't somehow have identified at  
22 least the model or the type of car or the color of  
23 the sedan?

24 A. I believe he could have identified at  
25 least the size and -- and at least shape of the car.

1 I would hope he'd identify the color too.

2 Q. And I think there was a question that  
3 they also had to go down and turn around and head  
4 back, so they would have known which direction they  
5 were heading; correct?

6 A. Correct. And I would assume, then, they  
7 would have then identified the vehicle would be the  
8 assumption.

9 Q. And it would be pretty easy to say they  
10 left mile marker whatever it is, did a U-turn, and  
11 were heading to Las Vegas fifteen minutes ago or ten  
12 minutes ago or five minutes ago, whatever the case  
13 maybe be.

14 A. Correct.

15 Q. And that would alert the public  
16 vis-a-vis another police officer or --

17 MR. LEVINE: Objection. We're leading  
18 at this point.

19 BY MR. CAMPBELL:

20 Q. Okay. Would that alert -- would that be  
21 an adequate alert?

22 A. That would be an adequate alert to a law  
23 enforcement agency.

24 Q. Did the fact that they never called,  
25 never told anybody, never called when they were in

1 cell service and now you hear this, they had these  
2 concerns about their -- about a possible gun being  
3 pulled out or a stabbing or a robbery, does that  
4 even cast more doubt on their story of never  
5 calling?

6 A. Yes. In my opinion, it casts more  
7 doubt. You still have a duty to report, a duty to  
8 at least move forward with something to let somebody  
9 know that there was an incident that happened, and  
10 you still have a duty to at least investigate and  
11 find out if there actually was or was not a victim,  
12 whether that victim be a patient or a victim of a  
13 robbery or domestic abuse.

14 Q. I believe on the tape, we heard -- I  
15 think it was Mr. Delucchi that said on the tape in  
16 response to a question to you that the driver said  
17 that his passenger, his wife or significant other,  
18 was possibly having a miscarriage. Did you hear  
19 that on the tape?

20 A. Yes, I did.

21 Q. Can you look at Exhibit Number 1 in the  
22 smaller binder -- excuse me, Exhibit A in the small  
23 binder. Go to the second page. You see there where  
24 it says, if you continue over from the first page:

25 "Before getting out of the



1 medic unit, a very excited and  
2 erratic male appeared in the  
3 driver's window screaming my wife  
4 is having a miscarriage."

5 A. That's correct.

6 Q. There's no qualification in that  
7 statement about "maybe," is there?

8 A. There is not.

9 Q. And this was made -- this statement was  
10 made on 5-31, just days after the incident.

11 A. That's correct.

12 Q. Let's talk a little bit about the  
13 definition of a patient. You understand that -- can  
14 a medical director write protocols for a fire  
15 department or an ambulance unit that are stricter  
16 than the statute -- statutory guidelines?

17 A. Yes, they can.

18 Q. And you're familiar with their authority  
19 to do that?

20 A. Yes, I am.

21 Q. Can you look at Exhibit 14. I think  
22 it's page 14. You see there's general guidelines.  
23 Number 1 says:

24 "A PCR must be completed for  
25 all patients (a patient is

1 defined as 'the subject of an EMS  
2 call'), whether or not they are  
3 transported."

4 Do you see that?

5 A. Yes, I do.

6 Q. And these EMS protocols are written by  
7 the medical director, to your understanding?

8 A. Yes, they are.

9 Q. Okay. So he's defined a patient in a  
10 stricter fashion than the Nevada statute?

11 A. That's correct.

12 Q. Okay. And do you believe, in your  
13 review, that there was an EMS call in this case?

14 A. Yes, there was.

15 Q. And why do you say that?

16 A. Because a statement was made to an  
17 attendant of an ambulance that my wife is having a  
18 miscarriage.

19 Q. Okay. And also how about the fact that  
20 an ambulance was flagged down?

21 A. Correct. So a call was made either via  
22 some way -- the ambulance was flagged down by  
23 someone requesting help.

24 Q. So in your opinion, that would be a  
25 call?

1 A. That would be a call.

2 Q. I believe one of your opinions was -- it  
3 was your opinion they didn't want a transport to  
4 Las Vegas?

5 A. That's correct.

6 Q. Okay. Did you review -- or remember the  
7 statement, I think, Mr. Delucchi played or that  
8 Mr. Levine played on the tape where Mr. Delucchi  
9 said something like we'll transport to Pahrump?

10 A. That's correct.

11 Q. And have you read the interview where  
12 they say Mr. Choyce became very agitated by the  
13 transport to Pahrump?

14 A. That's correct.

15 Q. Didn't want to go there?

16 A. Right.

17 Q. Did you see anything in the -- in any  
18 records or in your interviews where Mr. Delucchi or  
19 Hollis said, okay, we'll transport you to Las Vegas  
20 instead?

21 A. I did not. I see no evidence of any  
22 deescalation of the event.

23 Q. Was there anything that you would know  
24 that would prohibit them from turning the ambulance  
25 around and transporting the patient to Las Vegas?

1 A. No, there's not.

2 Q. Have you come across occasions where a  
3 patient may request a specific hospital?

4 A. Yes, we do.

5 Q. Would it be safe to assume that if an  
6 agitated driver wanted to go to Las Vegas, that it  
7 might calm him down by offering to take him to  
8 Las Vegas?

9 A. That would be a way to deescalate the  
10 event, yes.

11 Q. Finally, you were asked a lot of  
12 questions about whether or not you interviewed the  
13 Choyces personally.

14 A. Correct.

15 Q. You never did; right?

16 A. Correct.

17 Q. You did review interview notes, albeit  
18 Chief Lewis or Lieutenant Moody that made notes, of  
19 those two gentlemen's going out and actually  
20 interviewing the Choyces; correct?

21 A. That is correct.

22 Q. And you looked at those in detail.

23 A. Yes.

24 Q. Did you see anything in those notes that  
25 would make you suspect that they were not accurate

1 when compared to the other review that you had done  
2 on this file?

3 A. No, I did not.

4 Q. Was a lot of the -- were a lot of the  
5 statements and things corroborated by both versions  
6 of the story?

7 A. I believe they were both corroborating  
8 the same story that happened.

9 Q. Okay. There were some differences about  
10 closeness to the car.

11 A. Correct.

12 Q. And there was some differences about the  
13 time.

14 A. Correct.

15 Q. And there were some differences about  
16 whether or not there was an actual conversation with  
17 Miss Choyce.

18 A. That's correct.

19 Q. Other than that, there was a lot of  
20 corroboration?

21 A. Yeah, the perception was there was a lot  
22 of corroboration.

23 Q. Okay. Let me ask you this: In your  
24 experience, are there circumstances where you just  
25 cannot interview a patient when you're doing an

1 investigation of what a paramedic or transport may  
2 have done in a case?

3 A. I'm sorry.

4 Q. In your opinion -- I mean, in your  
5 experience, are there situations where you just  
6 cannot interview a patient after an incident takes  
7 place when you're doing an investigation of what the  
8 paramedics did?

9 A. Yes, there is.

10 Q. Okay.

11 A. Unwillingness to talk, traumatic --  
12 trauma of the event just -- somebody just not  
13 wanting to follow through with what's going on.

14 Q. Okay. Sometimes patients even die;  
15 right?

16 A. That's right.

17 Q. You can't interview them, can you.

18 A. Correct.

19 Q. Do you believe that when you can't  
20 interview a patient, that makes your report or your  
21 conclusions suspect?

22 A. Yes, I do. It still needs to have some  
23 sort of corroboration or follow-up on for quality  
24 assurance and make sure the appropriateness of the  
25 call still existed.

1 Q. Okay. And did you reach that conclusion  
2 in this case, that there was at least enough here to  
3 follow up to make your report accurate?

4 A. Yes, I did.

5 MR. CAMPBELL: That's all I have. Thank  
6 you.

7 THE ARBITRATOR: Anything further from  
8 the grievant?

9 MR. LEVINE: Yeah, very briefly.

10

11 RECROSS-EXAMINATION

12 BY MR. LEVINE:

13 Q. I have a couple things I wanted to  
14 clarify.

15 Am I correct that you did not receive  
16 any medical records from any hospitals in Las Vegas  
17 relating to this incident?

18 A. That's correct.

19 Q. You were asked a little bit about  
20 medical protocols. I went back, and do you recall  
21 originally when you testified -- you testified your  
22 beliefs as to what a medical director can do  
23 vis-à-vis licensing. Do you recall that?

24 A. Correct.

25 Q. And I raised an objection on foundation,

1 and we'll brief the issue later, but I just found in  
2 Exhibit 3 an E-mail I would like you to take a look  
3 at. And since they're not, again, sequentially  
4 numbered, this one is in the middle. It's going to  
5 be tough for me to get us exactly there, so let me  
6 count from the back.

7 It's a three-page E-mail that starts  
8 12 pages back. The front of it has a heading at the  
9 top Elicia Rollins, but it says from Rebecca Bruch  
10 to Ray Delucchi, and then there's one underneath it  
11 from you to Rebecca Bruch. I want you to find that  
12 E-mail for me.

13 MR. CAMPBELL: Counsel, is that  
14 August 2?

15 MR. LEVINE: No. It's October. Oh,  
16 August 2 is, yes. August 2 is the first, and then  
17 there was --

18 MR. CAMPBELL: Okay.

19 MR. LEVINE: And then there's a  
20 follow-up. Okay. Actually, what I don't want is  
21 the August 2. I want to go past the August 2. It's  
22 a three-pager that begins October 16. That's the  
23 one I want. October 16, 2012 is the third page, and  
24 then there's a first page which is October 22. And  
25 it could be quicker I could just walk around and



1 point it out to everybody?

2 THE ARBITRATOR: I have it.

3 MR. CAMPBELL: If we looked at the first  
4 page, it would be the one from Rebecca Bruch on  
5 Monday, October 22, at 2:15 to Mr. Delucchi.

6 MR. LEVINE: Yes.

7 MR. CAMPBELL: And then it has the NAC  
8 provisions.

9 MR. LEVINE: Yes.

10 MR. CAMPBELL: And it's actually  
11 numbered 1, and then there's a number 2 with Pat  
12 Songer with an accredited stamp.

13 MR. LEVINE: Yes.

14 MR. CAMPBELL: And then number 3 another  
15 half page with Erickson, Thorpe & Swainston's logo  
16 on the bottom.

17 MR. LEVINE: Okay.

18 MR. CAMPBELL: Got that?

19 THE WITNESS: No, I don't, but I'll find  
20 it.

21 MR. LEVINE: May I approach the witness?

22 THE ARBITRATOR: Sure.

23 MR. LEVINE: It's those three pages.  
24 And again, like many E-mails, we start with the  
25 back.

1 BY MR. LEVINE:

2 Q. All right. On October 16, 2012, which  
3 I'll represent to you is after my clients were  
4 terminated, you received an E-mail from Rebecca  
5 Bruch that says:

6 "Pat: Can you tell me again  
7 which NRS/NAC specifically  
8 require an EMT/EMS to work under  
9 the license of the medical  
10 director and/or would prevent the  
11 EMT/EMS from being employed if  
12 the medical director revoked that  
13 sponsorship?"

14 A. Correct.

15 Q. Okay. And what you responded was with  
16 NAC 450B.310; right?

17 A. Correct.

18 Q. Licensing of attendants. And so we're  
19 clear, and I think the arbitrator raised a question  
20 regarding some confusion, an attendant is somebody  
21 who is -- operates in or with an ambulance; correct?

22 A. Operates within an ambulance, yes.

23 Q. Okay. As a matter of fact, if we now --  
24 keeping that big book where it is, turn in the small  
25 book to Exhibit V as in Victor. Just to clarify for

1 purposes of the arbitrator's questions, if you could  
2 turn to NAC 450B.055 it defines what an attendant  
3 actually is; correct?

4 A. Correct.

5 Q. An attendant is defined as -- I'm going  
6 to wait for the arbitrator to --

7 THE ARBITRATOR: I'm sorry. Where are we?

8 MR. LEVINE: NAC 450B.055, attendant.  
9 You had wanted to know what an attendant is.

10 THE ARBITRATOR: Yes. I'm listening.

11 BY MR. LEVINE:

12 Q. An attendant is "a person, including a  
13 firefighter or a volunteer, who is licensed under  
14 the applicable provisions of this chapter to perform  
15 the duties of a driver, attendant, or air attendant  
16 pursuant to this chapter." So that's what an  
17 attendant is; correct?

18 A. Correct.

19 Q. And when you were asked by Ms. Bruch can  
20 you tell me again what the NRS is, that -- her own  
21 words:

22 "Which NRS/NAC specifically  
23 require an EMS/EMT to work under  
24 the license of the medical  
25 director and/or would prevent an

1 EMS/EMT from being employed if  
2 the medical director revoked that  
3 sponsorship?"

4 You identified 450B.310, which is the  
5 licensing of attendants; correct?

6 A. I listed 450B.310, 450B.250, 450B.447 as  
7 reference.

8 Q. Okay. Now, 450B.310 says:  
9 "Unless exempted by  
10 subsection 6 of" -- and it  
11 references two statutes -- "no  
12 person may act in the capacity of  
13 an attendant of a service or a  
14 firefighting agency, including a  
15 volunteer service or agency,  
16 unless the person possesses a  
17 current valid card evidencing  
18 that he or she holds a license  
19 issued by the Health Division and  
20 authorizing him or her to act in  
21 that capacity."

22 Correct?

23 A. Correct.

24 Q. The statute you provided doesn't mention  
25 the medical director. It says, "A license issued by

1 the Health Division." Right?

2 A. In order to have that license issued,  
3 the medical director must sign off on it.

4 Q. On the application.

5 A. On the application.

6 Q. But once the application is submitted  
7 with the signature, the license is actually issued  
8 by the State of Nevada; correct?

9 A. Correct.

10 Q. And in fact, only the State of Nevada  
11 can take away that license once it is issued; correct?

12 A. Correct, but the medical director can  
13 revoke the privileges to act -- the privileges to  
14 operate under his license.

15 Q. Please take a look at NAC 450B.505.

16 THE ARBITRATOR: Now, is this in V?

17 MR. LEVINE: Still in V.

18 BY MR. LEVINE:

19 Q. All right. Do you have it?

20 A. Yes.

21 Q. Please turn to -- this is the powers and  
22 duties of the medical director; correct?

23 A. Uh-huh.

24 Q. Subsection 4:

25 "A medical director of a

1 service or firefighter agency  
2 may:

3 "(A) In consultation with  
4 appropriate specialists and  
5 consistent with the protocols of  
6 regional and statewide systems,  
7 establish medical protocols and  
8 policies for the service or  
9 firefighting agency;

10 "(B) Recommend to the Health  
11 Division the revocation of  
12 licensure of personnel who  
13 provide emergency care."

14 It just says they can recommend it;  
15 correct?

16 A. Correct.

17 Q. It doesn't say he can actually pull  
18 their license; correct?

19 A. He can pull his authority to let that  
20 person be a patient extender.

21 Q. Let's read down:

22 "Approve educational  
23 requirements and proficiency  
24 levels for instructors and  
25 personnel of the service or

1 firefighting agency;

2 "(D) Approve educational  
3 programs within the service that  
4 are consistent with accepted  
5 local, regional, and state  
6 medical practice;

7 "(E) suspend an emergency  
8 medical technician within that  
9 service or firefighting agency  
10 pending review and evaluation by  
11 the Health Division."

12 A. Correct.

13 Q. According to this, he can only suspend  
14 them while the State reviews it; correct?

15 A. Correct.

16 Q. It doesn't say he can actually pull it;  
17 correct?

18 A. Okay. Suspend.

19 Q. Okay. So if we actually look at the  
20 regulation, he may make a recommendation to pull the  
21 license, and he can suspend them while that  
22 recommendation is reviewed; correct?

23 A. Correct.

24 MR. LEVINE: Okay. I don't have  
25 anything further.

1 THE ARBITRATOR: Anything further?

2 MR. CAMPBELL: No, I don't.

3 THE ARBITRATOR: Thank you, Mr. Songer,  
4 and safe travels to you.

5 Let's go off the record to discuss what  
6 we might be able to accomplish in our remaining  
7 hours of the afternoon here.

8 (A recess was taken from 4:43  
9 to 5:03 P.M.)

10 THE ARBITRATOR: We're back on the  
11 record, and by agreement of the parties, we're going  
12 to work beyond 5:00 o'clock. Is that agreed to by  
13 both parties?

14 MR. LEVINE: Yes.

15 MR. CAMPBELL: Agreed.

16 THE ARBITRATOR: Okay. And we're going  
17 to try and get as far as we can with at least one  
18 more witness for the Town.

19 So the Town is calling?

20 MR. CAMPBELL: Scott Lewis.

21  
22 SCOTT LEWIS,  
23 having been called as a witness and having been  
24 first duly sworn, was examined and testified as  
25 follows:



CERTIFICATE OF REPORTER

STATE OF NEVADA           )  
  SS:  
COUNTY OF CLARK        )

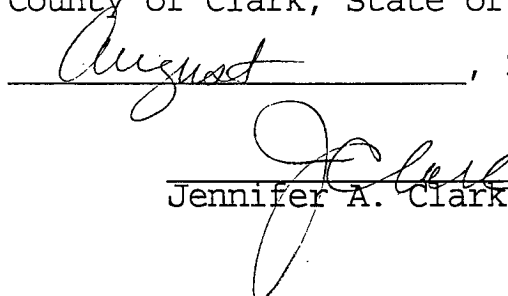
I, Jennifer A. Clark, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the arbitration proceedings commencing on August 12, 2013.

That prior to testifying, the witnesses were duly sworn to testify to the truth; that I thereafter transcribed my said stenographic notes into written form; that the typewritten transcript is a complete, true, and accurate transcription of said stenographic notes.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in the County of Clark, State of Nevada, this 19th day of

August, 2013.

  
Jennifer A. Clark, RDR, CRR, CCR 422

REC-11  
J  
Dt: \_\_\_\_\_

**CERTIFIED COPY**

TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

September 24, 2013

9:06 A.M.

3770 Howard Hughes Parkway

Suite 200

Las Vegas, Nevada

Reported by: Jennifer Clark, RDR, CRR, CCR #422

logged.

## 1 APPEARANCES:

2 For the Town of Pahrump:

3 RICHARD G. CAMPBELL, JR., ESQ.  
4 ARMSTRONG TEASDALE  
5 50 West Liberty Street  
6 Suite 950  
7 Reno, Nevada 89501  
8 775.322.7400  
9 775.322.9049 Fax  
10 rcampbell@armstrongteasdale.com

11 For the Grievants Tommy Hollis and Raymond Delucchi:

12 ADAM LEVINE, ESQ.  
13 LAW OFFICES OF DANIEL MARKS  
14 530 South Las Vegas Boulevard  
15 Las Vegas, Nevada 89101  
16 702.386.0536  
17 702.386.6812 Fax  
18 alevine@danielmarks.net

19 The Arbitrator:

20 CATHERINE HARRIS, ESQ.  
21 (Via telephone)  
22 5960 South Land Park Drive  
23 Suite 255  
24 Sacramento, California 95822-3313  
25 disputeresolutions@att.net

Also Present:

Raymond Delucchi  
Tommy Hollis  
Dean Fletcher  
William J. Snow

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<u>Number</u>	<u>Marked</u>	<u>Admitted into Evidence</u>
UNION		
AA	799	800

1 record while we get Mr. Songer on the telephone.

2 MR. CAMPBELL: Okay. Thank you.

3 (A recess was taken from 9:32  
4 to 9:38 A.M.)

5 THE ARBITRATOR: We're back on the  
6 record, and the Town is calling?

7 MR. CAMPBELL: Pat Songer.

8

9 PAT SONGER,  
10 having been recalled as a witness and having been  
11 previously duly sworn, was examined and testified  
12 further, telephonically, as follows:

13 THE ARBITRATOR: And Mr. Songer, you are  
14 still under oath.

15 Go ahead, Mr. Campbell.

16 THE WITNESS: Yes, ma'am.

17

18 DIRECT EXAMINATION

19 BY MR. CAMPBELL:

20 Q. Mr. Songer, you're here today as a  
21 rebuttal witness. I want to ask you a question  
22 regarding some testimony of Mr. Delucchi.

23 Mr. Delucchi, in the last hearing,  
24 testified at page 648, for the record, about a  
25 conversation he said he had with you on July 31 of

1       2012. The question was:

2                       "Did you have a discussion  
3                       with him on July 31, 2012  
4                       regarding the subject of  
5                       interviewing the Choyces?

6                       "ANSWER: Yes.

7                       "QUESTION: What did he tell  
8                       you on July 31, 2012?

9                       "ANSWER: He said that he  
10                      was unable to interview the  
11                      Choyces because William  
12                      Kohbarger, he said, wouldn't let  
13                      him due to a possible lawsuit."  
14                      Did you have that conversation with  
15       Mr. Delucchi?

16           A.       No, I did not.

17           Q.       Did Mr. Kohbarger ever tell you anything  
18       about contacting the Choyces?

19           A.       No, he did not.

20           Q.       Did you talk to Mr. Kohbarger at any  
21       time prior to making your recommendations and  
22       sending them to Miss Bruch?

23           A.       No, I did not.

24           Q.       And after you made those  
25       recommendations, did you have telephone

1 conversations with Mr. Kohbarger?

2 A. Yes, I did.

3 Q. Did he or Miss Bruch ever ask you to  
4 change your report?

5 A. No, he did not. We talked about some  
6 spelling issues, and that was it.

7 Q. You did have an interview, though, with  
8 Mr. Delucchi on July 31 of 2012; right?

9 A. Yes, I did.

10 Q. Did you tell Mr. Delucchi and Mr. Hollis  
11 that you were retained to review the evidence and  
12 then gave a recommendation to the Town's attorney,  
13 Rebecca Bruch?

14 A. Yes, I did.

15 Q. Did you give Mr. Hollis and Mr. Delucchi  
16 what we called Garrity warnings about what was going  
17 on and what rights they had?

18 MR. LEVINE: I'm going to object as it  
19 calls for a legal conclusion. The arbitrator has  
20 the recording itself, and I believe in recording  
21 number 1, the arbitrator can decide for herself  
22 whether it meets the requirements of Garrity. I  
23 don't think it does.

24 MR. CAMPBELL: Okay. Let me rephrase  
25 it.

1 BY MR. CAMPBELL:

2 Q. Did you discuss the Garrity warnings  
3 with Mr. Hollis and Mr. Delucchi?

4 A. Yes, I did.

5 Q. Did you tell them that they were --

6 MR. LEVINE: Objection. You're leading  
7 him. Ask him what he told him.

8 MR. CAMPBELL: I'm asking him.

9 BY MR. CAMPBELL:

10 Q. Did you -- did you tell them that he  
11 could talk to an attorney?

12 A. Yes, I did.

13 MR. LEVINE: Hold on. I object. I  
14 object. A nonleading question is what did you tell  
15 them, not did you tell them and then the answer.

16 MR. CAMPBELL: I don't think that's  
17 leading at all. I'm asking him whether he  
18 instructed them about being able to talk to an  
19 attorney.

20 THE ARBITRATOR: I'm going to allow it,  
21 because in the end, I have the direct evidence on  
22 this point, so let's go forward.

23 MR. CAMPBELL: Okay.

24 THE WITNESS: Yes. They were given  
25 their Garrity. They both signed it. But before



1 that happened, they stepped out of the room and said  
2 they needed to speak with -- I don't remember who it  
3 was, counsel or -- their legal counsel.

4 BY MR. CAMPBELL:

5 Q. Did either Mr. Hollis or Delucchi ever  
6 object to being interviewed by you?

7 A. No, they did not.

8 Q. Did you review the testimony of Brittnie  
9 Choyce that took place in this case?

10 A. Yes, I did.

11 Q. And did you -- did the testimony -- the  
12 live testimony that she gave, did that correspond to  
13 the notes that Chief Lewis had made regarding  
14 Ms. Choyce's interview?

15 A. Yes, it did. It collaborated the notes  
16 that I reviewed from Chief Lewis.

17 Q. Okay. Did anything in that live  
18 testimony make you rethink your recommendations in  
19 this case?

20 A. No, I don't believe so. I believe it  
21 just reinforced what my findings were in the case.

22 MR. CAMPBELL: That's all I have,  
23 Mr. Songer. Thank you.

24 THE WITNESS: Thank you.

25 THE ARBITRATOR: Mr. Levine.

## CROSS-EXAMINATION

BY MR. LEVINE:

Q. Mr. Songer, you turned over partial recordings to the Town of Pahrump regarding your July 31, 2012 interviews; correct?

A. I don't believe they were partial. They were stopped once when they left the room to speak to whoever it was they wanted to speak to about their Garrity warning.

Q. So you believe they are complete.

A. I believe so.

Q. Have you reviewed them?

A. Yes, I have reviewed them.

Q. When did you review them?

A. Prior to the last meeting we had.

MR. LEVINE: I'll let the arbitrator listen for herself and make that determination.

BY MR. LEVINE:

Q. When did you turn them over to the Town to be produced to Local 4068?

A. I don't recall. It was whenever -- I don't recall.

Q. It was shortly before this arbitration in August of 2013, wasn't it?

A. I believe so, yes.

1           Q.       You indicated you reviewed the testimony  
2 of Brittnie Choyce and that it reinforced your  
3 findings. Do you recall that?

4           A.       I do.

5           Q.       So you recall -- well, in your review of  
6 her testimony, did you note that she claims that  
7 they never even offered to take her to Desert  
8 Valley; correct?

9           A.       I don't recall if that's what she said  
10 or not or what her recollection of it was.

11          Q.       In fact, what she did say was that her  
12 husband used profanity, spun the tires, and peeled  
13 out. Do you recall that?

14          A.       Yes, after the incident.

15          Q.       And that is consistent with the  
16 testimony of Ray Delucchi and Tommy Hollis, that  
17 they made an offer to the Choyces, that that offer,  
18 which Delucchi and Hollis say was to take them to  
19 Desert Valley, was met with profanity, and then he  
20 dropped the car in gear and sped away; correct?

21          A.       I believe that was correct.

22          Q.       You indicated that your interactions  
23 with Rebecca Bruch regarding your report was just to  
24 correct some spelling errors? Did I hear you  
25 correctly?

1           A.       Yes, it was.

2                   MR. LEVINE:   Okay.   Did you provide the  
3           witness with Exhibit T?

4                   Ms. Arbitrator, I'm going to make a  
5           record here that when at the last hearing, we  
6           discussed his intent to call Mr. Songer, I said that  
7           if you are going to call a witness telephonically,  
8           it is very important that they have before them a  
9           full set of exhibits.   I was assured by Mr. Campbell  
10          that the witness would.   I now understand that the  
11          witness does not have Exhibit T, which is the  
12          handwritten notes of Rebecca Bruch on Mr. Songer's  
13          report.

14                   Is that accurate, that he does not have  
15          it?

16                   MR. CAMPBELL:   Do you have that,  
17          Mr. Songer?

18                   THE WITNESS:   I have -- I don't have the  
19          exhibit, but I do have it in my file.

20          BY MR. LEVINE:

21                  Q.       Okay.   Can you please pull it out, then.

22                  A.       Yes.   Now, the notes that we're speaking  
23          of are after I talked to -- on the date that we were  
24          speaking of?

25                  Q.       I just want you to pull them out.

1                   And Ms. Arbitrator, for our records,  
2                   those are Exhibit T.

3                   THE ARBITRATOR: So there's no ambiguity  
4                   about this, I suppose you could either fax or  
5                   E-mail and attach the exhibit to the witness.

6                   MR. LEVINE: Well, let's see if we can  
7                   get by.

8                   Ms. Arbitrator, do you have Exhibit T in  
9                   front of you?

10                  THE ARBITRATOR: I do. It looks like  
11                  it's a multipage document. The front page says Pat  
12                  Songer, facts from Pahrump Valley Fire Rescue  
13                  services investigation, points of interview with  
14                  complainants.

15                  MR. LEVINE: Correct. And then on the  
16                  first page should be handwritten Delucchi dash  
17                  attorney -- A-T-T-Y being short for attorney --  
18                  notes.

19                  THE ARBITRATOR: Yes, in cursive.

20                  MR. LEVINE: Yes.

21                  THE ARBITRATOR: Yes.

22                  BY MR. LEVINE:

23                  Q.       Okay. Mr. Songer, do you have that in  
24                  front of you?

25                  A.       No, I don't. I'm looking for it at this

1 time. No, I don't have that in front of me.

2 MR. CAMPBELL: Mr. Songer, are you close  
3 to a fax machine?

4 THE WITNESS: Yes. Hold on one second,  
5 623-9026.

6 THE ARBITRATOR: All right. Let's go  
7 off the record while this material is faxed to the  
8 witness.

9 (A recess was taken from 9:48  
10 to 9:54 A.M.)

11 THE ARBITRATOR: Back on the record.  
12 And the document which is in evidence as Union T has  
13 been provided to the witness by facsimile. So let's  
14 proceed. Go ahead, Mr. Levine.

15 BY MR. LEVINE:

16 Q. Okay. Your testimony was that  
17 Ms. Bruch's involvement was limited to -- I think  
18 you said spelling corrections. Is that accurate?

19 A. Spelling, grammatical, and just making  
20 sure that the -- what I was saying was being  
21 understood appropriately.

22 Q. Okay. Well, let's go to -- they're not  
23 consecutively numbered, but I'm going to work off of  
24 consecutive numbering, counting from the first,  
25 page 6.

1 A. Okay.

2 Q. And these are Conclusions From. In  
3 paragraph 7, you originally wrote, "In the United  
4 States of America, 'if you didn't document it, it  
5 didn't happen.'" Do you see that?

6 A. Yes.

7 Q. She crossed that out; correct?

8 A. You know, I don't recall if that was her  
9 that crossed it out or I crossed it out. One of us  
10 did.

11 Q. Let's go to page 8 of 9. Whose  
12 handwriting is this? Is this your handwriting or  
13 Ms. Bruch's? This is not your handwriting on here;  
14 correct?

15 A. This is not my handwriting.

16 Q. Okay. And it's Ms. Bruch's handwriting,  
17 isn't it?

18 A. I believe so.

19 Q. If we go to page 8 of 9, rather than  
20 making grammatical corrections or spelling  
21 corrections, she wrote a portion of a paragraph,  
22 paragraph 8 at the bottom, didn't she?

23 A. That's correct.

24 Q. And if we go up to higher up on the  
25 page, which is the last paragraph of -- I guess item

1 number 11 starts on page 7 and continues to page 8,  
2 you originally had:

3 "Now, 12 people could  
4 conclude that the EMS crew  
5 (paramedic and EMT-I) did not  
6 want to take the patient to  
7 Summerland [sic] Hospital in  
8 Las Vegas."

9 That is then crossed out. Do you see  
10 that?

11 A. Yes.

12 Q. Who are the 12 people that Ms. Bruch  
13 crossed out?

14 A. That's why it's crossed out, 'cause I  
15 don't believe I was clarifying exactly; thus the  
16 reason for making sure that I was conveying my  
17 thoughts and my conclusions appropriately to  
18 Rebecca.

19 Q. Wait a second. You were the one,  
20 though, who, before you gave the draft to Attorney  
21 Bruch, wrote, "Now, 12 people could conclude." Who  
22 were the 12 people when you wrote it?

23 A. I don't recall. That is why it's  
24 crossed out.

25 Q. All right. And what she put after she



1 crossed it out was, "Based on my interviews and  
2 review of documents, I concluded." That's what she  
3 wrote in for you; correct?

4 A. That is what I had her put in there, to  
5 clarify what I was conveying to them.

6 Q. Did you tell and disclose to Ms. Bruch  
7 that you had not interviewed either James Choyce or  
8 Brittnie Choyce?

9 A. Yes.

10 Q. Okay. Then if you disclosed that fact  
11 to Ms. Bruch and you knew you hadn't disclosed it,  
12 can you explain to us why that fact, that you didn't  
13 interview either James Choyce or Brittnie Choyce, is  
14 not contained in your final report?

15 A. I don't know if there is a reason I left  
16 that out, other than the fact that I was unable to  
17 contact them.

18 Q. You would agree with me that Ms. Bruch  
19 did not have you put that fact in; correct?

20 A. I would agree with you what?

21 Q. Ms. Bruch did not instruct you to  
22 specifically note that fact, did she?

23 A. Ms. Bruch didn't instruct me to do  
24 anything.

25 Q. Your report that was eventually turned

1 into the Town had additional pages beyond the nine  
2 that are marked up in exhibit -- well,  
3 Ms. Arbitrator, what is Exhibit T.

4 You'd agree with me that there are  
5 additional pages in your final report?

6 A. Without seeing them in front of me, I  
7 don't know what additional pages you're talking  
8 about.

9 Q. There are several pages regarding  
10 recommendations for termination and citation to a  
11 bunch of -- do you recall those?

12 A. Correct. That is correct, there was  
13 additional pages.

14 Q. Where are the markups on the additional  
15 pages?

16 A. Where are the markups on these  
17 additional pages?

18 Q. Yeah. Where are the pages submitted to  
19 Ms. Bruch regarding the recommendations that has her  
20 notations or markups?

21 A. I don't believe there are markups on  
22 those.

23 Q. So did you go over those with Ms. Bruch?

24 A. The recommendations?

25 Q. Yes, as to --

1           A.       I went over the recommendations with  
2 her, and I would have turned that in with my report.  
3 I don't believe that was a part that we discussed on  
4 how to turn in -- to make my report understandable  
5 to her..

6           Q.       All right. Wait. Did you go over the  
7 specific recommendations with Ms. Bruch, yes or no?

8           A.       I turned in the report to Ms. Bruch.

9           Q.       We had just got done with rebuttal  
10 testimony from Mr. Kohbarger to the effect that  
11 after your investigation was done, there were two to  
12 three meetings between yourself, Ms. Bruch, and  
13 Mr. Kohbarger. We just had that witness testimony  
14 within the last 15 minutes.

15          A.       Yes.

16          Q.       During those meetings, did you go over  
17 the recommendations and the itemization of the  
18 regulations That you found were violated?

19          A.       Yes, we did.

20          Q.       All right. Now, in your testimony from  
21 day one of these proceedings, I highlighted for you  
22 the finding that you made, finding that both  
23 Mr. Hollis and Mr. Delucchi were guilty of violating  
24 Town policy 11.1.17, intimidation, and your  
25 testimony was you couldn't explain why that was in

1 there.

2           Given the fact that you've had two to  
3 three meetings with Ms. Bruch and Mr. Kohbarger  
4 after your investigation, how was it, then, can you  
5 explain now, that that got left in there when you  
6 don't know where it came from if you reviewed it  
7 with Mr. Kohbarger and Ms. Bruch?

8           A.     I guess I don't understand what you're  
9 trying to --

10          Q.     Okay. Did Ms. Bruch and Mr. Kohbarger  
11 instruct you to take out the finding of intimidation  
12 that you made?

13          A.     No, no, they did not.

14          Q.     Given the fact that you don't know where  
15 it came from?

16          A.     No, they did not.

17          Q.     So they left it in despite the fact that  
18 you didn't know where it came from.

19          A.     Is that a question?

20          Q.     Yes, it's a question.

21          A.     I left it in despite the fact --  
22 honestly, I don't know why I left it in. It might  
23 be a mistake on my part, that I didn't review my  
24 document well enough, but no, I did not -- they did  
25 not tell me to take it out or leave part of it in.

1 MR. LEVINE: I don't have anything  
2 further.

3 THE ARBITRATOR: Any redirect?

4 MR. CAMPBELL: Yes. Mr. Songer, I just  
5 want to follow up --

6 MR. LEVINE: I'm sorry. I apologize. I  
7 do. I do have -- I apologize. Can I have the  
8 arbitrator's indulgence?

9 THE ARBITRATOR: Yes, go ahead.

10 BY MR. LEVINE:

11 Q. Okay. You indicated in your testimony  
12 that in reviewing Ms. Choyce's testimony, it  
13 reinforced all the conclusions of your report. Do  
14 you recall that?

15 A. Yes, I do.

16 Q. One of the things addressed in your  
17 report is the issue of scene safety where you  
18 discount Mr. Delucchi and Mr. Hollis's concerns for  
19 their own safety; correct?

20 A. Correct.

21 Q. Are you familiar with the textbook  
22 Brady, Essentials of Paramedic Care by Bledsoe,  
23 Porter, and Cherry?

24 A. Yes.

25 Q. That's a treatise -- that's a legal

1 term, "treatise" -- but it's an instructional book  
2 used to train paramedics; correct?

3 A. It's one of many.

4 Q. Do you consider it what we would call in  
5 law a learned treatise or an authoritative text?

6 A. I don't -- honestly I don't know how to  
7 answer that. I don't know if it's an authoritative  
8 text or if it's just one of many textbooks that are  
9 used to train paramedics and EMTs.

10 Q. Are you familiar with what it says on  
11 the subject of scene safety?

12 A. No, I am not.

13 Q. I'm going to read you an excerpt from it  
14 under chapter 12, Patient Assessment in the Field,  
15 scene safety. It says:

16 "Use all your senses to  
17 evaluate a scene and learn to  
18 trust your intuition. If your  
19 instincts tell you not to enter  
20 or get out, follow them. They  
21 are the subconscious sum of your  
22 experiences. Listen to them;  
23 they are probably correct."

24 Now, obviously you don't have a copy of  
25 this in front of you, but that would be what

1 paramedic trainees are trained; correct?

2 A. According to that part, sir, that would  
3 be his reference to the scene, and in reference to  
4 this scene, it would still validate that their  
5 instincts and their abilities were probably not --  
6 were not utilized appropriately. They did not --

7 They were pulled over as an ambulance.  
8 They're a marked ambulance being flagged down by a  
9 vehicle looking for somebody to render care to their  
10 patient. So I don't believe -- what you're, you  
11 know, trying to infer here is that there's -- they  
12 should have told them -- I mean, if what you're  
13 trying to say, their instincts should have said they  
14 should have kept driving.

15 MR. LEVINE: I'll pass the witness.

16 THE WITNESS: And I think their instinct  
17 said pull over, somebody needs help.

18 MR. LEVINE: I'll pass the witness.

19 THE ARBITRATOR: Mr. Campbell.

20 MR. CAMPBELL: Yes.

21

22 REDIRECT EXAMINATION

23 BY MR. CAMPBELL:

24 Q. Just a couple questions, Mr. Songer.

25 Were all your recommendations based on

1 your investigation without any outside third-party  
2 interference?

3 A. Yes, they were.

4 Q. In your meetings with Ms. Bruch and  
5 Mr. Kohbarger, did you -- other than what's  
6 reflected in Exhibit T, did you make any substantive  
7 changes because of recommendations or conversations  
8 they may have had with you?

9 A. No. Changes were made in my report  
10 based on conversations with either of them.

11 Q. And in the interlineations made by  
12 Ms. Bruch, did you adopt and stand by those in your  
13 final report?

14 A. Yes, I did.

15 Q. And one final question: After looking  
16 at Mrs. Choyce's testimony, do you consider her a  
17 patient?

18 A. Yes, I do.

19 MR. CAMPBELL: That's all I have. Thank  
20 you.

21 THE ARBITRATOR: Anything further,  
22 Mr. Levine?

23 MR. LEVINE: Not for this witness.

24 THE ARBITRATOR: Does that conclude the  
25 Town's rebuttal testimony?



1 MR. CAMPBELL: Yes, it does,  
2 Ms. Arbitrator.

3 THE WITNESS: Am I good to go?

4 MR. CAMPBELL: Yes, you are.

5 MR. LEVINE: Yes.

6 THE WITNESS: Okay. Thank you.

7 THE ARBITRATOR: Thank you,  
8 Mr. Kohbarger. Okay. Has his connection been  
9 terminated?

10 MR. CAMPBELL: Yes. It's Mr. Songer,  
11 actually.

12 THE ARBITRATOR: I'm sorry. Mr. Songer.  
13 Excuse me. Mr. Songer.

14 Will there be anything further from the  
15 Union?

16 MR. LEVINE: Yes. Very brief  
17 surrebuttal, five minutes or less.

18 THE ARBITRATOR: All right. And the  
19 Union is calling?

20 MR. LEVINE: I'm going to recall Justin  
21 Snow.

22 THE ARBITRATOR: Mr. Snow, you're still  
23 under oath.

24 THE WITNESS: Yes, ma'am.

25 THE ARBITRATOR: Please proceed,

## **EXHIBIT “2”**

**Brittani**

---

**From:** Rebecca Bruch <rbruch@etsreno.com>  
**Sent:** Wednesday, June 27, 2012 4:06 PM  
**Subject:** Town of Pahrump

Hi, Pat. Thank you for talking with me today. I've talked with Town Manager Bill Kohbarger, and they would like me to direct this investigation as far as being the person you'll report to. But I will hook you up with the person down there that will help you coordinate times and places for interviews. Let me know when you're feeling ready to move forward. Thank you again. Becky

**Rebecca Bruch**

Erickson, Thorpe & Swainston, Ltd.  
99 West Arroyo Street  
P.O. Box 3559  
Reno, Nevada 89505  
Phone: (775) 786-3930, ext. 236  
Fax: (775) 786-4160  
[rbruch@etsreno.com](mailto:rbruch@etsreno.com)



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## **EXHIBIT “3”**

**Brittani**

---

**From:** Rebecca Bruch <rbruch@etsreno.com>  
**Sent:** Thursday, August 02, 2012 10:34 AM  
**Subject:** RE: Good morning

Thanks for the update, Pat. I was hoping when I didn't hear from you that no news was good news. Can you please call me before you write your report, so I have an idea where it's going. Thanks. Becky

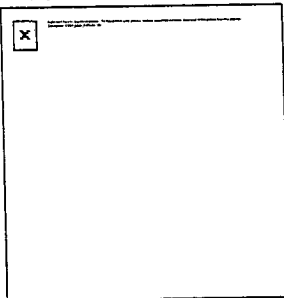
---

**From:** Pat songer [<mailto:psonger@hghospital.ws>]  
**Sent:** Thursday, August 02, 2012 8:37 AM  
**To:** Rebecca Bruch  
**Subject:** Good morning

Becky,

Everything went well in Pahump, it took a couple of hours to get the Admonition of Rights signed, but they finally did. I should have a report out soon. We are putting all the information together and looking through some issue with NRS. I will send you PDF copies of the sign rights, or just place them in Drop Box? Feel free to call if you have any questions.

**Pat Songer**  
Director of Emergency Medical Services  
Humboldt General Hospital  
Ambulance/Rescue/SORT  
118 East Haskell Street  
Winnemucca, NV 89445  
[psonger@hghospital.ws](mailto:psonger@hghospital.ws)  
Phone: 775-623-5222 Ext. 260  
Cell: 775-304-0416  
Fax: 775-623-9026



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## **EXHIBIT “4”**

Pat Songer

*Felucchi -  
atty notes*

Facts From  
Pahrump Valley Fire-Rescue Services Investigation

Points of Interview with Complainants

A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation Review of Documents

### A. External Complaints

### B. Resumes

1. Raymond Delucchi, EMT-Advanced (Paramedic)
2. Tommy Hollis, EMT-Intermediate
3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate

### C. Pahrump Valley Fire-Rescue Services

1. Job Description for Firefighter/Paramedic
2. Job Description for Firefighter/EMT-I Transport

### D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)

### E. International Association of Fire Fighters Local 4068 & Town of Pahrump

### F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources

*Collective  
Bargaining  
Agreement*

### G. Pahrump Valley Fire-Rescue Services Rules and Regulations

### H. Pahrump Valley Fire-Rescue Services EMS Protocols

### I. Pahrump Valley Fire-Rescue Services Rules and Regulations



## Pat Songer

### Facts From Pahrump Valley Fire-Rescue Services Investigation

#### Interview Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".  
"The scene wasn't safe enough to make contact with the passenger".

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### Interview Tommy Hollis, Firefighter/EMT-Intermediate

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
5. EMT-Intermediate Hollis stated Timeframe took "2 minutes".
6. EMT-Intermediate Hollis restated "miscarriage", at the ambulance window by a male.
7. Asked, what dictates a Special Circumstance Report to be filled out. Answer by EMT-Intermediate Hollis "Erratic Situation", and "at the Lieutenant or Chief's request".
8. Asked, what dictates a Patient Care Report (PCR) to be filled out. Answer by EMT-Intermediate Hollis "patient contact".
9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid".
12. Asked, have you filled out a PCR <sup>since</sup> that date? Answer by EMT-Intermediate Hollis "no".

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1. The Complainants could have <sup>been</sup> more believable for the following reasons 2-13.

2. There was "Patient Contact". Contrary to what the two (2) Firefighter/EMS personnel want us to believe, because they both went to Brittney's front passenger door where she was seated. The PVFRS employee's statement "What's going on" at the right side of the vehicle in close proximity to the front passenger door, combined with both Brittney's statement (see #3. below), and James Joyce's statement (see # 4 below) constitutes Patient Contact.

*Choyce's*

3. In the Allegations by Complainant Brittney

"What's going on", stated by the Paramedic while at the passenger/patient's front passenger window denotes "patient contact".

Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis, have a more believable and plausible pattern to it. Brittney explains in detail what the "bald" person (Paramedic Delucchi) stated ("What's going on") to her and her response to that (See Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis). An EMS expert will tell you that the words that were stated by Brittney would be a typical response to Paramedic Delucchi's question. Paramedic Delucchi's statement that all the passenger did was cry is not believable nor what a bleeding miscarriage lady would be saying or doing. She would be verbalizing everything (and possibly more) as in the statement by Brittney. Additionally, for the two Firefighter/EMS employees to have credibility and be considered believable, then STAR CARE (As in the PVFRS Rules and Regulations) would have to been demonstrated by the "A" and the "R" (in STAR), and the "C", "A", "R", and "E" (in CARE). And in this case six (6) out of the eight (8) STAR CARE topics were disregarded.

Moreover, failure by both Fire/EMS personnel together or individually to document the details of this encounter in a PVFRS's Patient Care Report, or PVFRS's Special Circumstance Report (Incident Report) form will be viewed as a cover up by the two (2) Firefighter/EMS personnel.

4. The allegation by complainant James Choyce

1339 Harmony Street, Winnemucca, Nevada 89445  
Tel: 775-623-2247

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"The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

This demonstrates that Paramedic Delucchi was in fact close enough to the patient to make a ~~call~~ statement "it wasn't that much blood". Moreover, Paramedic Delucchi ~~did~~ make "Patient Contact".

*calls*

5. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".

Therefore, Paramedic Delucchi, by the National Standards of Care from the Department of Transportation (DOT) for EMT-Basic, and or EMT-Paramedic didactic, clinical, and or field education should have responded appropriately. Additionally, STAR CARE (see #3) which is a part of PVFRS Rules and Regulations were continuously disregarded by both EMS providers. Moreover, a "Miscarriage" is a serious situation which can/may lead to a life threatening situation called Hemorrhagic Shock (loss of blood/bleeding), resulting in possible death.

6. Paramedic Delucchi stated, "The whole incident took 60 seconds". EMT-Intermediate Hollis stated "2 minutes". Paramedic Delucchi stated, I was speaking to the driver not the patient". "The scene wasn't safe enough to make contact with the passenger".

If you look at all the conversations detailed by all four people on scene that night, then compile them into a conversational screen play format the true on scene time probably exceeded 5 minutes.

7. All the questioning regarding the Patient Care Report, the Special Circumstance Report, and or any other reports or documentation for Dispatch, Medical, and or Operations that was not nor has been filled out as of the date of our interviews is severely damaging. ~~In the United States of America, "if you didn't document it, it didn't happen".~~ This is the foundation of all the legal chapters in every EMT-Basic, EMT-Intermediate, and all EMT-Paramedic book and courses *emphasize the need to document*. Not documenting all aspects in a lengthy narrative within the Patient Care Report, exposes the town, service, and EMT's to litigation, ~~that finds for the~~

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Pahrump Valley Fire-Rescue Services Investigation

~~plaintiff~~ <sup>may</sup>. What they did, by doing nothing will be perceived by any reasonable person as an attempt to cover up that whole situation. What they should have done was ~~expose~~ <sup>disclose and report</sup> the entire situation; then they ~~are~~ <sup>are</sup> believable.

\* All next page

8. As far as EMT-Intermediate Tommy Hollis, ~~while~~ <sup>while</sup> ~~he is the subordinate to a Paramedic regarding patient care in as far as he is to follow a Paramedic's requests, unless, the Paramedic's requests or actions does not follow the National Standards of Care as outlined in all EMS educational material.~~ These standards can be found in all published DOT approved EMS course textbooks. Therefore, all Volunteer and Professional EMS personnel (PVFRS is a Professional EMS Service) have a Responsibility and "Duty to Act" which EMT-Intermediate Tommy Hollis and Paramedic Delucchi failed to perform as a professional EMS provider and team. Additionally, EMT-Intermediate Tommy Hollis was the Senior PVFRS employee on that ambulance. Therefore, EMT-Intermediate Tommy Hollis did not <sup>properly</sup> supervise that ambulance's activity/operation and reporting as the senior PVFRS employee in accordance with PVFRS Rules and Regulations, and the National Standards of Care.

9. In EMT-Intermediate Tommy Hollis's "second interview", "by Bill Kohbarger", on page (no page numbers are documented) 8 at the bottom, when asked by "BK (Chuckie): You have no problem writing Incident Reports at any time." Answer: "They are a key thing in court." This demonstrates the knowledge <sup>responsibility</sup> of the Supervising ambulance team leader regarding what is proper and the right thing to do for this event, IE: file an Incident Report, which was not filed that day.

10. The more damaging fact discovered in our investigation was <sup>the fact that</sup> Summerlin Hospital In Las Vegas Nevada (Where Brittney's Physician wanted her to go, and an "appropriate hospital") was only approximately 33 miles away from their location. In comparison, Desert View Regional Medical Center in Pahrump Nevada was approximately 31 miles away in the opposite (North) direction, and not an "Appropriate Hospital" to transport to.

11. "Appropriate Hospital Destination" as denoted in the National DOT Standards of Care, is a hospital that can appropriately care for a/your patient's medical needs. Desert View Regional Medical Center, In Pahrump, Nevada is not an

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"Appropriate Hospital" for an Obstetrical emergency of this nature. Desert View Regional Medical Center, in Pahrump, Nevada does not have an Obstetrician specially trained and board-certified on call 24/7; nor do ~~most~~ small hospitals across America. Summerlin Hospital in Las Vegas, Nevada is a major receiving hospital with many specialty board-certified Physicians, including Obstetricians. Additionally, ~~all~~ EMS personnel in America are fully educated as to what constitutes an "Appropriate Hospital Destination".

Both EMT-Intermediate Tommy Hollis, the PVFRS Ambulance <sup>properly trained</sup> leader/supervisor; PVFRS Paramedic Delucchi, and all other EMS personnel ~~in America~~ have been educated regarding "Appropriate Hospital Destination" during their EMS Certification/Education.

*same* ~~Based on my interviews and review of documents, it appeared~~ <sup>I concluded</sup> Now, twelve people could conclude that the EMS crew (Paramedic and EMT-I) did not want to take the patient to Summerlin Hospital in Las Vegas, Nevada, but instead to Desert View Regional Medical Center, in Pahrump, Nevada, the closest hospital to the EMS crew's fire station, <sup>for</sup> the EMS crew's personal convenience.

12. No effort on either provider's part was made to contact law enforcement, another ambulance service, Medical Control, and or PVFRS's supervisory personnel. Moreover, both individual's failure and flagrant disregard to report by filling proper documentation to PVFRS as part as their Rules and Regulations, PVFRS EMS Protocols, State of Nevada Reporting criteria for Patient Contact, and Radio Failure with Medical Control.

8. As far as EMT-Intermediate Tommy Hollis, while he is subordinate to a Paramedic regarding patient care, and is to follow a Paramedic's direction, ~~but~~ he is not to follow those directions if they do not follow the National Standards of Care as outlined in all EMS educational Material. ... [add the rest of the paragraph]

**Pat Songer**  
**CONFIDENTIAL ATTORNEY WORK PRODUCT**  
Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

13. This mind set of both Paramedic Delucchi and EMT-Intermediate Tommy Hollis, is that they used good sound judgment, which we cannot find/identify in either ~~of~~ the documentation provided by PVFRS and/or in our Interviews or investigation. Additionally, their ~~mindset they didn't do anything wrong~~; demonstrates a pattern of behavior and professional conduct that may be repeated in the future. Moreover, they showed no remorse for anything that transpired. This was their demeanor, and mindset at the interviews. Therefore, their attitude leads me to believe that there may be repeated poor judgment in the future resulting in ramifications for the Town of Pahrump. Probability in Actuarial Analysis tells us that it's not if, but when the next event/incident will happen.

*refusal to acknowledge  
any wrongdoing*

## **EXHIBIT “5”**



# Pat Songer

## Cover Letter for Pahrump Valley Fire-Rescue Services Investigation

Rebecca Bruch  
Erickson, Thorpe, & Swainston, Ltd.  
99 West Arroyo Street  
P. O. Box 3559  
Reno, Nevada 89505

Re: Pahrump Valley Fire-Rescue Services Investigation

Dear Becky,

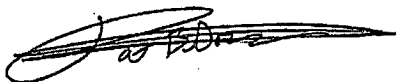
Please find our complete investigation report, including the Facts, Conclusions, and Recommendations.

I will be completing the Investigation's bill over the next week.

If the Town Manager, Medical Director, Fire Chief or you have any questions or wish to talk, please contact me anytime.

Thank you for your time and patients.

Sincerely,



Pat Songer, CMTE, NREMT-P

Three (3) Attachments

1. Facts
2. Conclusions
3. Recommendations

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### Points of Interview with Complainants

#### A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

#### B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

#### C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### Review of Documents

#### A. External Complaints

#### B. Resumes

1. Raymond Delucchi, EMT-Advanced (Paramedic)
2. Tommy Hollis, EMT-Intermediate
3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate

#### C. Pahrump Valley Fire-Rescue Services

1. Job Description for Firefighter/Paramedic
2. Job Description for Firefighter/EMT-I Transport

#### D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)

#### E. International Association of Fire Fighters Local 4068 & Town of Pahrump, Collective Bargaining Agreement

#### F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources

#### G. Pahrump Valley Fire-Rescue Services Rules and Regulations

#### H. Pahrump Valley Fire-Rescue Services EMS Protocols

#### I. Pahrump Valley Fire-Rescue Services Rules and Regulations

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### Interview Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".  
"The scene wasn't safe enough to make contact with the passenger".

# Pat Songer

## Facts From Pahrump Valley Fire-Rescue Services Investigation

### Interview Tommy Hollis, Firefighter/EMT-Intermediate

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
5. EMT-Intermediate Hollis stated Timeframe took "2 minutes".
6. EMT-Intermediate Hollis restated "miscarriage", at the ambulance window by a male.
7. Asked, what dictates a Special Circumstance Report to be filled out. Answer by EMT-Intermediate Hollis "Erratic Situation", and "at the Lieutenant or Chief's request".
8. Asked, what dictates a Patient Care Report (PCR) to be filled out. Answer by EMT-Intermediate Hollis "patient contact".
9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid".
12. Asked, have you filled out a PCR since that date? Answer by EMT-Intermediate Hollis "no".

**Pat Songer**  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

1. The Complainants could have been more believable for the following reasons 2-13.
2. There was "Patient Contact". Contrary to what the two (2) Firefighter/EMS personnel want us to believe, because they both went to Brittney's front passenger door where she was seated. The PVFRS employee's statement "What's going on" at the right side of the vehicle in close proximity to the front passenger door, combined with both Brittney's statement (see #3. below), and James Choyce's statement (see # 4 below) constitutes Patient Contact.
3. In the Allegations by Complainant Brittney

"What's going on", stated by the Paramedic while at the passenger/patient's front passenger window denotes "patient contact".

Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis, have a more believable and plausible pattern to it. Brittney explains in detail what the "bald" person (Paramedic Delucchi) stated ("What's going on") to her and her response to that (See Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis). An EMS expert will tell you that the words that were stated by Brittney would be a typical response to Paramedic Delucchi's question. Paramedic Delucchi's statement that all the passenger did was cry is not believable nor what a bleeding miscarriage lady would be saying or doing. She would be verbalizing everything (and possibly more) as in the statement by Brittney. Additionally, for the two Firefighter/EMS employees to have credibility and be considered believable, then STAR CARE (As in the PVFRS Rules and Regulations) would have to been demonstrated by the "A" and the "R" (in STAR), and the "C", "A", "R", and "E" (in CARE). And in this case six (6) out of the eight (8) STAR CARE topics were disregarded.

Moreover, failure by both Fire/EMS personnel together or individually to document the details of this encounter in a PVFRS's Patient Care Report, or PVFRS's Special Circumstance Report (Incident Report) form will be viewed as a cover up by the two (2) Firefighter/EMS personnel.

**Pat Songer**  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

4. In the allegations by complainant James Choyce

"The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

This demonstrates that Paramedic Delucchi was in fact close enough to the patient to make a callous statement "it wasn't that much blood". Moreover, Paramedic Delucchi did make "Patient Contact".

5. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".

Therefore, Paramedic Delucchi, by the National Standards of Care from the Department of Transportation (DOT) for EMT-Basic, and or EMT-Paramedic didactic, clinical, and or field education should have responded appropriately. Additionally, STAR CARE (see #3) which is a part of PVFRS Rules and Regulations were continuously disregarded by both EMS providers. Moreover, a "Miscarriage" is a serious situation which can/may lead to a life threatening situation called Hemorrhagic Shock (loss of blood/bleeding), resulting in possible death.

6. Paramedic Delucchi stated, "The whole incident took 60 seconds". EMT-Intermediate Hollis stated "2 minutes". Paramedic Delucchi stated, I was speaking to the driver not the patient". "The scene wasn't safe enough to make contact with the passenger".

If you look at all the conversations detailed by all four people on scene that night, then compile them into a conversational screen play format the true on scene time probably exceeded 5 minutes.

7. All the questioning regarding the Patient Care Report, the Special Circumstance Report, and or any other reports or documentation for Dispatch, Medical, and or Operations that was not nor has been filled out as of the date of our interviews is severely damaging. The foundation of all the legal chapters in every EMT-Basic, EMT-Intermediate, and all EMT-Paramedic book and courses emphasizes the need to document. Not documenting all aspects in a lengthy narrative within the Patient Care Report, exposes the town, service, and EMT's to litigation.

**Pat Songer**  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

What they did, by doing nothing may be perceived by any reasonable person as an attempt to cover up that whole situation. What they should have done was disclose and report the entire situation; then they are believable.

8. As far as EMT-Intermediate Tommy Hollis, while he is subordinate to a Paramedic regarding patient care, and is to follow a Paramedic's direction, he is not to follow those directions if they do not follow the National Standards of Care as outlined in all EMS educational materials. These standards can be found in all published DOT approved EMS course textbooks. Therefore, all Volunteer and Professional EMS personnel (PVFRS is a Professional EMS Service) have a Responsibility and "Duty to Act" which EMT-Intermediate Tommy Hollis and Paramedic Delucchi failed to perform as a professional EMS provider and team. Additionally, EMT-Intermediate Tommy Hollis was the Senior PVFRS employee on that ambulance. Therefore, EMT-Intermediate Tommy Hollis did not properly supervise that ambulance's activity/operation and report as the senior PVFRS employee in accordance with PVFRS Rules and Regulations, and the National Standards of Care.
9. In EMT-Intermediate Tommy Hollis's "second interview", "by Bill Kohbarger", on page (no page numbers are documented) 8 at the bottom, when asked by "BK" "(Chuck)". "You have no problem writing Incident Reports at any time." Answer: "They are a key thing in court." This demonstrates knowledge of a supervising ambulance team leader responsibility regarding what is proper and the right thing to do for this event, IE: file an Incident Report, which was not filed that day.
10. The more damaging fact discovered in our investigation was the fact that; Summerlin Hospital in Las Vegas Nevada (Where Brittney's Physician wanted her to go, and an "appropriate hospital") was only approximately 33 miles away from their location. In comparison, Desert View Regional Medical Center in Pahrump, Nevada was approximately 31 miles away in the opposite (North) direction, and not an "Appropriate Hospital" to transport to.
11. "Appropriate Hospital Destination" as denoted in the National DOT Standards of Care, is a hospital that can appropriately care for a/your patient's medical needs. Desert View Regional Medical Center, in Pahrump, Nevada is not an "Appropriate Hospital" for an Obstetrical emergency of this nature.



**Pat Songer**  
**CONFIDENTIAL ATTORNEY WORK PRODUCT**  
Conclusions From  
Pahrump Valley Fire-Rescue Services Investigation

Desert View Regional Medical Center, in Pahrump, Nevada does not have an Obstetrician specially trained and board-certified on call 24/7; nor do most small hospitals across America. Summerlin Hospital in Las Vegas Nevada is a major receiving hospital with many specialty board-certified Physicians, including Obstetricians. Additionally, EMS personnel in America are fully aware by their DOT education as to what constitutes an "Appropriate Hospital Destination".

Both EMT-Intermediate Tommy Hollis, the PVFRS Ambulance leader/supervisor; PVFRS Paramedic Delucchi, and all other properly educated EMS personnel regarding "Appropriate Hospital Destination" during their EMS Education and Certification.

Based on my interviews and review of documents, I concluded that the EMS crew (Paramedic and EMT-I) did not want to take the patient to Summerlin Hospital in Las Vegas, Nevada, but instead to Desert View Regional Medical Center, in Pahrump, Nevada, the closest hospital to the EMS crew's fire station, for the EMS crews personal convenience.

12. No effort on either provider's part was made to contact law enforcement, another ambulance service, Medical Control, and or PVFRS's supervisory personnel. Moreover, both individual's failure and flagrant disregard to report by filing proper documentation to PVFRS as part as their Rules and Regulations, PVFRS EMS Protocols, State of Nevada Reporting criteria for Patient Contact, and Radio Failure with Medical Control.
13. This mindset of both Paramedic Delucchi and EMT-Intermediate Tommy Hollis is that they used good sound judgment, which we cannot find/identify in either all the documentation provided by PVFRS and or in our Interviews or investigation. Additionally, their refusal to acknowledge any wrongdoing; demonstrates a pattern of behavior and professional conduct that may be repeated in the future. Moreover, they showed no remorse for anything that transpired. This was their demeanor, and mindset at the interviews. Therefore, their attitude leads me to believe that there may be repeated poor judgment in the future resulting in ramifications for the Town of Pahrump. Probability in Actuarial Analysis tells us that it's not if, but when the next event/incident will happen.

**Pat Songer**  
**CONFIDENTIAL ATTORNEY WORK PRODUCT**  
Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

We would be more than happy to assist, coordinate, and or lead the Town of Pahrump, the PVFRS's Medical Director, and or anyone else you desire during this process on your behalf.

**Our Immediate Recommendations for the Town of Pahrump is to:**

1. Medical Director: Have the Fire Chief (or his Agent) fully inform and brief PVFRS's EMS Medical Director regarding:
  - a. The incident
  - b. The severity
  - c. Current investigations
  - d. Investigations findings
  - e. Possible litigation
  - f. Actions taken (see g., 1))
  - g. Actions he/she as Medical Director may/should take immediately:
    - 1) As Medical Director PVFRS I have temporary revoked Paramedic Raymond Delucchi's, and EMT-Intermediate Tommy Hollis's authorization to practice under my license, pending their investigation(s) outcome.
    - 2) Medical Director notifies the State of Nevada EMS Program Manager Patrick Irwin of his action (See 1) above).
    - 3) Medical Director desires to actively cooperate with the State of Nevada's investigation.
2. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump: Have their Agent fully inform and brief the State of Nevada EMS Program Manager Patrick Irwin regarding:
  - a. The incident
  - b. The severity
  - c. Current investigations
  - d. Investigations findings
  - e. Possible litigation
  - f. Actions taken
  - g. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump's desires to actively cooperate with State of Nevada EMS Program Manager Patrick Irwin, and the State of Nevada's investigation.

# Pat Songer

## CONFIDENTIAL ATTORNEY WORK PRODUCT Recommendations From Pahrump Valley Fire-Rescue Services Investigation

3. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
  - a. For PVFRS Firefighter/Paramedic Raymond Delucchi's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
    - 1) Termination for the listed reasons the Town of Pahrump, PVFR, and Agreements/Contracts denote:
      - a) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
      - b) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.4, "administrative leave, without pay"
    - 2) Termination for the listed reasons, the PVFRS Rules and Regulations:
      - a) 02.03.01, Line:
        - 1] D., H., K.
      - b) 02.03.02
      - c) 02.03.03, Willful and flagrant disregard for reporting and documenting
      - d) 02.03.04, Willful and flagrant disregard for reporting and documenting
      - e) 02.03.05
      - f) 02.03.11
      - g) 02.03.14
      - h) 02.05.15
      - i) 02.05.24

## Pat Songer

CONFIDENTIAL ATTORNEY WORK PRODUCT  
Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
- a) Documentation (Page 14)
    - 1] 1., 2., 3., 4.
  - b) Refusal of Care (Page 18)
    - Star 11
  - c) Standard of Care (Page 20)
    - 1] Paragraph 1, and 2, Notes: Star 10, 11
  - d) Childbirth. Failure to evaluate or perform
  - e) Pre-Term Labor. Failure to evaluate or perform
  - f) Shock – Hypovolemia. Failure to evaluate or perform

**Pat Songer**  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

4. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
  - a. For PVFRS Firefighter/EMT-Intermediate Tommy Hollis's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
    - 1) Termination for the listed reasons the Town of Pahrump, PVFR, and Agreements/Contracts denote:
      - a) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
      - b) 11. Disciplinary Actions and Appeals:
        - 1] 11.1.4, "administrative leave, without pay"
    - 2) Termination for the listed reasons, the PVFRS Rules and Regulations:
      - a) 02.03.01, Line:
        - 1] D., H., K.
      - b) 02.03.02
      - c) 02.03.03, Willful and flagrant disregard for reporting and documenting
      - d) 02.03.04, Willful and flagrant disregard for reporting and documenting
      - e) 02.03.05
      - f) 02.03.11
      - g) 02.03.14
      - h) 02.05.15
      - i) 02.05.24

**Pat Songer**  
CONFIDENTIAL ATTORNEY WORK PRODUCT  
Recommendations From  
Pahrump Valley Fire-Rescue Services Investigation

- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
- a) Documentation (Page 14)
    - 1] 1., 2., 3., 4.
  - b) Refusal of Care (Page 18)
    - Star 11
  - c) Standard of Care (Page 20)
    - 1] Paragraph 1, and 2, Notes: Star 10, 11
  - d) Childbirth. Failure to evaluate or perform
  - e) Pre-Term Labor. Failure to evaluate or perform
  - f) Shock – Hypovolemia. Failure to evaluate or perform

## **EXHIBIT “6”**



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Town of Pahrump 400 N. Hwy 160 Pahrump, NV 89060 Phone: 775.727.5107 Fax: 775.727.0345

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September 13, 2012

Raymond Delucchi  
1930 Village Center Circle 3 – 372  
Las Vegas, NV 89134

Dear Mr. Delucchi,

This is to notify you that the Town of Pahrump received notice of a revocation of your sponsorship to work under our Medical Director's license, effective September 13, 2012. The EMS Medical Director for Pahrump Valley Fire-Rescue Service gave this notice based on the findings of a third-party investigation into the events that occurred on or about May 25, 2012, involving James and Brittney Choyce.

The Town of Pahrump Personnel Policy, under 3.23.(3) of the *License/Occupational Certification* policy, states, "In the event the employee does not have a valid license, certificate, permit, or occupational certification, s/he does not meet the job requirements. Failure to meet the job requirements will result in termination."

Because your sponsorship has been revoked, you do not meet the job requirements, therefore, you are being placed on unpaid Administrative Leave per the Town of Pahrump Personnel Policy *11.1.4. Administrative Leave* pending notice of intent to terminate.

Sincerely,

William A. Kohbarger, ICMA - CM  
Pahrump Town Manager  
400 N. Hwy 160  
Pahrump, NV 89060  
775.727.5107 ext. 305  
bkohbarger@pahrumppnv.org

Cc: Personnel file





Town of Pahrump 400 N. Hwy 160 Pahrump, NV 89060 Phone: 775.727.5107 Fax: 775.727.0345

September 13, 2012

Tommy Hollis  
3110 S. Oakleaf Street  
Pahrump, NV 89048

Dear Mr. Hollis,

This is to notify you that the Town of Pahrump received notice of a revocation of your sponsorship to work under our Medical Director's license, effective September 13, 2012. The EMS Medical Director for Pahrump Valley Fire-Rescue Service gave this notice based on the findings of a third-party investigation into the events that occurred on or about May 25, 2012, involving James and Brittney Choyce.

The Town of Pahrump Personnel Policy, under 3.23.(3) of the *License/Occupational Certification* policy, states, "In the event the employee does not have a valid license, certificate, permit, or occupational certification, s/he does not meet the job requirements. Failure to meet the job requirements will result in termination."

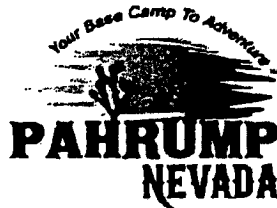
Because your sponsorship has been revoked, you do not meet the job requirements, therefore, you are being placed on unpaid Administrative Leave per the Town of Pahrump Personnel Policy 11.1.4. *Administrative Leave* pending notice of intent to terminate.

Sincerely,

William A. Kohbarger, ICMA - CM  
Pahrump Town Manager  
400 N. Hwy 160  
Pahrump, NV 89060  
775.727.5107 ext. 305  
bkohbarger@pahrumptnv.org

Cc: Personnel file

## **EXHIBIT “7”**



Town of Pahrump 400 N. Hwy 160 Pahrump, NV 89060 Phone: 775.727.5107 Fax: 775.727.0345

## INTENT TO DISCIPLINE

**TO:** Raymond Delucchi  
**FROM:** William A. Kohbarger  
**DATE:** September 18, 2012  
**SUBJECT:** Notice of Intent to Discipline

---

Raymond Delucchi  
1930 Village Center Circle 3-372  
Las Vegas, NV 89134

Dear Mr. Delucchi,

This letter is to notify you of the intent to terminate your employment, effective September 21, 2012, and is intended to comply with all due process and notice requirements as provided under state and federal law, as well as Town of Pahrump policies and procedures, and the collective bargaining agreement between PVFRS and the Town of Pahrump. This notice results from the following:

1. The revocation of your sponsorship by the Medical Director, which allowed you to work for Pahrump Valley Fire-Rescue Services, (See attached email from Dr. Slaughter) and
2. The Findings of the Third-Party Investigative Report conducted Mr. Pat Songer, Director of EMS for the Humboldt General Hospital. (See attached Third-party Report)

Pahrump Medical Director, Dr. Slaughter, revoked sponsorship of you working under his license effective September 13, 2012. The Town of Pahrump Personnel Policy Manual, Section 3.23.2(3) of the *License/Occupational Certification* policy, states, "In the event the employee does not have a valid license, certificate, permit, or occupational certification, s/he does not meet the job requirements. Failure to meet the job requirements will result in termination."

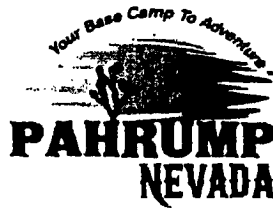
Mr. Songer's report refers to numerous violations of the Town of Pahrump Personnel Policies, PVFRS Rules and Regulations and the PVFRS EMS Protocols.

### Town of Pahrump Personnel Policies

1. 11.1.1(1) Conduct unbecoming an employee
2. 11.1.1(2) Falsification of or making a material omission of forms, records, or reports
3. 11.1.1(7) Actual or threatened physical violence including, but not limit to, intimidation
4. 11.1.1(11) Dishonesty, including intentionally or negligently providing false information
5. 11.1.1(12) Willfully or intentionally violating or failing to comply with the Town of Pahrump's policies, rules, regulations, and/or procedures

### PVFRS Rules and Regulations

1. 02.03.01(D) Negligence of indifference in the performance of duty
2. 02.03.01(H) Falsification or destruction of records, reports or documents



Town of Pahrump 400 N. Hwy 160 Pahrump, NV 89060 Phone: 775.727.5107 Fax: 775.727.0345

3. 02.03.01(K) Any Flagrant violation of the Department's Rules and Regulations or Standard Operating Guidelines
4. 02.03.02 Any Department member that observes a violation of the Department's Rules and Regulations shall bring the violation to the attention of the officer in charge
5. 02.03.03 Willful and flagrant disregard for reporting and documenting
6. 02.03.04 Willful and flagrant disregard for reporting and documenting
7. 02.03.05
8. 02.03.11
9. 02.03.14
10. 02.05.15
11. 02.05.24

**PVFRS EMS Protocols**

1. Documentation (pg 14)
  - i. 1., 2., 3., 4
2. Refusal of Care (pg 18)
  - i. Star 11
3. Standard of Care (pg 10)
  - i. Paragraph 1 and 2 Notes: Star 10, 11
4. Childbirth. (Failure to evaluate or perform)
5. Pre-term Labor. (Failure to evaluate or perform)
6. Shock - Hypovolemia. (Failure to evaluate or perform)

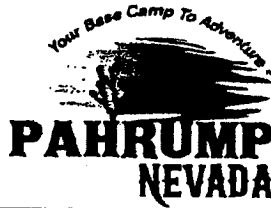
Please return your PPE and department assigned equipment to your lieutenant by September 21, 2012.

You have the right to file a written response or to request in writing a pre-disciplinary conference before the Town Manager, within five (5) working days of receipt of the notice of proposed disciplinary action. Failure to file a written response or request a pre-disciplinary hearing within five (5) working days, or to appear at the pre-disciplinary hearing after requesting such, will constitute a forfeiture of the employee's rights to any further appeal.

Sincerely,

William A. Kohbarger, ICMA-CM  
Pahrump Town Manager

Cc: Personnel file



Town of Pahrump 400 N. Hwy 160 Pahrump, NV 89060 Phone: 775.727.5107 Fax: 775.727.0345

## INTENT TO DISCIPLINE

**TO:** Tommy Hollis  
**FROM:** William A. Kohbarger  
**DATE:** September 18, 2012  
**SUBJECT:** Notice of Intent to Discipline

---

Tommy Hollis  
3110 S. Oakleaf Street  
Pahrump, NV 89048

Dear Mr. Hollis,

This letter is to notify you of the intent to terminate your employment, effective September 21, 2012, and is intended to comply with all due process and notice requirements as provided under state and federal law, as well as Town of Pahrump policies and procedures, and the collective bargaining agreement between PVFRS and the Town of Pahrump. This notice results from the following:

1. The revocation of your sponsorship by the Medical Director, which allowed you to work for Pahrump Valley Fire-Rescue Services, (See attached email from Dr. Slaughter) and
2. The Findings of the Third-Party Investigative Report conducted Mr. Pat Songer, Director of EMS for the Humboldt General Hospital. (See attached Third-party Report)

Pahrump Medical Director, Dr. Slaughter, revoked sponsorship of you working under his license effective September 13, 2012. The Town of Pahrump Personnel Policy Manual, Section 3.23.2(3) of the *License/Occupational Certification* policy, states, "In the event the employee does not have a valid license, certificate, permit, or occupational certification, s/he does not meet the job requirements. Failure to meet the job requirements will result in termination."

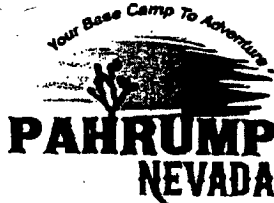
Mr. Songer's report refers to numerous violations of the Town of Pahrump Personnel Policies, PVFRS Rules and Regulations and the PVFRS EMS Protocols.

### Town of Pahrump Personnel Policies

1. 11.1.1(1) Conduct unbecoming an employee
2. 11.1.1(2) Falsification of or making a material omission of forms, records, or reports
3. 11.1.1(7) Actual or threatened physical violence including, but not limit to, intimidation
4. 11.1.1(11) Dishonesty, including intentionally or negligently providing false information
5. 11.1.1(12) Willfully or intentionally violating or failing to comply with the Town of Pahrump's policies, rules, regulations, and/or procedures

### PVFRS Rules and Regulations

1. 02.03.01(D) Negligence of indifference in the performance of duty
2. 02.03.01(H) Falsification or destruction of records, reports or documents



Town of Pahrump 400 N. Hwy 160 Pahrump, NV 89060 Phone: 775.727.5107 Fax: 775.727.0345

3. 02.03.01(K) Any Flagrant violation of the Department's Rules and Regulations or Standard Operating Guidelines
4. 02.03.02 Any Department member that observes a violation of the Department's Rules and Regulations shall bring the violation to the attention of the officer in charge
5. 02.03.03 Willful and flagrant disregard for reporting and documenting
6. 02.03.04 Willful and flagrant disregard for reporting and documenting
7. 02.03.05
8. 02.03.11
9. 02.03.14
10. 02.05.15
11. 02.05.24

**PVFRS EMS Protocols**

1. Documentation (pg 14)
  - i. 1., 2., 3., 4
2. Refusal of Care (pg 18)
  - i. Star 11
3. Standard of Care (pg 10)
  - i. Paragraph 1 and 2 Notes: Star 10, 11
4. Childbirth. (Failure to evaluate or perform)
5. Pre-term Labor. (Failure to evaluate or perform)
6. Shock - Hypovolemia. (Failure to evaluate or perform)

Please return your PPE and department assigned equipment to your lieutenant by September 21, 2012.

You have the right to file a written response or to request in writing a pre-disciplinary conference before the Town Manager, within five (5) working days of receipt of the notice of proposed disciplinary action. Failure to file a written response or request a pre-disciplinary hearing within five (5) working days, or to appear at the pre-disciplinary hearing after requesting such, will constitute a forfeiture of the employee's rights to any further appeal.

Sincerely,

William A. Kohbarger, ICMA-CM  
Pahrump Town Manager

Cc: Personnel file