

CLERK OF THE COURT

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Mar 24 2016 01:17 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

1 **NOAS**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No.: 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No.: 6419  
6 **DANIELLE TARMU, ESQ.**  
7 Nevada Bar No.: 11727  
8 **EGLET PRINCE**  
9 400 South Seventh Street, #400  
10 Las Vegas, Nevada 89101  
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12 (702) 450-5400 phone  
13 (702) 450-5451 facsimile  
14 Attorneys for Plaintiff  
15 *Beau R. Orth*

16 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
17 **CLARK COUNTY, NEVADA**

18 **BEAU R. ORTH,**

19 Plaintiff,

20 vs.

21 **ALBERT H. CAPANNA, M.D.;**  
22 **DOES I through X; ROE BUSINESS**  
23 **ENTITIES I through X, inclusive,**

24 Defendants.

CASE NO. : A-11-648041-C  
DEPT. NO. : III

**NOTICE OF CROSS-APPEAL**

25 Notice is hereby given that Plaintiff Beau R. Orth appeals to the Nevada Supreme Court  
26 from the following orders: (1) Order Regarding Defendant's Motion for New Trial, or in the  
27 Alternative, for Amendment of Judgment, limited to the briefing regarding NRS 42.021 and any  
28 admission of Plaintiff's insurance information, attached as **Exhibit "1;"** (2) Order Regarding  
Defendant's Motion for Application of NRS 41A.035 and NRS 42.021 regarding NRS 42.021  
only, attached as **Exhibit "2;"** (3) Order Regarding Plaintiff's Motion to Declare NRS 42.021  
and NRS 41A.035 Unconstitutional, regarding to NRS 42.021 only, attached as **Exhibit "3;"**

1 and (4) Order Regarding Plaintiff's Omnibus Motion in Limine, Section 7, Regarding Collateral  
2 Sources of Payment, attached as **Exhibit "4."**

3 DATED this 21 day of March, 2016.

4  
5 **EGLET PRINCE**



6  
7 \_\_\_\_\_  
8 DENNIS M. PRINCE, ESQ.  
9 Nevada Bar No.: 5092  
10 TRACY A. EGLET, ESQ.  
11 Nevada Bar No.: 6419  
12 DANIELLE TARMU, ESQ.  
13 Nevada Bar No.: 11727  
14 400 South Seventh Street, Box 1, Suite 400  
15 Las Vegas, Nevada 89101  
16 *Attorneys for Plaintiff*  
17  
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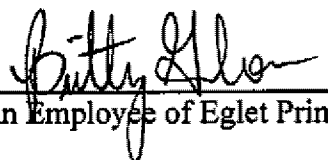
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on March 21, 2016, I caused the foregoing document entitled **NOTICE OF CROSS-APPEAL** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Anthony D. Lauria, Esq.  
LAURIA, TOKUNAGA GATES & LINN, LLP  
601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
[Alauria@ltglaw.net](mailto:Alauria@ltglaw.net)

Robert L. Eisenberg, Esq.  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Suite 300  
Reno Nevada 89519  
[rle@lge.net](mailto:rle@lge.net)

Attorneys for Defendant  
*Albert H. Capanna, M.D.*

  
An Employee of Eglet Prince

# **EXHIBIT “1”**

# ORIGINAL

1 **ORDR**  
2 **ROBERT L. EISENBERG** (Nevada Bar No. 950)  
3 **Lemons, Grundy & Eisenberg**  
4 **6005 Plumas Street, Third Floor**  
5 **Reno, Nevada 89509**  
6 **775-786-6868**  
7 **775-786-9756**  
8 **Email: [rlc@lge.net](mailto:rlc@lge.net)**

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02/10/2016 11:50:25 AM

  
CLERK OF THE COURT

9 **Anthony D. Lauria**  
10 **Nevada Bar No. 4114**  
11 **LAURIA TOKUNAGA GATES & LINN, LLP**  
12 **601 South Seventh Street, 2nd Floor**  
13 **Las Vegas, NV 89101**  
14 **Tel: (702) 387-8633**  
15 **Fax: (702) 387-8635**  
16 **ATTORNEYS FOR DEFENDANT**

17  
18 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
19 **IN AND FOR THE COUNTY OF CLARK**

20 **BEAU R. ORTH,**

Plaintiff,

Case No. A-11-648041

Dept. No. III

21 vs.

22 **ALBERT H. CAPANNA, M.D.**

Defendant.

**ORDER REGARDING  
DEFENDANT'S MOTION  
FOR NEW TRIAL, OR IN  
THE ALTERNATIVE, FOR  
AMENDMENT OF  
JUDGMENT**

23 This matter was heard by the Court on December 16, 2015. Dennis M. Prince, of  
24 Eglot Prince, appeared on behalf of Plaintiff Orth. Anthony D. Lauria, of Lauria  
25 Tokunaga Gates & Linn, LLP, and Robert L. Eisenberg, of Lemons, Grundy &  
26 Eisenberg, appeared on behalf of Defendant Capanna. Having considered the motion  
27 papers and the oral arguments by counsel, the Court hereby rules as follows:  
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**Motion for New Trial**

The Court finds that Defendant has not established grounds for a new trial, pursuant to NRCP 59. The Court affirms its pretrial rulings dealing with discovery and evidence relating to expert witnesses. The Court finds no basis to grant a new trial, pursuant to NRCP 59, regarding discussions about insurance in *voir dire*, jury instructions or arguments by plaintiff's counsel.

The Court also finds no basis for a new trial regarding MRI presentations at trial. And the Court finds no basis for a new trial on other issues raised in Defendant's Motion for New Trial.

Accordingly, the Motion for New Trial is denied.

**Motion for Amendment of Judgment**


This motion seeks an amendment of the judgment, to comply with NRS 41A.035, which imposes a cap on noneconomic damages. Having considered the motion papers and the arguments of counsel, the Court hereby grants the Motion for Amendment of the Judgment. The noneconomic damages will be reduced to \$350,000. This amount will apply entirely to the past noneconomic damages.

It is so ORDERED.

DATED: February 4, 2016

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Order initially prepared by:

  
ROBERT L. EISENBERG  
(Nv. Bar No. 0950)  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
Email: [rlc@lge.net](mailto:rlc@lge.net)  
*Attorneys for Defendant*

# **EXHIBIT “2”**

ORIGINAL

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ORDR  
ROBERT L. EISENBERG (Nevada Bar No. 950)  
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CLERK OF THE COURT

Anthony D. Lauria  
Nevada Bar No. 4114  
LAURIA TOKUNAGA GATES & LINN, LLP  
601 South Seventh Street, 2nd Floor  
Las Vegas, NV 89101  
Tel: (702) 387-8633  
Fax: (702) 387-8633  
*ATTORNEYS FOR DEFENDANT*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

BEAU R. ORTH,  
  
Plaintiff,  
  
vs.  
  
ALBERT H. CAPANNA, M.D.  
  
Defendant.

Case No. A-11-648041  
Dept. No. III

**ORDER REGARDING  
DEFENDANT'S MOTION  
FOR APPLICATION OF  
NRS 41A.035 and 42.021**

\_\_\_\_\_ /  
  
This matter was heard by the Court on December 16, 2015. Dennis M. Prince, of Eglet Prince, appeared on behalf of Plaintiff Orth. Anthony D. Lauria, of Lauria Tokunaga Gates & Linn, LLP, and Robert L. Eisenberg, of Lemons, Grundy & Eisenberg, appeared on behalf of Defendant Capanna. Having considered the motion papers and the oral arguments by counsel, the Court hereby rules as follows:

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NRS 41A.035

This statute imposes a cap of \$350,000 on noneconomic damages.<sup>1</sup> The Court finds that statute is applicable and that Plaintiff's noneconomic damages must not exceed \$350,000. Nevertheless, the Court denies Defendant's request to apportion noneconomic damages between past and future damages. The Court finds that the entire \$350,000 amount of noneconomic damages should be attributed to past damages.

NRS 42.021

Subsections (3) through (8) of this statute deal with periodic payments for future damages. The Court finds that the statutory provisions for periodic payments apply to the amount awarded by the jury for future medical expenses, i.e., \$350,000. The Court finds that this portion of the judgment shall be paid in three periodic payments. The first payment will be the amount of \$175,000, which consists of one-half of the future medical expenses awarded by the jury. This amount will be paid within six months after entry of the amended judgment. The second periodic payment will be the amount of \$88,000, which will be paid within one year after entry of the amended judgment. The final periodic payment will be the amount of \$87,000, which will be paid within 18 months after entry of the amended judgment.

The Court also finds that the \$350,000 amount of future medical expenses awarded by the jury shall draw post-judgment interest, pursuant to NRS 17.130(2), from the time of entry of the judgment until satisfied, with post-judgment interest to be adjusted as each periodic payment is made.

It is so ORDERED.

DATED: February 4, 2016

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

<sup>1</sup> The Court has also dealt with application of this statute in the Order Regarding Defendant's Motion for Amendment of the Judgment.

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Order initially prepared by:

 4114

ROBERT L. EISENBERG  
(Nv. Bar No. 0950)  
Lemons, Grundy & Eisenberg  
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Reno, Nevada 89519  
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Email: [rlc@lge.net](mailto:rlc@lge.net)  
*Attorneys for Defendant*

# **EXHIBIT “3”**

  
CLERK OF THE COURT

1 **ORDER**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No.: 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No.: 6419  
6 **DANIELLE TARMU, ESQ.**  
7 Nevada Bar No.: 11727  
8 **EGLET PRINCE**  
9 400 South Seventh Street, #400  
10 Las Vegas, Nevada 89101  
11 [dprince@egletlaw.com](mailto:dprince@egletlaw.com)  
12 [teget@egletlaw.com](mailto:teget@egletlaw.com)  
13 [dtarmu@egletlaw.com](mailto:dtarmu@egletlaw.com)  
14 (702) 450-5400 phone  
15 (702) 450-5451 facsimile  
16 Attorneys for Plaintiff  
17 *Beau R. Orth*

12 **DISTRICT COURT**  
13  
14 **CLARK COUNTY, NEVADA**

15 **BEAU R. ORTH,**  
16 Plaintiff,

17 vs.

18 **ALBERT H. CAPANNA, M.D.;**  
19 **DOES I through X; ROE BUSINESS**  
20 **ENTITIES I through X, inclusive,**  
21 Defendants.

CASE NO. : A-11-648041-C  
DEPT. NO. : III

**ORDER REGARDING PLAINTIFF'S**  
**MOTION TO DECLARE NRS 42.021**  
**AND NRS 41A.035**  
**UNCONSTITUTIONAL**

22  
23 This matter having come on for hearing on the 14th day of August, 2015; Dennis M.  
24 Prince, Esq., and Danielle Tarmu, Esq. of Eglet Prince appearing on behalf of Plaintiff, Beau  
25 Orth; and Anthony D. Lauria, Esq. and Paul A. Cardinale, Esq. of Laura Tokunaga Gates &  
26 Linn, LLP, appearing on behalf of Defendant Albert H. Capanna, M.D. The Court, having read  
27 the moving papers and heard oral argument by counsel, and hereby **DENIES** Plaintiff's  
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Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional. The statutes pass constitutional scrutiny under rational basis test.

Dated this 20 day of August, 2015.

  
DISTRICT COURT JUDGE

DATED this 22<sup>nd</sup> day of August, 2015.

DATED this \_\_\_ day of August, 2015.

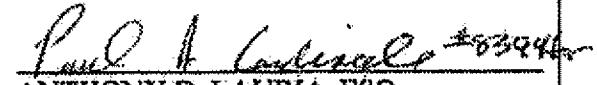
Respectfully Submitted By:

Approved as to Form and Content:

EGLET PRINCE

LAURIA TOKUNAGA GATES & LINN

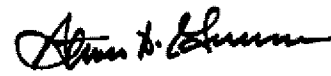




DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
DANIELLE TARMU, ESQ.  
Nevada Bar No.: 11727  
400 South Seventh Street, Suite 400  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

ANTHONY D. LAURIA, ESQ.  
Nevada Bar No. 4114  
KIMBERLY L. JOHNSON, ESQ.  
Nevada Bar No.: 10554  
601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
*Attorneys for Defendant*

# **EXHIBIT “4”**



CLERK OF THE COURT

**EGLET PRINCE**

1 **ORDR**  
 2 **DENNIS M. PRINCE, ESQ.**  
 Nevada Bar No.: 5092  
 3 **TRACY A. EGLET, ESQ.**  
 Nevada Bar No.: 6419  
 4 **DANIELLE TARMU, ESQ.**  
 Nevada Bar No.: 11727  
 5 **EGLET PRINCE**  
 6 400 South Seventh Street, #400  
 Las Vegas, Nevada 89101  
 7 [dprince@egletlaw.com](mailto:dprince@egletlaw.com)  
 8 [teget@egletlaw.com](mailto:teget@egletlaw.com)  
 9 [dtarmu@egletlaw.com](mailto:dtarmu@egletlaw.com)  
 (702) 450-5400 phone  
 (702) 450-5451 facsimile  
 10 Attorneys for Plaintiff  
 Beau R. Orth

11  
 12 **DISTRICT COURT**  
 13  
 14 **CLARK COUNTY, NEVADA**

15 **BEAU R. ORTH,**

16 Plaintiff,

17 vs.

18 **ALBERT H. CAPANNA, M.D.;**  
 19 **DOES I through X; ROE BUSINESS**  
 20 **ENTITIES I through X, inclusive,**

21 Defendants.

CASE NO. : A-11-648041-C  
 DEPT. NO. : III

**ORDER REGARDING PLAINTIFF'S**  
**MOTIONS IN LIMINE**

22  
 23 This matter having come on for hearing on the 14th day of August, 2015; Dennis M.  
 24 Prince, Esq., and Danielle Tarmu, Esq. of Eglet Prince appearing on behalf of Plaintiff, Beau  
 25 Orth; and Anthony D. Lauria, Esq. and Paul A. Cardinale, Esq. of Laura Tokunaga Gates &  
 26 Linn, LLP, appearing on behalf of Defendant Albert H. Capanna, M.D. The Court, having read  
 27 the moving papers and heard oral argument by counsel, and hereby rules as follows:  
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**IT IS HEREBY ORDERED** that Plaintiff's Omnibus Motion in Limine No. 1 is ruled upon as follows:

1) **Hypothetical Medical Condition.** This Motion is **GRANTED**. Questions must be related to evidence in the record or evidence they reasonably anticipate will be presented at trial.

2) **Reference to Plaintiff Being a Malingerer, Magnifying Symptoms or Manifesting Secondary Gain Motives Should be Excluded.** This Motion is **GRANTED** as unopposed. Defendant will not make this argument at all unless new evidence regarding these issues is disclosed at trial, in which case counsel must approach the bench before making any reference to the jury.

3) **References to Defense Medical Examiners as "Independent."** This Motion is **GRANTED** as unopposed.

4) **Closing Argument.** This Motion is **GRANTED** as unopposed. Defendant will not argue that Plaintiff's counsel is asking for a higher verdict because he thinks the jury will award less. This order does not prevent Defendant from arguing that the amount requested by Plaintiff is not supported by the evidence.

5) **Taxation.** This Motion is **GRANTED** as unopposed. The parties will not reference taxation of any amount of damages.

6) **Precluding Reference as to Plaintiff's Counsel Working with Plaintiff's Treating Physicians on Unrelated Cases.** This Motion is **GRANTED IN PART** and **DENIED IN PART**. Defendant can ask questions about the nature of physicians' practice, such as the amount of work for defense versus plaintiffs, and attorneys. However, Defendant



1 cannot ask specific questions about working with Plaintiff's counsel in the past, such as the  
2  
3 number of times the doctor treated Plaintiff's counsel's clients.

4  
5 7) **Exclude Collateral Sources of Payment.** This Motion is **DENIED** without  
6 prejudice.

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 2 to Exclude  
8 Irrelevant and/or Unduly Prejudicial Information is **GRANTED**. Any reference to Plaintiff's  
9 parents' alleged spinal treatment or Plaintiff having a congenital spinal condition is excluded  
10 from trial.

11  
12 **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 3 to Exclude Prior  
13 Unrelated Medical Conditions is **GRANTED**. Any reference to Plaintiff's previous injuries  
14 sustained while playing football and sports, including but not limited to, his ankle injury in his  
15 sophomore year of college, his torn ligament in his hand/thumb area approximately in 2009 or  
16 early 2010, and his March 2010 concussion, are excluded from trial. If Defendant believes that  
17 something at trial opens the door to allow questioning in this area, then the parties must  
18 approach the bench before asking questions or referencing it before the jury.

19  
20 **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 4 to Permit  
21 Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and  
22 Extent of Disability Without a Formal Expert Report is **GRANTED**. Dr. Cash can testify  
23 about billing, causation, prognosis, future treatment, and extent of disability without a formal  
24 expert report. He is a treating physician, not a retained expert. Asking a treating physician to  
25 do a future cost letter or certain other tasks does not automatically convert him/her to a retained  
26 expert.  
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**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire is **MOOT** as it is too late.

**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 6 to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports is **GRANTED**. Retained expert opinions must comply with NRCP 16.1(a)(2)(B) and be in a 16.1 disclosure, report, or deposition.

Dated this 1 day of ~~August~~<sup>Sept</sup>, 2015.

  
\_\_\_\_\_  
**DISTRICT COURT JUDGE**

DATED this 1 day of ~~August~~<sup>Dec.</sup>, 2015.

DATED this \_\_\_\_ day of August, 2015.

Respectfully Submitted By:

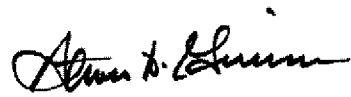
Approved as to Form and Content:

**EGLET PRINCE**

**LARIA TOKUNAGA GATES & LINN**

\_\_\_\_\_  
**DENNIS M. PRINCE, ESQ.**  
Nevada Bar No. 5092  
**TRACY A. EGLET, ESQ.**  
Nevada Bar No. 6419  
**DANIELLE TARMU, ESQ.**  
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Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

\_\_\_\_\_  
**ANTHONY D. LAURIA, ESQ.**  
Nevada Bar No. 4114  
**KIMBERLY L. JOHNSON, ESQ.**  
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601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
*Attorneys for Defendant*

  
CLERK OF THE COURT

1 **ASTA**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No.: 5092  
4 **TRACY A. EGLET, ESQ.**  
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7 Nevada Bar No.: 11727  
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13 (702) 450-5451 facsimile  
14 Attorneys for Plaintiff  
15 *Beau R. Orth*

10 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11  
12 **CLARK COUNTY, NEVADA**

13 **BEAU R. ORTH,**  
14  
15 Plaintiff,

CASE NO. : A-11-648041-C  
DEPT. NO. : III

15 vs.

**PLAINTIFF'S CROSS-APPEAL**  
**STATEMENT**

16 **ALBERT H. CAPANNA, M.D.;**  
17 **DOES I through X; ROE BUSINESS**  
18 **ENTITIES I through X, inclusive,**  
19  
20 Defendants.

21 Pursuant to NRAP 3(a)(1), Plaintiff Beau Orth hereby submits the following cross-appeal  
22 statement:

23 A. District Court Case Number and Caption Showing the Names of All Parties to the

24 Proceedings:

25  
26 Beau R. Orth, Plaintiff  
27 Albert H. Capanna, M.D., Defendant  
28 Case No.: A-11-648041-C  
Department No. III

**EGLET PRINCE**  


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B. Name of Judge Who Entered Order or Judgment Being Appealed:

Honorable Douglas Herndon

C. Name of Each Appellant and the Name and Address of Counsel for Each

Appellant:

Beau R. Orth is represented by the following counsel:

Dennis M. Prince  
Danielle Tarmu  
Eglet Prince  
400 South Seventh Street, Suite 400  
Las Vegas, Nevada 89101  
Telephone: (702) 450-5400

D. Name of Each Respondent and the Name and Address of Each Respondent's

Appellate Counsel, if known:

Albert H. Cappana, M.D. is represented by the following counsel:

Anthony D. Laura  
Laura, Tokanaga, Gates & Linn  
601 S. Seventh Avenue  
Las Vegas, Nevada 89101  
Telephone: (702) 387-8633

Robert L. Eisenberg  
Lemons Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
Telephone: (775) 786-6868

E. Whether An Attorney Identified in Response to Subparagraph (D) is not

Licensed to Practice Law in Nevada, and if so, Whether the District Court Granted That

Attorney Permission to Appear Under SCR 42, Including a Copy of Any District Court Appeal:

All attorneys are licensed in Nevada.

F. Whether the Appellant Was Represented by Appointed or Retained

Counsel in the District Court, and Whether the Appellant is Represented by Appointed

Counsel on Appeal: Retained counsel.

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G. Whether the Appellant was Granted Leave to Proceed *in forma pauperis*: No.

H. Date Proceedings Commenced in District Court: September 8, 2011.

I. Brief Description of Nature of the Action and Result in District Court, Including

the Type of Judgment or Order Being Appealed and the Relief Granted by the District Court:

Medical malpractice action wherein Defendant physician was found by a jury to be below the standard of care by performing surgery on the wrong level of Plaintiff's spine. This resulted in money judgment against Defendant. Appellant is appealing the admission of Plaintiff's collateral source information and the constitutionality of NRS 42.021, as permitted in the following orders: (1) Order Regarding Defendant's Motion for New Trial, or in the Alternative, for Amendment of Judgment, limited to the briefing regarding NRS 42.021 and any admission of Plaintiff's insurance information; (2) Order Regarding Defendant's Motion for Application of NRS 41A.035 and NRS 42.021, regarding NRS 42.021 only; (3) Order Regarding Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional, regarding NRS 42.021 only; and (4) Order Regarding Plaintiff's Omnibus Motion in Limine, Section 7, regarding Collateral Sources of Payment.

J. Whether the Case Was Previously Subject of an Appeal to or Original Writ

Proceeding in the Supreme Court and, if so, the Caption and Supreme Court Docket Number of

the Prior Proceeding: Defendant filed an appeal on March 7, 2016 and Plaintiff hereby files a cross-appeal. The caption and docket number of Defendant's appeal is: Albert H. Capanna, M.D., Appellant, vs. Beau R. Orth, Respondent, Supreme Court No. 69935.

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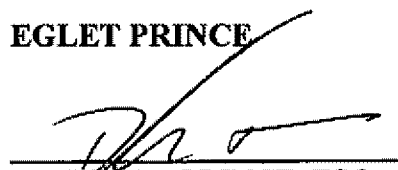
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K. Whether the Appeal Involves Child Custody or Visitation: No.

L. Whether Appeal Involves Possibility of Settlement: Yes.

DATED this 21 day of March, 2016.

**EGLET PRINCE**



DENNIS M. PRINCE, ESQ.

Nevada Bar No.: 5092

TRACY A. EGLET, ESQ.

Nevada Bar No.: 6419

DANIELLE TARMU, ESQ.

Nevada Bar No.: 11727

400 South Seventh Street, Box 1, Suite 400

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on March 21, 2016, I caused the foregoing document entitled **PLAINTIFF'S CROSS-APPEAL STATEMENT** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Anthony D. Lauria, Esq.  
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[Alauria@ltglaw.net](mailto:Alauria@ltglaw.net)

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Reno Nevada 89519  
[rle@lge.net](mailto:rle@lge.net)

Attorneys for Defendant  
*Albert H. Capanna, M.D.*

  
An Employee of Eglet Prince

EGLET PRINCE

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DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

**Beau Orth, Plaintiff(s)**  
vs.  
**Albert Capanna, MD, Defendant(s)**

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§  
§  
§  
§  
§

Location: **Department 3**  
Judicial Officer: **Herndon, Douglas W.**  
Filed on: **09/08/2011**  
Case Number History:  
Cross-Reference Case **A648041**  
Number:  
Supreme Court No.: **69935**

CASE INFORMATION

Case Type: **Malpractice - Medical/Dental**  
Case Flags: **Appealed to Supreme Court  
Jury Demand Filed  
Automatically Exempt from  
Arbitration  
Commissioner Bulla Recused  
Med Mal Case**

DATE	CASE ASSIGNMENT
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**Current Case Assignment**

Case Number	A-11-648041-C
Court	Department 3
Date Assigned	08/07/2013
Judicial Officer	Herndon, Douglas W.

PARTY INFORMATION

		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Orth, Beau R</b>	<b>Prince, Dennis M</b> <i>Retained</i> 7022286800(W)
<b>Defendant</b>	<b>Capanna, MD, Albert H</b>	<b>Lauria, Anthony D</b> <i>Retained</i> 702-387-8633(W)














DATE	EVENTS & ORDERS OF THE COURT	INDEX
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09/08/2011	 Complaint Filed By: Plaintiff Orth, Beau R <i>Complaint</i>	
09/08/2011	Case Opened	
09/08/2011	Med Mal Case	
11/16/2011	 Affidavit of Due Diligence Filed By: Plaintiff Orth, Beau R <i>Affidavit of Due Diligence</i>	
11/29/2011	 Ex Parte Application Party: Plaintiff Orth, Beau R <i>Ex Parte Application to Effecutate Service of Process on Defendant by Certified Mail Pursuant to NRS 14.090(b)</i>	
12/07/2011	 Order Granting Filed By: Plaintiff Orth, Beau R	
















DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

*Order Granting Ex Parte Application to Effectuate Service of Process on Defendant by Certified Mail Pursuant to NRS 14.090(b)*












- 12/13/2011  Notice of Service  
Party: Plaintiff Orth, Beau R  
*Notice of Service of Summons and Complaint By Certified Mail Pursuant to NRS 14.090(b)*
- 01/11/2012  Initial Appearance Fee Disclosure  
Filed By: Defendant Capanna, MD, Albert H  
*Initial Appearance Fee Disclosure*
- 01/11/2012  Demand for Jury Trial  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Demand for Jury Trial*
- 01/11/2012  Answer to Complaint  
Filed by: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Answer to Plaintiff's Complaint*
- 01/25/2012  Notice of Early Case Conference  
Filed By: Plaintiff Orth, Beau R  
*Notice of NRCP 16.1 Early Case Conference*
- 02/16/2012  Peremptory Challenge  
Filed by: Defendant Capanna, MD, Albert H  
*Peremptory Challenge of Judge*
- 02/16/2012  Notice of Department Reassignment
- 03/16/2012  Joint Case Conference Report  
Filed By: Plaintiff Orth, Beau R  
*Joint Case Conference Report*
- 03/27/2012  Scheduling Order  
*Scheduling Order*
- 07/06/2012  Order Setting Medical/Dental Malpractice Status Check  
Filed By: Plaintiff Orth, Beau R  
*Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference*
- 08/08/2012  **Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Cory, Kenneth)
- 09/12/2012  Peremptory Challenge  
Filed by: Plaintiff Orth, Beau R  
*Peremptory Challenge*
- 09/12/2012  Notice of Department Reassignment
- 02/05/2013  **Status Check: Medical/Dental Malpractice** (1:00 PM) (Judicial Officer: Wiese, Jerry A.)
- 02/22/2013  Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call  
*Order Setting Civil Jury Trial (Med Mal Firm Setting)*

DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

06/25/2013	 Stipulation and Order to Extend Discovery Deadlines Filed By: Defendant Capanna, MD, Albert H <i>Stipulation and Order to Extend Discovery Deadlines (First Request)</i>
06/25/2013	 Notice of Entry of Order Filed By: Defendant Capanna, MD, Albert H <i>Notice of Entry of Order</i>
08/06/2013	 <b>Status Check: Medical/Dental Malpractice</b> (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
08/08/2013	 Amended Order Setting Jury Trial <i>Amended Order Setting Civil Jury Trial</i>
08/09/2013	 Designation of Expert Witness Filed By: Plaintiff Orth, Beau R <i>Plaintiff's Designation of Expert Witnesses</i>
12/03/2013	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Orth, Beau R <i>Stipulation and Order to Extend Discovery (Second Request)</i>
12/04/2013	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Orth, Beau R <i>Notice of Entry of Stipulation and Order</i>
12/12/2013	<b>CANCELED Pre Trial Conference</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Judge</i>
12/18/2013	<b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Herndon, Douglas W.) <i>Vacated - per Commissioner</i>
01/02/2014	<b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Judge</i>
01/06/2014	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Herndon, Douglas W.) <i>Vacated - per Commissioner</i>
02/03/2014	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Judge</i>
02/04/2014	 <b>Status Check: Medical/Dental Malpractice</b> (8:30 AM) (Judicial Officer: Wiese, Jerry A.)
02/14/2014	 Amended Order Setting Jury Trial <i>2nd Amended Order Setting Civil Jury Trial</i>
07/08/2014	 Substitution of Attorney Filed by: Defendant Capanna, MD, Albert H <i>Substitution of Attorneys</i>
08/12/2014	 <b>Status Check: Medical/Dental Malpractice</b> (8:30 AM) (Judicial Officer: Wiese, Jerry A.)
08/12/2014	 <b>Status Check: Discovery</b> (8:30 AM) (Judicial Officer: Bulla, Bonnie)
08/13/2014	 Amended Order Setting Jury Trial

DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

*Amended Order Setting Civil Jury Trial (Med Mal Firm Set)*

- 08/20/2014  Notice of Change of Address  
Filed By: Plaintiff Orth, Beau R  
*Notice of Change of Address*
- 09/12/2014 **CANCELED Status Check: Compliance** (11:00 AM) (Judicial Officer: Bulla, Bonnie)  
*Vacated - per Commissioner*
- 09/19/2014  Discovery Commissioners Report and Recommendations  
Filed By: Defendant Capanna, MD, Albert H  
*Discovery Commissioner's Report and Recommendations*
- 09/22/2014  Notice of Entry of Order  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Entry of Order*
- 10/01/2014 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Vacated - per Judge*
- 10/13/2014 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Vacated - per Judge*
- 11/14/2014  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Initial Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 11/14/2014  Designation of Expert Witness  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Designation of Expert Witnesses*
- 11/19/2014  Designation of Expert Witness  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's First Supplement to Designation of Expert Witnesses*
- 02/03/2015  **Status Check: Medical/Dental Malpractice** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)
- 02/03/2015  **Status Check: Discovery** (8:30 AM) (Judicial Officer: Bulla, Bonnie)
- 02/04/2015  Amended Order Setting Jury Trial  
*Amended Order Setting Civil Jury Trial (Medical Malpractice)*
- 02/11/2015  Notice of Change of Hearing  
*Notice of Change of Hearing*
- 03/04/2015 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Vacated - Superseding Order*
- 03/09/2015 **CANCELED Status Check: Compliance** (2:00 PM) (Judicial Officer: Bulla, Bonnie)  
*Vacated - Per Setting Slip*
- 03/18/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*

DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

- 03/18/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for McKenna and Ruggeroli Pain Specialists Billing and Payment Information*
- 03/18/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Surgical Arts Center Billing and Payment Information*
- 03/23/2015  Discovery Commissioners Report and Recommendations  
Filed By: Defendant Capanna, MD, Albert H  
*Discovery Commissioner's Report and Recommendations*
- 03/25/2015  Notice of Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Taking Deposition of Plaintiff, Beau R. Orth*
- 03/30/2015  Notice of Vacating Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Notice Vacating Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*
- 03/30/2015 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Vacated - Superseding Order*  
*Jury Trial Medical Malpractice (set during sweeps)*
- 04/02/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*First Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for McKenna and Ruggeroli Pain Specialists billing and Payment Information (change of location & date)*
- 04/02/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*First Amended Notice of Taking deposition of the Custodian of Records-Person Most Knowledgeable for Surgical Arts Center Billing and Payment Information*
- 04/08/2015  Designation of Expert Witness  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Second Supplement to Designation of Expert Witnesses*
- 04/15/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*First Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*
- 04/15/2015  Notice of Association of Counsel  
Filed By: Plaintiff Orth, Beau R  
*Notice of Association of Counsel*
- 05/05/2015  Notice of Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Taking Deposition of Anthony C. Ruggeroli, M.D.*

DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

- 05/08/2015  Notice to Vacate Deposition  
Filed by: Defendant Capanna, MD, Albert H  
*Notice Vacating Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information.*
- 05/15/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Second Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information.*
- 05/28/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Second Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*
- 05/29/2015  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 06/01/2015  Amended Notice of Taking Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Amended Notice of Taking Deposition of Andrew Cash, M.D.*
- 06/02/2015  Amended Notice of Taking Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Second Amended Notice of Taking Deposition of Andrew Cash, M.D.*
- 06/03/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Third Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*
- 06/15/2015  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 06/18/2015  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 06/19/2015  Amended Notice of Taking Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Third Amended Notice of Taking Deposition of Andrew Cash, M.D.*
- 06/19/2015  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 06/22/2015  Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Motions in Limine*
- 06/22/2015  Notice of Hearing  
Filed By: Defendant Capanna, MD, Albert H


DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

*Notice of Hearing*

- 06/22/2015  Omnibus Motion In Limine  
Filed by: Plaintiff Orth, Beau R  
*Plaintiff's Omnibus Motion in Limine No. 1*
- 06/22/2015  Motion in Limine  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information*
- 06/22/2015  Motion in Limine  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions*
- 06/22/2015  Motion in Limine  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report*
- 06/22/2015  Motion  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*
- 06/22/2015  Motion in Limine  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion in Limine No. 6 to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert REports*
- 06/24/2015  Notice to Vacate Deposition  
Filed by: Defendant Capanna, MD, Albert H  
*Notice Vacating Deposition of The Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*
- 07/02/2015  Deposition  
Filed By: Defendant Capanna, MD, Albert H  
*Fourth Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information*
- 07/09/2015  Opposition  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Opposition to Defendant's Motion in Limine*
- 07/09/2015  Opposition to Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Response and Opposition to Plaintiff's Omnibus Motion in Limine No. 1*
- 07/09/2015  Opposition to Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Response and Opposition to Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information*
- 07/09/2015  Opposition to Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H

DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

*Defendant's Response and Opposition to Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions*

- 07/09/2015  Opposition to Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Response and Opposition to Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report*
- 07/09/2015  Opposition to Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Response and Limited Opposition to Plaintiff's Motion in Limine No. 5: to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*
- 07/09/2015  Opposition to Motion in Limine  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Response and Limited Opposition to Plaintiff's Motion in Limine No. 6: to Limit Defendant's Expert's Testimony to the Opinions and Bases Set Forth in Their Reports*
- 07/13/2015  Motion  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional*
- 07/20/2015  Pre-Trial Disclosure  
Party: Plaintiff Orth, Beau R  
*Plaintiff's Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)*
- 07/21/2015  Pre-trial Memorandum  
Filed by: Plaintiff Orth, Beau R  
*Plaintiff's Pre-Trial Memorandum*
- 07/21/2015  Pre-Trial Disclosure  
Party: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)*
- 07/21/2015  Pre-Trial Disclosure  
Party: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Supplemental Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)*
- 07/22/2015  Motion  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100*
- 07/22/2015  **Calendar Call** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
- 07/22/2015  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 07/23/2015  Pre-Trial Disclosure  
Party: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Second Supplemental Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)*

DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

- 07/27/2015  Errata  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Errata to Defendant Albert H. Capanna, M.D.'s Pretrial Disclosure and Supplemental Pretrial Disclosures*
- 07/27/2015  Errata  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Errata to Supplement to NRCP 16.1 Early Case Conference Disclosure of Witnesses and Documents*
- 07/27/2015  Designation of Expert Witness  
Filed By: Defendant Capanna, MD, Albert H  
*Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.*
- 07/27/2015  Pre-Trial Disclosure  
Party: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Third Supplemental Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)*
- 07/27/2015  Supplemental  
Filed by: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Supplement to NRCP 16.1 Early Case Conference Disclosure of Witnesses and Documents*
- 07/28/2015  Motion  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence*
- 07/28/2015  Motion  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future Treatment and Surgery Made Without Scientific Basis*
- 07/30/2015  Opposition to Motion  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Opposition to Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional*
- 08/03/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Omnibus Motion in Limine No. 1*
- 08/03/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Motion in Limine No. 5: to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*
- 08/03/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Motion in Limine No. 6: to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports*
- 08/03/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R



DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

*Plaintiff's Reply in Support of Motion in Limine No. 4: to Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report*

- 08/03/2015  Objection  
Filed By: Defendant Caparna, MD, Albert H  
*Defendant Albert H. Caparna, M.D.'s Objection to Plaintiff's Pretrial Disclosure Pursuant to NRCPC 16.1(a)(3)(c)*
- 08/03/2015  **Status Check: Medical/Dental Malpractice** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)
- 08/03/2015  Reply to Opposition  
Filed by: Defendant Caparna, MD, Albert H  
*Reply to Opposition to Defendant's Motions in Limine*
- 08/03/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information*
- 08/03/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions*
- 08/04/2015  Motion to Strike  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion to Strike Defendant's Untimely Disclosures on Order Shortening Time*
- 08/07/2015  Opposition  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Opposition to Defendant's Trial Brief and Motion to Limit Damages to Those Caused by Acts of Alleged Negligence*
- 08/07/2015  Opposition  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Opposition to Defendant's Motion Re Application of NRS 50.275 and to Exclude Testimony Regarding Future Treatment and Surgery Made Without Scientific Basis*
- 08/07/2015  Reply to Opposition  
Filed by: Plaintiff Orth, Beau R  
*Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional*
- 08/09/2015  Opposition and Countermotion  
Filed By: Defendant Caparna, MD, Albert H  
*Defendant's Opposition to Plaintiff's Motion to Strike Untimely Disclosures and Counter-Motion to Exclude Improper "Supplemental" Disclosures and Claims for Future Damages*
- 08/10/2015  Opposition to Motion  
Filed By: Defendant Caparna, MD, Albert H  
*Defendant's Opposition to Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100*
- 08/12/2015  Pre-trial Memorandum

DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

Filed by: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Pre-Trial Memorandum*

08/12/2015



Brief

Filed By: Defendant Capanna, MD, Albert H  
*Trial Brief re Limited Hearsay Exception for Statements Made to a Physician*

08/12/2015



Brief

Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Trial Brief re NRS 42.021 and Introduction of Evidence of Benefits Payable to Plaintiff; Requirement that Plaintiff Obtain Medical Insurance Pursuant to Affordable Care Act Which Will Cover Claimed Future Medical Costs; Request for Periodic Payments for Any Award for Future Damages Over \$50,000*

08/12/2015



Reply to Opposition

Filed by: Defendant Capanna, MD, Albert H  
*Reply to Opposition to Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future Treatment and Surgery Made Without Scientific Basis*

08/13/2015



Reply in Support

Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100*

08/13/2015



Reply in Support

Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Reply in Support of Motion to Strike Untimely Disclosures and Opposition to Defendant's Counter-Motion to Exclude Improper "Supplemental" Disclosures and Claims for Future Damages*

08/14/2015

**Omnibus Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Motions in Limine*

08/14/2015

**Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information*

08/14/2015

**Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions*

08/14/2015

**Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report*

08/14/2015

**Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion in Limine No. 6: to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports*

08/14/2015

**Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*

08/14/2015

**Omnibus Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Omnibus Motion in Limine No. 1*

08/14/2015











**Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional*

08/14/2015















**Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)

DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

*Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100*

- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future Treatment and Surgery Made Without Scientific Basis*
- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence*
- 08/14/2015 **Motion to Strike** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion to Strike Defendant's Untimely Disclosures on Order Shortening Time*
- 08/14/2015 **Opposition and Countermotion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Opposition to Plaintiff's Motion to Strike Untimely Disclosures and Countermotion to Exclude Improper "Supplemental" Disclosures and Claims for Future Damages*
- 08/14/2015  **All Pending Motions** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
- 08/17/2015 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Vacated*  
*MedMal Sweeps*
- 08/19/2015  **Motion** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)  
**08/19/2015-08/21/2015**  
*Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence*
- 08/19/2015  **Jury Trial - FIRM** (10:30 AM) (Judicial Officer: Herndon, Douglas W.)  
**08/19/2015-08/21/2015, 08/24/2015-08/28/2015, 08/31/2015-09/02/2015**
- 08/20/2015  Brief  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Trial Brief No. 1*
- 08/21/2015  Receipt of Copy  
Filed by: Plaintiff Orth, Beau R  
*Receipt of Copy*
- 08/21/2015  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Proceedings: Jury Trial - Day 1 August 19, 2015*
- 08/21/2015  Jury List
- 08/22/2015  Order  
Filed By: Plaintiff Orth, Beau R  
*Order Regarding Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 UnConstitutional*
- 08/22/2015  Order  
Filed By: Plaintiff Orth, Beau R  
*Order Regarding Plaintiff's Motion to Strike Untimely Disclosures on Order Shortening Time*
- 08/25/2015  Brief  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Trial Brief No. 2 (regarding collections notices)*

DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

- 08/26/2015  Recorders Transcript of Hearing  
*Partial Transcript of Proceedings Trial by Jury - Day 3 Plaintiff's Opening Statements Only*
- 08/26/2015  Media Request and Order  
Party: Plaintiff Orth, Beau R  
*Media Request And Order Allowing Camera Access To Court Proceedings*
- 08/26/2015  Media Request and Order  
Party: Plaintiff Orth, Beau R  
*Media Request And Order Allowing Camera Access To Court Proceedings*
- 08/27/2015  Jury Instructions  
Party: Plaintiff Orth, Beau R  
*Plaintiff's Amended Proposed Jury Instructions*
- 08/27/2015  Jury Instructions  
Party: Plaintiff Orth, Beau R  
*Plaintiff's Proposed Jury Instructions*
- 08/27/2015  Recorders Transcript of Hearing  
*Transcript of Proceedings Jury Trial - Testimony of Dr. Allan Belzberg August 24, 2015*
- 08/28/2015  Recorders Transcript of Hearing  
*Transcript of Proceedings Excerpt of Jury Trial 4 Testimony of Andrw Cash August 24, 2015*
- 08/31/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Proceedings Jury Trial - Testimony of Dr. Frank Yoo August 25, 2015*
- 08/31/2015  Jury Instructions  
Party: Defendant Capanna, MD, Albert H  
*Defendant's Proposed Jury Instructions*
- 09/01/2015  Amended Jury List  
*Amended Jury*
- 09/01/2015  Jury Instructions
- 09/02/2015  Recorders Transcript of Hearing  
*Recorder's Transcript Re: All Pending Motions 08/14/15*
- 09/02/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Jury Trial - Day 8; Testimony of Albert Capanna 08-28-15*
- 09/02/2015  Jury Verdict
- 09/02/2015  Request  
*Request for Application of N.R.S. 41A.035, N.R.S. 42.021*
- 09/09/2015  Ex Parte Application  
Party: Defendant Capanna, MD, Albert H

DEPARTMENT 3  
**CASE SUMMARY**  
**CASE NO. A-11-648041-C**

*Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS. 42.021*

- 09/11/2015  Recorders Transcript of Hearing  
Party: Plaintiff Orth, Beau R  
*Partial Transcript of Proceedings Trial by Jury Day 9, Direct Examination of Dr. Marc Kaye Only August 31, 2015*
- 09/11/2015  Recorders Transcript of Hearing  
Party: Plaintiff Orth, Beau R  
*Partial Transcript of Proceedings Trial by Jury Day 10, Plaintiff's Rebuttal Closing Statements Only Septembe 1, 2015*
- 09/25/2015  Opposition  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Opposition to Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS 42.021*
- 10/01/2015  Memorandum of Costs and Disbursements  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Memorandum of Costs and Disbursements*
- 10/02/2015  Notice of Intent  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Intend to File Motion to Retax and Settle the Costs*
- 10/06/2015  Motion to Retax  
Filed By: Defendant Capanna, MD, Albert H  
*Motion to Retax and Settle the Costs*
- 10/14/2015  **Motion to Stay** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS. 42.021*
- 10/23/2015  Motion  
Filed By: Defendant Capanna, MD, Albert H  
*Motion for Application of NRS 41A.035, NRS 42.021*
- 10/26/2015  Judgment on Jury Verdict  
Filed By: Plaintiff Orth, Beau R  
*Judgment Upon the Jury Verdict*
- 10/26/2015 **Judgment Plus Legal Interest** (Judicial Officer: Herndon, Douglas W.)  
Debtors: Albert H Capanna, MD (Defendant)  
Creditors: Beau R Orth (Plaintiff)  
Judgment: 10/26/2015, Docketed: 11/02/2015  
Total Judgment: 4,659,490.49
- 10/27/2015  Objection  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant Albert H. Capanna, M.D.'s Objection to Judgment on the Jury Verdict*
- 10/27/2015  Opposition  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Opposition to Defendant's Motion to Retax and Settle the Costs*

DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

10/28/2015  Notice of Entry of Judgment  
Filed By: Plaintiff Orth, Beau R  
*Notice of Entry of Order*

10/30/2015  Reply to Opposition  
Filed by: Defendant Capanna, MD, Albert H  
*Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Retax and Settle The Costs*

11/04/2015  Opposition  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Opposition to Defendant's Motion for Application of NRS 41A.035 [AND] NRS 42.021*

11/09/2015  **Motion to Retax** (3:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Motion to Retax and Settle the Costs*

11/09/2015  Motion for New Trial  
Filed By: Defendant Capanna, MD, Albert H  
*Defendant's Motion for New Trial, or In The Alternative, For Amendment of Judgment*

11/10/2015  Recorders Transcript of Hearing  
*Partial Transcript of Proceedings Trial by Jury Day 3 August 21, 2015*

11/11/2015  Reply to Opposition  
Filed by: Defendant Capanna, MD, Albert H  
*Reply to Opposition to Motion for Application of N.R.S. 41A.035 and N.R.S. 42.021*

11/12/2015  Notice of Association of Counsel  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Association of Counsel*

11/16/2015  Motion for Attorney Fees  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion for Attorney's Fees*

11/16/2015  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Proceedings Jury Trial Day 4; Bench Conferences and Testimony of Andrew Cash Not Previously Transcribed August 24, 2015*


11/16/2015  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Proceedings Jury Trial Day 5; Bench Conferences and Proceedings Not Previously Transcribed August 25, 2015*

11/16/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Proceedings Jury Trial Day 6 August 26, 2015*

11/16/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Proceedings Jury Trial Day 7 August 27, 2015*


11/17/2015  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Proceedings Jury Trial Day 8 August 28, 2015*


DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C


11/17/2015  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Proceedings Jury Trial Day 9 August 31, 2015*


11/18/2015 **Motion** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Argument: Motions*


11/18/2015 **Motion** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)  
**11/18/2015, 12/16/2015**  
*Defendant's Motion for Application of NRS 4LA.035, NRS 42.021*


11/18/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)


11/18/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Proceedings Jury Trial, Day 11, September 2, 2015*


11/18/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Proceedings Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 4LA.035 and NRS 42.021, October 14, 2015*


11/23/2015  Recorders Transcript of Hearing  
*Transcript of Proceedings Jury Trial Day 10 September 1, 2015*


12/01/2015  Order  
Filed By: Plaintiff Orth, Beau R.  
*Order Regarding Plaintiff's Motions in Limine*


12/02/2015  Opposition  
Filed By: Defendant Capanna, MD, Albert H  
*Opposition to Motion for Attorney's Fees*

12/02/2015  Opposition  
Filed By: Plaintiff Orth, Beau R.  
*Plaintiff's Opposition to Defendant's Motion for New Trial, or in the Alternative For Amendment of Judgment*

12/03/2015  Notice of Entry of Order  
Filed By: Plaintiff Orth, Beau R.  
*Notice of Entry of Order*


12/10/2015  Stipulation and Order  
Filed by: Defendant Capanna, MD, Albert H  
*Stipulation and Order to Continue Hearings*


12/11/2015  Reply to Opposition  
Filed by: Defendant Capanna, MD, Albert H  
*Defendant's Reply to Opposition to Motion for New Trial, or in the Alternative, For Amendment of Judgment*


12/15/2015  Reply in Support  
Filed By: Plaintiff Orth, Beau R.  
*Plaintiff's Reply in Support of Motion for Attorney's Fees*


12/16/2015 **Motion for New Trial** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Defendant's Motion for New Trial, or In The Alternative, For Amendment of Judgment*

DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

12/16/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)


12/21/2015  **Motion for Attorney Fees and Costs** (3:00 AM) (Judicial Officer: Herndon, Douglas W.)  
*Plaintiff's Motion for Attorney Fees and Costs*


12/23/2015  Recorders Transcript of Hearing  
*Recorder's Transcript of Defendant's Motion for New Trial, or in the Alternative, for Amendment of Judgment; and Defendant's Motion for Application fo NRS 41A.035, NRS 42.021*


01/28/2016  Amended Judgment  
Filed By: Plaintiff Orth, Beau R  
*Amended Judgment Upon the Jury Verdict*


01/28/2016 **Amended Verdict** (Judicial Officer: Herndon, Douglas W.)  
Debtors: Albert H Capanna, MD (Defendant)  
Creditors: Beau R Orth (Plaintiff)  
Judgment: 01/28/2016, Docketed: 09/04/2015  
Total Judgment: 941,435.34


02/01/2016 **CANCELED Status Check: Medical/Dental Malpractice** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)  
*Vacated*


02/03/2016  Notice of Entry of Judgment  
Filed By: Plaintiff Orth, Beau R  
*Notice of Entry of Judgment*


02/10/2016  Order  
Filed By: Defendant Capanna, MD, Albert H  
*Order Regarding Defendant's Motion for New Trial, or in the Alternative, for Amendment of Judgment*

02/10/2016  Order  
Filed By: Defendant Capanna, MD, Albert H  
*Order Regarding Defendant's Motion for Application of NRS 41A.035 and 42.021*

02/11/2016  Notice of Entry of Order  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Entry of Order*









02/11/2016  Notice of Entry of Order  
Filed By: Defendant Capanna, MD, Albert H  
*Notice of Entry of Order*

03/04/2016  Motion to Strike  
Filed By: Plaintiff Orth, Beau R  
*Plaintiff's Motion to Strike New Arguments and Law Raised in Defendant's Reply Related to His Motion for New Trial on Order Shortening Time*

03/04/2016  Receipt of Copy  
Filed by: Plaintiff Orth, Beau R  
*Receipt of Copy*



DEPARTMENT 3  
**CASE SUMMARY**  
CASE NO. A-11-648041-C

03/07/2016	 Notice of Appeal Filed By: Defendant Capanna, MD, Albert H <i>Notice of Appeal</i>
03/07/2016	 Case Appeal Statement Filed By: Defendant Capanna, MD, Albert H <i>Case Appeal Statement</i>
03/07/2016	 Notice of Filing Cost Bond Filed By: Defendant Capanna, MD, Albert H <i>Notice of Cost Bond</i>
03/08/2016	 Opposition Filed By: Defendant Capanna, MD, Albert H <i>Opposition to Motion to Strike</i>
03/15/2016	 Reply in Support Filed By: Plaintiff Orth, Beau R <i>Plaintiff's Reply in Support of Motion to Strike New Arguments and Law Raised in Defendant's Reply Related to His Motion for New Trial on Order Shortening Time</i>
03/16/2016	 <b>Motion to Strike</b> (9:00 AM) (Judicial Officer: Herndon, Douglas W.) <i>Plaintiff's Motion to Strike New Arguments and Law Raised in Defendant's Reply Related to His Motion for New Trial on Order Shortening Time</i>
03/21/2016	 Notice of Appeal Filed By: Plaintiff Orth, Beau R <i>Notice of Cross-Appeal</i>
03/21/2016	 Case Appeal Statement Filed By: Plaintiff Orth, Beau R <i>Plaintiff's Cross-Appeal Statement</i>

DATE	FINANCIAL INFORMATION	
	<b>Defendant</b> Capanna, MD, Albert H	
	Total Charges	247.00
	Total Payments and Credits	247.00
	<b>Balance Due as of 3/23/2016</b>	<b>0.00</b>
	<b>Plaintiff</b> Orth, Beau R	
	Total Charges	294.00
	Total Payments and Credits	294.00
	<b>Balance Due as of 3/23/2016</b>	<b>0.00</b>

CIVIL COVER SHEET

A - 1 1 - 6 4 8 0 4 1 - C

Clark County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

XXVII

**I. Party Information**

Plaintiff(s) (name/address/phone): BEAU R. ORTH

Defendant(s) (name/address/phone): ALBERT H. CAPANNA, MD

Attorney (name/address/phone):

Dennis M. Prince, Prince & Keating, 3230 S. Buffalo Drive,  
Suite 108, Las Vegas, Nevada 89117 (702) 228-6800

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence - Auto <input checked="" type="checkbox"/> <b>Negligence - Medical/Dental</b> <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category, for Clark or Washoe Counties only.)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

09/8/11

Date

Signature of initiating party or representative

ORIGINAL

1 ORDR

2 ROBERT L. EISENBERG (Nevada Bar No. 950)

3 Lemons, Grundy & Eisenberg

6005 Plumas Street, Third Floor

4 Reno, Nevada 89509

775-786-6868

5 775-786-9756

Email: [rls@lge.net](mailto:rls@lge.net)

6 Anthony D. Lauria

7 Nevada Bar No. 4114

8 LAURIA TOKUNAGA GATES & LINN, LLP

601 South Seventh Street, 2nd Floor

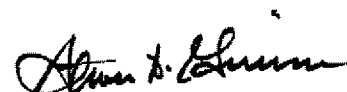
9 Las Vegas, NV 89101

10 Tel: (702) 387-8633

Fax: (702) 387-8635

11 ATTORNEYS FOR DEFENDANT

Electronically Filed  
02/10/2016 11:50:25 AM



CLERK OF THE COURT

12  
13 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
14 IN AND FOR THE COUNTY OF CLARK

15 BEAU R. ORTH,

Plaintiff,

Case No. A-11-648041

Dept. No. III

16 vs.

17 ALBERT H. CAPANNA, M.D.

Defendant.

18 ORDER REGARDING  
19 DEFENDANT'S MOTION  
20 FOR NEW TRIAL, OR IN  
21 THE ALTERNATIVE, FOR  
22 AMENDMENT OF  
23 JUDGMENT

24 This matter was heard by the Court on December 16, 2015. Dennis M. Prince, of  
25 Eglet Prince, appeared on behalf of Plaintiff Orth. Anthony D. Lauria, of Lauria  
26 Tokunaga Gates & Linn, LLP, and Robert L. Eisenberg, of Lemons, Grundy &  
27 Eisenberg, appeared on behalf of Defendant Capanna. Having considered the motion  
28 papers and the oral arguments by counsel, the Court hereby rules as follows:

///

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Motion for New Trial

The Court finds that Defendant has not established grounds for a new trial, pursuant to NRC P 59. The Court affirms its pretrial rulings dealing with discovery and evidence relating to expert witnesses. The Court finds no basis to grant a new trial, pursuant to NRC P 59, regarding discussions about insurance in *voir dire*, jury instructions or arguments by plaintiff's counsel.

The Court also finds no basis for a new trial regarding MRI presentations at trial. And the Court finds no basis for a new trial on other issues raised in Defendant's Motion for New Trial.

Accordingly, the Motion for New Trial is denied.

Motion for Amendment of Judgment

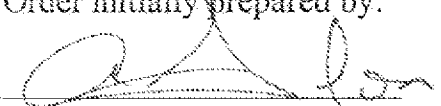
This motion seeks an amendment of the judgment, to comply with NRS 41A.035, which imposes a cap on noneconomic damages. Having considered the motion papers and the arguments of counsel, the Court hereby grants the Motion for Amendment of the Judgment. The noneconomic damages will be reduced to \$350,000. This amount will apply entirely to the past noneconomic damages.

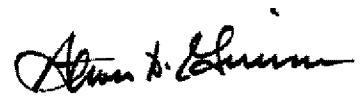
It is so ORDERED.

DATED: Feb 4, 2016

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Order initially prepared by:

 4414  
\_\_\_\_\_  
ROBERT L. EISENBERG  
(Nv. Bar No. 0950)  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
Email: [rie@lge.net](mailto:rie@lge.net)  
*Attorneys for Defendant*



CLERK OF THE COURT

1 **NEOU**  
Anthony D. Lauria  
2 Nevada Bar No.: 4114  
Kimberly L. Johnson  
3 Nevada Bar No.: 10554  
**LAURIA TOKUNAGA GATES & LINN, LLP**  
4 601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
5 (702) 387-8633; Fax: (702) 387-8635  
Attorneys for *Defendant* **ALBERT H. CAPANNA,**  
6 **M.D.**

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY NEVADA**

10 **BEAU R. ORTH,**  
11 **Plaintiff,**

12 **v.**

13 **ALBERT H. CAPANNA, M.D.; DOES**  
**I THROUGH X; ROE BUSINESS**  
14 **ENTITIES I THROUGH X,**  
15 **Defendants.**

**CASE NO. : A-11-648041-C**  
**DEPT. NO. : 3**

**NOTICE OF ENTRY OF ORDER**

16  
17 **NOTICE IS HEREBY GIVEN** that the above-entitled court entered its Order  
18 on February 4, 2016, a copy of which is attached.

19 Dated: February 11, 2016.

**LAURIA TOKUNAGA GATES & LINN, LLP**

20  
21 **By: /s/ ANTHONY D. LAURIA**  
Anthony D. Lauria  
22 Nevada Bar No.: 4114  
601 South Seventh Street  
23 Las Vegas, Nevada 89101  
Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lauria Tokunaga  
3 Gates & Linn, and that on the 11<sup>th</sup> day of February 2016, I served a true and correct  
4 copy of the foregoing **NOTICE OF ENTRY OF ORDER**:

- 5
- 6  By placing same to be deposited for mailing in the United States  
7 Mail, in a sealed envelope upon which first class postage was  
8 prepared in Las Vegas, Nevada; and/or
- 9  Via electronic mail; and/or
- 10  Via facsimile; and/or
- 11  Via Receipt of Copy to the interested parties

12 as follows:

13 Dennis M. Prince, Esq.  
14 Eglet Prince  
15 400 S. 7<sup>th</sup> Street, Box 1, Suite 400  
16 Las Vegas, Nevada 89101  
17 Attorneys for Plaintiff  
18 BEAU R. ORTH

19 /s/ *CARRIE C. TAYLOR*  
20 Carrie C. Taylor  
21 Lauria Tokunaga Gates & Linn  
22  
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ORDR  
ROBERT L. EISENBERG (Nevada Bar No. 950)  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
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Email: [rlc@lge.net](mailto:rlc@lge.net)

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CLERK OF THE COURT

Anthony D. Lauria  
Nevada Bar No. 4114  
LAURIA TOKUNAGA GATES & LINN, LLP  
601 South Seventh Street, 2nd Floor  
Las Vegas, NV 89101  
Tel: (702) 387-8633  
Fax: (702) 387-8635  
*ATTORNEYS FOR DEFENDANT*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

BEAU R. ORTH,

Plaintiff,

Case No. A-11-648041

Dept. No. III

vs.

ALBERT H. CAPANNA, M.D.

Defendant.

**ORDER REGARDING  
DEFENDANT'S MOTION  
FOR NEW TRIAL, OR IN  
THE ALTERNATIVE, FOR  
AMENDMENT OF  
JUDGMENT**

\_\_\_\_\_ /  
This matter was heard by the Court on December 16, 2015. Dennis M. Prince, of Eglet Prince, appeared on behalf of Plaintiff Orth. Anthony D. Lauria, of Lauria Tokunaga Gates & Linn, LLP, and Robert L. Eisenberg, of Lemons, Grundy & Eisenberg, appeared on behalf of Defendant Capanna. Having considered the motion papers and the oral arguments by counsel, the Court hereby rules as follows:

///

1 Motion for New Trial

2 The Court finds that Defendant has not established grounds for a new trial,  
3 pursuant to NRCP 59. The Court affirms its pretrial rulings dealing with discovery and  
4 evidence relating to expert witnesses. The Court finds no basis to grant a new trial,  
5 pursuant to NRCP 59, regarding discussions about insurance in *voir dire*, jury  
6 instructions or arguments by plaintiff's counsel.

7 The Court also finds no basis for a new trial regarding MRI presentations at trial.  
8 And the Court finds no basis for a new trial on other issues raised in Defendant's  
9 Motion for New Trial.

10 Accordingly, the Motion for New Trial is denied.

11 Motion for Amendment of Judgment


12 This motion seeks an amendment of the judgment, to comply with NRS  
13 41A.035, which imposes a cap on noneconomic damages. Having considered the  
14 motion papers and the arguments of counsel, the Court hereby grants the Motion for  
15 Amendment of the Judgment. The noneconomic damages will be reduced to \$350,000.  
16 This amount will apply entirely to the past noneconomic damages.  
17

18 It is so ORDERED.

19 DATED: Feb 4, 2016

20   
21 \_\_\_\_\_  
DISTRICT COURT JUDGE

22 Order initially prepared by:

23   
24 ROBERT L. EISENBERG  
25 (Nv. Bar No. 0950)  
26 Lemons, Grundy & Eisenberg  
27 6005 Plumas Street, Third Floor  
28 Reno, Nevada 89519  
775-786-6868  
Email: [rie@lge.net](mailto:rie@lge.net)  
*Attorneys for Defendant*



1 ORDR  
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CLERK OF THE COURT

9 Anthony D. Lauria  
10 Nevada Bar No. 4114  
11 LAURIA TOKUNAGA GATES & LINN, LLP  
12 601 South Seventh Street, 2nd Floor  
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15 Fax: (702) 387-8635  
16 ATTORNEYS FOR DEFENDANT

17  
18 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
19 IN AND FOR THE COUNTY OF CLARK

20 BEAU R. ORTH,  
21  
22 Plaintiff,

Case No. A-11-648041  
Dept. No. III

23 vs.

24 ALBERT H. CAPANNA, M.D.  
25 Defendant.

ORDER REGARDING  
DEFENDANT'S MOTION  
FOR APPLICATION OF  
NRS 41A.035 and 42.021

26 \_\_\_\_\_ /  
27  
28 This matter was heard by the Court on December 16, 2015. Dennis M. Prince, of  
Eglet Prince, appeared on behalf of Plaintiff Orth. Anthony D. Lauria, of Lauria  
Tokunaga Gates & Linn, LLP, and Robert L. Eisenberg, of Lemons, Grundy &  
Eisenberg, appeared on behalf of Defendant Capanna. Having considered the motion  
papers and the oral arguments by counsel, the Court hereby rules as follows:

///

NRS 41A.035

1  
2 This statute imposes a cap of \$350,000 on noneconomic damages.<sup>1</sup> The Court  
3 finds that statute is applicable and that Plaintiff's noneconomic damages must not  
4 exceed \$350,000. Nevertheless, the Court denies Defendant's request to apportion  
5 noneconomic damages between past and future damages. The Court finds that the  
6 entire \$350,000 amount of noneconomic damages should be attributed to past damages.  
7

NRS 42.021

8  
9 Subsections (3) through (8) of this statute deal with periodic payments for future  
10 damages. The Court finds that the statutory provisions for periodic payments apply to  
11 the amount awarded by the jury for future medical expenses, i.e., \$350,000. The Court  
12 finds that this portion of the judgment shall be paid in three periodic payments. The  
13 first payment will be the amount of \$175,000, which consists of one-half of the future  
14 medical expenses awarded by the jury. This amount will be paid within six months  
15 after entry of the amended judgment. The second periodic payment will be the amount  
16 of \$88,000, which will be paid within one year after entry of the amended judgment.  
17 The final periodic payment will be the amount of \$87,000, which will be paid within 18  
18 months after entry of the amended judgment.  
19

20 The Court also finds that the \$350,000 amount of future medical expenses  
21 awarded by the jury shall draw post-judgment interest, pursuant to NRS 17.130(2), from  
22 the time of entry of the judgment until satisfied, with post-judgment interest to be  
23 adjusted as each periodic payment is made.

24 It is so ORDERED.

25 DATED: February 4, 2016 \_\_\_\_\_  
26

  
DISTRICT COURT JUDGE

27  
28 <sup>1</sup> The Court has also dealt with application of this statute in the Order Regarding Defendant's Motion for Amendment of the Judgment.

1 Order initially prepared by:

2  4114

3 ROBERT L. EISENBERG

4 (Nv. Bar No. 0950)

5 Lemons, Grundy & Eisenberg

6 6005 Plumas Street, Third Floor

7 Reno, Nevada 89519

8 775-786-6868

9 Email: [rlc@lge.net](mailto:rlc@lge.net)

10 *Attorneys for Defendant*

11

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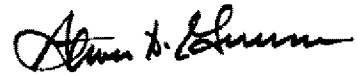
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CLERK OF THE COURT

1 **NEOJ**  
2 Anthony D. Lauria  
3 Nevada Bar No.: 4114  
4 Kimberly L. Johnson  
5 Nevada Bar No.: 10554  
6 **LAURIA TOKUNAGA GATES & LINN, LLP**  
7 601 South Seventh Street, 2<sup>nd</sup> Floor  
8 Las Vegas, Nevada 89101  
9 (702) 387-8633; Fax: (702) 387-8635  
10 Attorneys for *Defendant* **ALBERT H. CAPANNA,**  
11 **M.D.**

7 **DISTRICT COURT**  
8 **CLARK COUNTY NEVADA**

9 **BEAU R. ORTH,**  
10  
11 Plaintiff,

CASE NO. : A-11-648041-C  
DEPT. NO. : 3

**NOTICE OF ENTRY OF ORDER**

12 v.

13 **ALBERT H. CAPANNA, M.D.; DOES**  
14 **I THROUGH X; ROE BUSINESS**  
15 **ENTITIES I THROUGH X,**  
16 Defendants.

17 **NOTICE IS HEREBY GIVEN** that the above-entitled court entered its Order  
18 on February 4, 2016, a copy of which is attached.

19 Dated: February 11, 2016.

20 **LAURIA TOKUNAGA GATES & LINN, LLP**

21 By: /s/ **ANTHONY D. LAURIA**  
22 Anthony D. Lauria  
23 Nevada Bar No.: 4114  
24 601 South Seventh Street  
25 Las Vegas, Nevada 89101  
26 Attorneys for Defendant

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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lauria Tokunaga Gates & Linn, and that on the 11<sup>th</sup> day of February 2016, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER:**

- By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepared in Las Vegas, Nevada; and/or
- Via electronic mail; and/or
- Via facsimile; and/or
- Via Receipt of Copy to the interested parties

as follows:

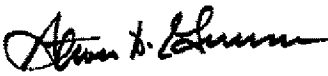
Dennis M. Prince, Esq.  
Eglet Prince  
400 S. 7<sup>th</sup> Street, Box 1, Suite 400  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff  
BEAU R. ORTH

*/s/ CARRIE C. TAYLOR*  
Carrie C. Taylor, an employee of  
Lauria Tokunaga Gates & Linn

ORIGINAL

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1 ORDR  
2 ROBERT L. EISENBERG (Nevada Bar No. 950)  
3 Lemons, Grundy & Eisenberg  
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5 Reno, Nevada 89509  
6 775-786-6868  
7 775-786-9756  
8 Email: [rie@lge.net](mailto:rie@lge.net)

  
CLERK OF THE COURT

9 Anthony D. Lauria  
10 Nevada Bar No. 4114  
11 LAURIA TOKUNAGA GATES & LINN, LLP  
12 601 South Seventh Street, 2nd Floor  
13 Las Vegas, NV 89101  
14 Tel: (702) 387-8633  
15 Fax: (702) 387-8633  
16 ATTORNEYS FOR DEFENDANT

17  
18 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
19 IN AND FOR THE COUNTY OF CLARK

20 BEAU R. ORTH,

Plaintiff,

Case No. A-11-648041

Dept. No. III

21 vs.

22 ALBERT H. CAPANNA, M.D.

Defendant.

ORDER REGARDING  
DEFENDANT'S MOTION  
FOR APPLICATION OF  
NRS 41A.035 and 42.021

23 \_\_\_\_\_ /  
24  
25 This matter was heard by the Court on December 16, 2015. Dennis M. Prince, of  
26 Eglet Prince, appeared on behalf of Plaintiff Orth. Anthony D. Lauria, of Lauria  
27 Tokunaga Gates & Linn, LLP, and Robert L. Eisenberg, of Lemons, Grundy &  
28 Eisenberg, appeared on behalf of Defendant Capanna. Having considered the motion  
papers and the oral arguments by counsel, the Court hereby rules as follows:

///

NRS 41A.035

1  
2 This statute imposes a cap of \$350,000 on noneconomic damages.<sup>1</sup> The Court  
3 finds that statute is applicable and that Plaintiff's noneconomic damages must not  
4 exceed \$350,000. Nevertheless, the Court denies Defendant's request to apportion  
5 noneconomic damages between past and future damages. The Court finds that the  
6 entire \$350,000 amount of noneconomic damages should be attributed to past damages.  
7

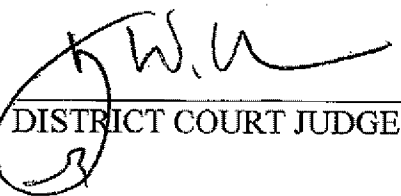
NRS 42.021

8  
9 Subsections (3) through (8) of this statute deal with periodic payments for future  
10 damages. The Court finds that the statutory provisions for periodic payments apply to  
11 the amount awarded by the jury for future medical expenses, i.e., \$350,000. The Court  
12 finds that this portion of the judgment shall be paid in three periodic payments. The  
13 first payment will be the amount of \$175,000, which consists of one-half of the future  
14 medical expenses awarded by the jury. This amount will be paid within six months  
15 after entry of the amended judgment. The second periodic payment will be the amount  
16 of \$88,000, which will be paid within one year after entry of the amended judgment.  
17 The final periodic payment will be the amount of \$87,000, which will be paid within 18  
18 months after entry of the amended judgment.  
19

20 The Court also finds that the \$350,000 amount of future medical expenses  
21 awarded by the jury shall draw post-judgment interest, pursuant to NRS 17.130(2), from  
22 the time of entry of the judgment until satisfied, with post-judgment interest to be  
23 adjusted as each periodic payment is made.

24 It is so ORDERED.

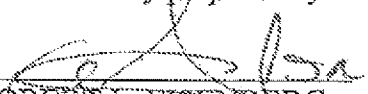
25 DATED: February 4, 2016

  
DISTRICT COURT JUDGE

26  
27  
28 <sup>1</sup> The Court has also dealt with application of this statute in the Order Regarding  
Defendant's Motion for Amendment of the Judgment.

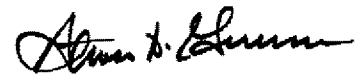
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Order initially prepared by:

 4114

ROBERT L. EISENBERG  
(Nv. Bar No. 0950)  
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Email: [rlc@lge.net](mailto:rlc@lge.net)  
*Attorneys for Defendant*





CLERK OF THE COURT

1 **ORDR**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No.: 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No.: 6419  
6 **DANIELLE TARMU, ESQ.**  
7 Nevada Bar No.: 11727  
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14 (702) 450-5400 phone  
15 (702) 450-5451 facsimile  
16 Attorneys for Plaintiff  
17 *Beau R. Orth*

12 **DISTRICT COURT**  
13  
14 **CLARK COUNTY, NEVADA**

15 **BEAU R. ORTH,**  
16  
17 Plaintiff,

CASE NO. : A-11-648041-C  
DEPT. NO. : III

17 vs.

18 **ALBERT H. CAPANNA, M.D.;**  
19 **DOES I through X; ROE BUSINESS**  
20 **ENTITIES I through X, inclusive,**  
21  
22 Defendants.

**ORDER REGARDING PLAINTIFF'S**  
**MOTION TO DECLARE NRS 42.021**  
**AND NRS 41A.035**  
**UNCONSTITUTIONAL**

23 This matter having come on for hearing on the 14th day of August, 2015; Dennis M.  
24 Prince, Esq., and Danielle Tarmu, Esq. of Eglet Prince appearing on behalf of Plaintiff, Beau  
25 Orth; and Anthony D. Lauria, Esq. and Paul A. Cardinale, Esq. of Laura Tokunaga Gates &  
26 Linn, LLP, appearing on behalf of Defendant Albert H. Capanna, M.D. The Court, having read  
27 the moving papers and heard oral argument by counsel, and hereby **DENIES** Plaintiff's  
28

**EGLET PRINCE**

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Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional. The statutes pass constitutional scrutiny under rational basis test.

Dated this 23 day of August, 2015.

  
DISTRICT COURT JUDGE

DATED this 22<sup>nd</sup> day of August, 2015.

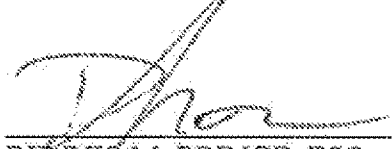
DATED this \_\_\_\_ day of August, 2015.

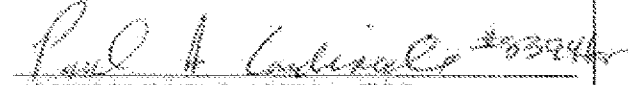
Respectfully Submitted By:

Approved as to Form and Content:

EGLET PRINCE

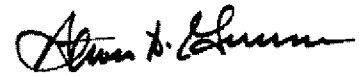
LAURIA TOKUNAGA GATES & LINN





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Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
DANIELLE TARMU, ESQ.  
Nevada Bar No.: 11727  
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*Attorneys for Plaintiff*

ANTHONY D. LAURIA, ESQ.  
Nevada Bar No. 4114  
KIMBERLY L. JOHNSON, ESQ.  
Nevada Bar No.: 10554  
601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
*Attorneys for Defendant*



CLERK OF THE COURT

**EGLET PRINCE**

1 **ORDR**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No.: 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No.: 6419  
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14 (702) 450-5400 phone  
15 (702) 450-5451 facsimile  
16 Attorneys for Plaintiff  
17 *Beau R. Orth*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

18 **BEAU R. ORTH,**

19 Plaintiff,

20 vs.

21 **ALBERT H. CAPANNA, M.D.;**  
22 **DOES I through X; ROE BUSINESS**  
23 **ENTITIES I through X, inclusive,**

24 Defendants.

CASE NO. : A-11-648041-C  
DEPT. NO. : III

**ORDER REGARDING PLAINTIFF'S**  
**MOTIONS IN LIMINE**

25 This matter having come on for hearing on the 14th day of August, 2015; Dennis M.  
26 Prince, Esq., and Danielle Tarmu, Esq. of Eglet Prince appearing on behalf of Plaintiff, Beau  
27 Orth; and Anthony D. Lauria, Esq. and Paul A. Cardinale, Esq. of Laura Tokunaga Gates &  
28 Linn, LLP, appearing on behalf of Defendant Albert H. Capanna, M.D. The Court, having read  
the moving papers and heard oral argument by counsel, and hereby rules as follows:

1           **IT IS HEREBY ORDERED** that Plaintiff's Omnibus Motion in Limine No. 1 is ruled  
2 upon as follows:

3           **1) Hypothetical Medical Condition.** This Motion is **GRANTED**. Questions  
4 must be related to evidence in the record or evidence they reasonably anticipate will be  
5 presented at trial.

6  
7           **2) Reference to Plaintiff Being a Malingerer, Magnifying Symptoms or**  
8 **Manifesting Secondary Gain Motives Should be Excluded.** This Motion is **GRANTED** as  
9 unopposed. Defendant will not make this argument at all unless new evidence regarding these  
10 issues is disclosed at trial, in which case counsel must approach the bench before making any  
11 reference to the jury.

12  
13           **3) References to Defense Medical Examiners as "Independent."** This Motion is  
14 **GRANTED** as unopposed.

15  
16           **4) Closing Argument.** This Motion is **GRANTED** as unopposed. Defendant  
17 will not argue that Plaintiff's counsel is asking for a higher verdict because he thinks the jury  
18 will award less. This order does not prevent Defendant from arguing that the amount requested  
19 by Plaintiff is not supported by the evidence.

20  
21           **5) Taxation.** This Motion is **GRANTED** as unopposed. The parties will not  
22 reference taxation of any amount of damages.

23  
24           **6) Precluding Reference as to Plaintiff's Counsel Working with Plaintiff's**  
25 **Treating Physicians on Unrelated Cases.** This Motion is **GRANTED IN PART** and  
26 **DENIED IN PART.** Defendant can ask questions about the nature of physicians' practice,  
27 such as the amount of work for defense versus plaintiffs, and attorneys. However, Defendant  
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cannot ask specific questions about working with Plaintiff's counsel in the past, such as the number of times the doctor treated Plaintiff's counsel's clients.

7) **Exclude Collateral Sources of Payment.** This Motion is **DENIED** without prejudice.

**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 2 to Exclude Irrelevant and/or Unduly Prejudicial Information is **GRANTED**. Any reference to Plaintiff's parents' alleged spinal treatment or Plaintiff having a congenital spinal condition is excluded from trial.

**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 3 to Exclude Prior Unrelated Medical Conditions is **GRANTED**. Any reference to Plaintiff's previous injuries sustained while playing football and sports, including but not limited to, his ankle injury in his sophomore year of college, his torn ligament in his hand/thumb area approximately in 2009 or early 2010, and his March 2010 concussion, are excluded from trial. If Defendant believes that something at trial opens the door to allow questioning in this area, then the parties must approach the bench before asking questions or referencing it before the jury.

**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 4 to Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report is **GRANTED**. Dr. Cash can testify about billing, causation, prognosis, future treatment, and extent of disability without a formal expert report. He is a treating physician, not a retained expert. Asking a treating physician to do a future cost letter or certain other tasks does not automatically convert him/her to a retained expert.

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IT IS HEREBY ORDERED that Plaintiff's Motion in Limine No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire is MOOT as it is too late.

IT IS HEREBY ORDERED that Plaintiff's Motion in Limine No. 6 to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports is GRANTED. Retained expert opinions must comply with NRC 16.1(a)(2)(B) and be in a 16.1 disclosure, report, or deposition.

Dated this 1 day of ~~August~~<sup>Sept</sup>, 2015.

  
DISTRICT COURT JUDGE

DATED this 1 day of ~~August~~<sup>Dec.</sup>, 2015.


DATED this \_\_\_\_ day of August, 2015.

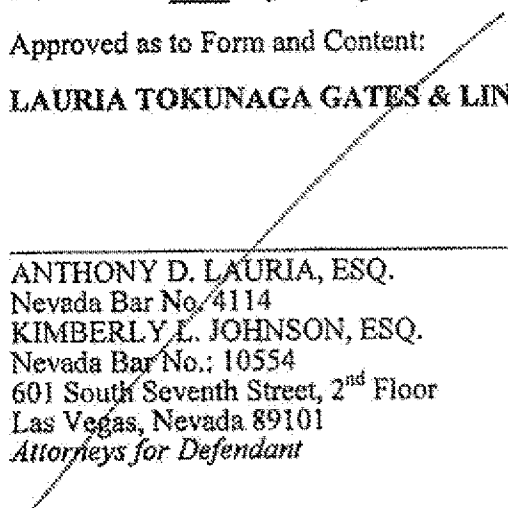
Respectfully Submitted By:

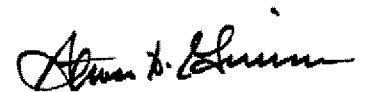
Approved as to Form and Content:

EGLET PRINCE

LAURIA TOKUNAGA GATES & LINN

  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
DANIELLE TARMU, ESQ.  
Nevada Bar No.: 11727  
400 South Seventh Street, Suite 400  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

  
ANTHONY D. LAURIA, ESQ.  
Nevada Bar No. 4114  
KIMBERLY L. JOHNSON, ESQ.  
Nevada Bar No.: 10554  
601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
*Attorneys for Defendant*



CLERK OF THE COURT

1 **NEOJ**  
2 DENNIS M. PRINCE, ESQ.  
3 Nevada Bar No. 5092  
4 TRACY A. EGLET, ESQ.  
5 Nevada Bar No. 6419  
6 DANIELLE TARMU, ESQ.  
7 Nevada Bar No. 11727  
8 **EGLET PRINCE**  
9 400 South Seventh Street, #400  
10 Las Vegas, Nevada 89101  
11 *eservice@egletlaw.com*  
12 (702) 450-5400 phone  
13 (702) 450-5451 facsimile

14 Attorneys for Plaintiff  
15 *Beau R. Orth*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **BEAU R. ORTH,**

19 Plaintiff,

20 vs.

21 **ALBERT H. CAPANNA, M.D.;**  
22 **DOES I through X; ROE BUSINESS**  
23 **ENTITIES I through X, inclusive,**

24 Defendants.

25 CASE NO. : A-11-648041-C  
26 DEPT. NO. : III

27 **NOTICE OF ENTRY OF ORDER**

28 **EGLET PRINCE**

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PLEASE TAKE NOTICE that an Order Regarding Plaintiff's Motions in Limine was signed on September 1, 2015 and entered in the above-entitled action on December 1, 2015, a copy of which is attached hereto as **Exhibit "1."**

Respectfully submitted this 3rd day of December, 2015.

**EGLET PRINCE**

/s/ Danielle Tarmu  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No.: 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No.: 6419  
DANIELLE TARMU, ESQ.  
Nevada Bar No.: 11727



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on December 3rd, 2015, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Anthony D. Lauria, Esq.  
Kimberly L. Johnson, Esq.  
LAURIA, TOKUNAGA GATES &  
LINN, LLP  
601 South Seventh Street  
2<sup>nd</sup> Floor  
Las Vegas, NV 89101  
Office: (702) 387-8633  
Fax: (702) 387-8635  
[Alauria@ltglaw.net](mailto:Alauria@ltglaw.net)  
[Kjohnson@ltglaw.net](mailto:Kjohnson@ltglaw.net)  
Attorneys for Defendant  
*Albert H. Capanna, M.D.*

/s/ Brittney Glover  
an Employee of EGLET PRINCE

# **EXHIBIT “1”**

*Alan D. Schuman*  
CLERK OF THE COURT

**EGLET PRINCE**

1 **ORDER**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No.: 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No.: 6419  
6 **DANIELLE TARMU, ESQ.**  
7 Nevada Bar No.: 11727  
8 **EGLET PRINCE**  
9 400 South Seventh Street, #400  
10 Las Vegas, Nevada 89101  
11 *dprince@egletlaw.com*  
12 *teglet@egletlaw.com*  
13 *dtarmu@egletlaw.com*  
14 (702) 450-5400 phone  
15 (702) 450-5451 facsimile  
16 Attorneys for Plaintiff  
17 *Beau R. Orth*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

18 **BEAU R. ORTH,**  
19 **Plaintiff,**

CASE NO. : A-11-648041-C  
DEPT. NO. : III

20 vs.

**ORDER REGARDING PLAINTIFF'S**  
**MOTIONS IN LIMINE**

21 **ALBERT H. CAPANNA, M.D.;**  
22 **DOES I through X; ROE BUSINESS**  
23 **ENTITIES I through X, inclusive,**  
24 **Defendants.**

25 This matter having come on for hearing on the 14th day of August, 2015; Dennis M.  
26 Prince, Esq., and Danielle Tarmu, Esq. of Eglet Prince appearing on behalf of Plaintiff, Beau  
27 Orth; and Anthony D. Lauria, Esq. and Paul A. Cardinale, Esq. of Laura Tokumaga Gates &  
28 Linn, LLP, appearing on behalf of Defendant Albert H. Capanna, M.D. The Court, having read  
the moving papers and heard oral argument by counsel, and hereby rules as follows:

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**IT IS HEREBY ORDERED** that Plaintiff's Omnibus Motion in Limine No. 1 is ruled upon as follows:

1) **Hypothetical Medical Condition. This Motion is GRANTED.** Questions must be related to evidence in the record or evidence they reasonably anticipate will be presented at trial.

2) **Reference to Plaintiff Being a Malingerer, Magnifying Symptoms or Manifesting Secondary Gain Motives Should be Excluded. This Motion is GRANTED as unopposed.** Defendant will not make this argument at all unless new evidence regarding these issues is disclosed at trial, in which case counsel must approach the bench before making any reference to the jury.

3) **References to Defense Medical Examiners as "Independent." This Motion is GRANTED as unopposed.**

4) **Closing Argument. This Motion is GRANTED as unopposed.** Defendant will not argue that Plaintiff's counsel is asking for a higher verdict because he thinks the jury will award less. This order does not prevent Defendant from arguing that the amount requested by Plaintiff is not supported by the evidence.

5) **Taxation. This Motion is GRANTED as unopposed.** The parties will not reference taxation of any amount of damages.

6) **Precluding Reference as to Plaintiff's Counsel Working with Plaintiff's Treating Physicians on Unrelated Cases. This Motion is GRANTED IN PART and DENIED IN PART.** Defendant can ask questions about the nature of physicians' practice, such as the amount of work for defense versus plaintiffs, and attorneys. However, Defendant

1 cannot ask specific questions about working with Plaintiff's counsel in the past, such as the  
2  
3 number of times the doctor treated Plaintiff's counsel's clients.

4           7) **Exclude Collateral Sources of Payment.** This Motion is **DENIED** without  
5  
6 prejudice.

7           **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 2 to Exclude  
8 Irrelevant and/or Unduly Prejudicial Information is **GRANTED**. Any reference to Plaintiff's  
9 parents' alleged spinal treatment or Plaintiff having a congenital spinal condition is excluded  
10 from trial.

11           **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 3 to Exclude Prior  
12 Unrelated Medical Conditions is **GRANTED**. Any reference to Plaintiff's previous injuries  
13 sustained while playing football and sports, including but not limited to, his ankle injury in his  
14 sophomore year of college, his torn ligament in his hand/thumb area approximately in 2009 or  
15 early 2010, and his March 2010 concussion, are excluded from trial. If Defendant believes that  
16 something at trial opens the door to allow questioning in this area, then the parties must  
17 approach the bench before asking questions in this area, then the parties must  
18 approach the bench before asking questions or referencing it before the jury.

19           **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 4 to Permit  
20 Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and  
21 Extent of Disability Without a Formal Expert Report is **GRANTED**. Dr. Cash can testify  
22 about billing, causation, prognosis, future treatment, and extent of disability without a formal  
23 expert report. He is a treating physician, not a retained expert. Asking a treating physician to  
24 do a future cost letter or certain other tasks does not automatically convert him/her to a retained  
25 expert.  
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**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire is **MOOT** as it is too late.

**IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 6 to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports is **GRANTED**. Retained expert opinions must comply with NRC 16.1(a)(2)(B) and be in a 16.1 disclosure, report, or deposition.

Dated this 1 day of <sup>Sept</sup> ~~August~~, 2015.

  
DISTRICT COURT JUDGE

DATED this 1 day of <sup>Dec.</sup> ~~August~~, 2015.


DATED this \_\_\_ day of August, 2015.

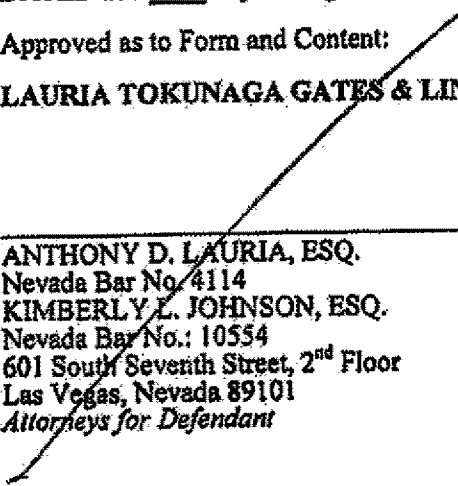
Respectfully Submitted By:

Approved as to Form and Content:

**EGLET PRINCE**

**LAURIA TOKUNAGA GATES & LINN**

  
\_\_\_\_\_  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
DANIELLE TARMU, ESQ.  
Nevada Bar No.: 11727  
400 South Seventh Street, Suite 400  
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*Attorneys for Plaintiff*

  
\_\_\_\_\_  
ANTHONY D. LAURIA, ESQ.  
Nevada Bar No. 4114  
KIMBERLY L. JOHNSON, ESQ.  
Nevada Bar No.: 10554  
601 South Seventh Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 08, 2012**

---

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

---

**August 08, 2012      9:00 AM      Status Check:  
Medical/Dental  
Malpractice**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** Complex Litigation Center  
Wiese, Jerry A.

---

**COURT CLERK:** Dulce Romea  
Alice Jacobson  
Sharon Coffman  
Aaron Carbajal  
Vanessa Ward

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Attorney(s) present: Michael Kane and John Cotton.

The Med-Mal Status Check was conducted by a panel consisting of Judges Jerry A. Wiese II and Kenneth C. Cory. Pursuant to EDCR 1.30, due to unavailability of the court or counsel, CHIEF JUDGE ORDERED case is REASSIGNED to Dept. 12.

DISTRICT COURT  
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

February 05, 2013

A-11-648041-C Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

February 05, 2013 1:00 PM Status Check:  
Medical/Dental  
Malpractice

HEARD BY: Wiese, Jerry A. COURTROOM: Complex Litigation Center

COURT CLERK: Alice Jacobson  
Sylvia Perez  
Andrea Natali  
Katrina Hernandez  
Michelle Jones

RECORDER:

REPORTER:

PARTIES  
PRESENT:

JOURNAL ENTRIES

- Appearances by: Adam Schneider and Michael Kane.

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, matter SET for trial and CONTINUED to next Med-Mal Status Check.

2/3/14 1:00 PM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 06, 2013**

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A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

---

**August 06, 2013      9:00 AM      Status Check:  
Medical/Dental  
Malpractice**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** Complex Litigation Center

**COURT CLERK:** Sylvia Perez  
Alice Jacobson  
Sharon Coffman  
Teresa Slade  
Keri Cromer

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Attorneys present: Adam Schneider and Evan Schwab

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, trial date VACATED AND RESET. Pursuant to EDCR 1.30, due to the unavailability of the Dept. or counsel, CHIEF JUDGE ORDERED, case TRANSFERRED to Dept. 3. FURTHER, matter SET on next Med-Mal Status Check.

1/6/14 1:30 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**February 04, 2014**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**February 04, 2014      8:30 AM      Status Check:  
Medical/Dental  
Malpractice**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** Complex Litigation Center

**COURT CLERK:** Sylvia Perez  
Alice Jacobson  
Sharon Coffman  
Athena Trujillo  
Melissa Murphy  
Andrea Natali

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Parties Present: Garnet Beal, Adam Schneider

Colloquy regarding status of the case and Trial setting. Parties anticipated 5 days for trial. COURT ORDERED, matter SET for trial and CONTINUED to next Med-Mal Status Check.

10/13/14 JURY TRIAL (DEPT 03)

CLERK'S NOTE: Court inadvertently gave an inaccurate trial date set for 10/12/14, the above minute order has been AMENDED to reflect the correct trial setting for Department 03.// mm 02/07/14

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 12, 2014**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 12, 2014      8:30 AM      Status Check:  
Medical/Dental  
Malpractice**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** Complex Litigation Center

**COURT CLERK:** Keri Cromer  
Alice Jacobson  
Michelle Jones  
Melissa Murphy  
Andrea Natali

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Beal, Garnet E.      Attorney  
                 Lauria, Anthony D      Attorney

**JOURNAL ENTRIES**

- The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Mr. Lauria stated he filed a motion for a new trial setting; anticipated 8 days for trial. COURT ORDERED, trial date VACATED and RESET. DIRECTED, counsel to meet with Commissioner Bulla.

3/30/15 - JURY TRIAL MEDICAL MALPRACTICE (SET DURING SWEEPS) (DEPT. 3)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 12, 2014**

---

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

---

**August 12, 2014      8:30 AM      Status Check: Discovery**

**HEARD BY:** Bulla, Bonnie      **COURTROOM:** Complex Litigation Center

**COURT CLERK:** Jennifer Lott

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Beal, Garnet E.      Attorney  
                 Lauria, Anthony D      Attorney

**JOURNAL ENTRIES**

- Dept. 3; March 30, 2015 Trial date. COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 1/9/2015; adding parties, amended pleadings, and initial expert disclosures DUE 10/9/14; rebuttal expert disclosures DUE 11/10/14; FILE dispositive motions by 2/9/2015. Mr. Beal confirmed Pltf had additional treatment two months ago.

Mr. Lauria to prepare the Report and Recommendations, and Mr. Beal to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Lauria to appear at status check hearing to report on the Report and Recommendations.

9/12/14 11:00 a.m. Status Check: Compliance

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**February 03, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**February 03, 2015      8:30 AM      Status Check:  
Medical/Dental  
Malpractice**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Alice Jacobson  
Treva Palmer  
Tena Jolley  
Michelle Jones  
Keri Cromer

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Attorneys present: Richard Englemann and Paul Cardinale

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of case. COURT ORDERED, trial date VACATED and RESET due to the unavailability of the Dept. or counsel. FURTHER , matter SET on next Med-Mal Status Check.

8/17/2015: MED-MAL JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**February 03, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**February 03, 2015      8:30 AM      Status Check: Discovery**

**HEARD BY:** Bulla, Bonnie      **COURTROOM:** RJC Jury Deliberation Room  
10th Floor - North

**COURT CLERK:** Jennifer Lott

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Attorneys present: Richard Englemann and Paul Cardinale.

Dept. 3; 8/17/15 Trial date. Commissioner previously Recused from this case. Mr. Englemann stated deposition clean up is needed, and Dr. Capanna's deposition is still needed. COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 5/29/15; FILE dispositive motions by 6/29/15.

Mr. Cardinale to prepare the Report and Recommendations, and Mr. Englemann to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Cardinale to appear at status check hearing to report on the Report and Recommendations.

3/6/15 11:00 a.m. Status Check: Compliance

DISTRICT COURT  
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

July 22, 2015

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

July 22, 2015      9:00 AM      Calendar Call

HEARD BY: Herndon, Douglas W.      COURTROOM: RJC Courtroom 16C

COURT CLERK: Shelly Landwehr

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

PRESENT:      Lauria, Anthony D      Attorney  
                 Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- Parties announced ready for trial. Mr. Prince stated his expert would need to be on early in the trial and requested jury selection begin on 8/19/15 with witnesses to start on 8/24/15. Mr. Lauria expressed concern stating there are six surgeons that will be testifying. Representations by Mr. Lauria regarding defendant's upcoming motion. Colloquy. COURT ORDERED, trial date VACATED and RESET. FURTHER, all current pending motions RESCHEDULED to 8/10/15.

08/10/15 1:00 PM ALL PENDING MOTIONS

08/19/15 10:30 AM JURY TRIAL (FIRM)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 03, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 03, 2015      8:30 AM      Status Check:  
Medical/Dental  
Malpractice**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Alice Jacobson  
Shelley Boyle  
Cynthia Molerres  
Natalie Ortega  
Robin Thomas

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:** Lauria, Anthony D      Attorney  
Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, trial date STANDS, matter SET on next Med-Mal Status Check.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 14, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 14, 2015      1:00 PM      All Pending Motions**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Alan Castle

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- Plaintiff's Omnibus Motion in Limine No. 1

Item #1 Court Finds Hypothetical medicals are okay if based on something that will be explained later in the case by the evidence or if there is some reasonable inference to what is in the plaintiff s medical records.

#2 Exclude Reference to Plaintiff being a malingerer, magnifying symptoms or manifesting secondary gain motives COURT ORDERED, GRANTED;

#3 Exclude Reference to Defense Medical Examiners as "Independent." COURT ORDERED, GRANTED;

#4 COURT Finds it not improper to say Plaintiff is asking for more than what the "evidence" suggests, however, not proper to for an amount less that Plaintiff expect to receive. COURT ORDERED, GRANTED;

#5 Exclude reference to taxation. No opposition. COURT ORDERED, GRANTED;

#6 Exclude reference to treating physicians on unrelated cases. COURT Finds if similar not unfair to ask about treating practices and being retained as an expert, but not appropriate to ask number of times expert worked counsel. COURT ORDERED, GRANTED IN PART / DENIED IN PART

#7 Exclude collateral sources. Addressed. COURT ORDERED, DENIED WITHOUT PREJUDICE.

Defendant's [Omnibus] Motions in Limine

#1 Exclude evidence relating to malpractice insurance coverage - COURT ORDERED, GRANTED;

#2 Exclude evidence relating to other claims - COURT admonished counsel and Finds sometimes regardless of the case, the witness will infer just by talking and make irrelevant statements. COURT ORDERED, GRANTED;

#3 Exclude evidence relating to Plaintiff's Nevada State Board of Medical Examiners' Complaint COURT ORDERED, GRANTED;

#4 Exclude evidence from Plaintiff's expert's report and testimony regarding Nevada Board of Medical Examiner's Complaint. COURT ORDERED, GRANTED

#5 Seek permission from Court during opening for demonstratives that are not stipulated; or Court and parties must go over beforehand; especially proposed evidence;

#6 Exclude evidence of claims for lost wages. No opposition. COURT ORDERED, GRANTED;

#7 Exclude evidence relating to medical matter by Plaintiff or lay witness. COURT ORDERED, GRANTED;

#8 Exclude evidence relating to the residence of defense counsel. No opposition. COURT ORDERED, GRANTED;

#9 Exclude evidence of alleged acts of negligence not the legal and proximate cause of harm to Plaintiff. COURT ORDERED, GRANTED;

#10 Exclude personal opinions and preferences of Plaintiff's experts. COURT ORDERED, GRANTED;

#11 Exclude opinions by Plaintiff's expert other than those provided at deposition, or, contained in expert's report. COURT Finds it would not be proper to supplement opinion at trial unless there is notice pursuant to the rules. COURT ORDERED, CONDITIONALLY GRANTED;

#12 Exclude testimony from an untimely identified expert witness. No opposition. COURT ORDERED, GRANTED;

#13 Sequence of testifying witness. COURT Finds asking generally who will be testifying is helpful for smoother flow and schedule planning. COURT ORDERED, GRANTED;

#14 Exclusionary rule INVOKED.

#15 COURT Finds there will be considerable 'crossover' based on the variety of medical disciplines, which is not necessarily cumulative as much as a different perspective. COURT ORDERED, GRANTED;

#16 Exclude reference to failure to call a doctor or witness. COURT Finds there may be comment from both sides if relevant to the case. COURT ORDERED, DENIED.

- Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information  
COURT ORDERED, GRANTED.

Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions  
COURT ORDERED, GRANTED.

Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report  
COURT ORDERED, GRANTED.

Plaintiff's Motion No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire  
COURT FINDS WITHDRAWN; not practical due to timing.

Plaintiff's Motion in Limine No. 6: to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports  
COURT ORDERED, GRANTED.

Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional  
NRS 42.021 Actions based on professional negligence of providers of health care: Introduction of certain evidence relating to collateral benefits; restrictions on source of collateral benefits; payment of future damages by periodic payments. COURT FINDS the law says the statute passes constitutional scrutiny at this time and ORDERED, motion DENIED.

NRS 41A.035 Limitation on amount of award for noneconomic damages. In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000. COURT FINDS the law says the statute passes constitutional scrutiny at

this time and the support of the ballot measure. COURT ORDERED, DENIED.

Plaintiff's Motion to Strike Defendant's Untimely Disclosures on Order Shortening Time  
COURT ORDERED, DENIED.

Defendant's Opposition to Plaintiff's Motion to Strike Untimely Disclosures and Counter-Motion to  
Exclude Improper "Supplemental" Disclosures and Claims for Future Damages  
COURT ORDERED, DENIED.

Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100  
COURT thinks Plaintiff is entitled and Finds inclined to give instruction, but DEFERRED RULING  
until after the evidence has been presented and not be given as a pre-instruction.

Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future  
Treatment and Surgery Made Without Scientific Basis  
COURT ORDERED, DENIED.

Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence  
CONTINUED TO 8/19/15 @ 10:00 a.m.

8/19/15 10:00 a.m. Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of  
Alleged Negligence /// Jury Trial

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 19, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 19, 2015      10:00 AM      Motion**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED.

CONTINUED TO: 8/20/15 12:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 19, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 19, 2015      10:30 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Discussion regarding Voir Dire and Jury selection. Mr. Prince advised parties have stipulated to majority of exhibits with the exception of medical bills. Colloquy regarding billing.

PROSPECTIVE JURY PANEL PRESENT: Introductions by Court and counsel. Clerk called roll of the prospective jury panel. Voir Dire of panel. .

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding challenges for cause.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire of panel.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding scheduling.

CONTINUED TO: 8/20/15 12:00 PM

DISTRICT COURT  
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 20, 2015

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

August 20, 2015	12:00 AM	Motion	Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence
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HEARD BY: Herndon, Douglas W.      COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED.

CONTINUED TO: 8/21/15 8:30 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

August 20, 2015

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

August 20, 2015      12:00 AM      Jury Trial - FIRM

HEARD BY: Herndon, Douglas W.      COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE PRESENCE OF THE PROSPECTIVE JURY PANEL: Discussion regarding schedule and testimony of expert witnesses.

PROSPECTIVE JURY PANEL PRESENT: Juror #20 was excused for cause as she was delayed at a doctor's appointment. Voir Dire by Plaintiff s continued. Voir dire by Defense.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court made a record of the bench conference as to challenges for cause.

PROSPECTIVE OF JURY PANEL PRESENT: Court admonished jury and excused for the evening.

CONTINUED TO: 8/21/15 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 21, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 21, 2015      8:30 AM      Motion**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- Arguments by Mr. Lauria as to the computation of damages and the additional \$350,000 being requested. Arguments by Mr. Prince as to future damages, noting error that was filed in disclosure form. Court stated FINDINGS and ORDERED, Motion DENIED, noting he will allow future damages. Mr. Lauria requested he make a standing objection as to statements in opening as to future damages. Court GRANTED requested and noted he should raise standing objection during testimony. Arguments as to Mr. Lauria requesting to exclude questions regarding defendant going to law school. Arguments by Mr. Prince. Court GRANTED request to exclude reference that defendant attended law school. Further arguments by Mr. Prince as to Dr. Capanna's testimony, opposing any diagrammatic drawings of procedure. Court stated counsel may cross-examine witnesses regarding any drawings.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 21, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 21, 2015      8:30 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Mr. Lauria noted objection to questioning regarding insurance during Voir dire and concern the jury has been prejudiced, therefore, requested a mistrial. Arguments by Mr. Prince. Court DENIED request for mistrial.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Peremptory challenge exercised. Discussion regarding Motion in Limine as to expert testimony regarding family history. Arguments by counsel as to Motion to Limit Damages to those Caused by Acts of Alleged Negligence. Court stated FINDINGS and ORDERED, Motion DENIED. Discussion regarding Dr. Capanna's testimony.

JURY PANEL PRESENT: Jury SELECTED and SWORN. Opening statements by Mr. Prince. Opening statements by Mr. Lauria. Court ADMONISHED and EXCUSED jury for the weekend

**A-11-648041-C**

recess. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 8/24/15 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 24, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 24, 2015      9:00 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY PANEL: Counsel stated stipulation as to exhibits and noted objections for the record. Colloquy regarding scheduling of witness testimony.

JURY PANEL PRESENT: Testimony and exhibits presented (see worksheets). DEPOSITION PUBLISHED IN OPEN COURT.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince noted objection to the record regarding Dr. Belzberg's testimony. Arguments by Mr. Lauria. Court stated questions as to supplemental report are permitted.

JURY PRESENT: Testimony and Exhibits presented (see worksheets).

Court admonished jury and excused for the evening.

A-11-648041-C

CONTINUED TO: 8/25/15 11:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 25, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 25, 2015      11:00 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria noted objection as to Dr. Yoo's as to need of future treatment, noting report was untimely. Discussion regarding questioning of witness.

JURY PRESENT: Testimony and exhibits presented. (See worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding availability of witnesses.

JURY PRESENT: Testimony and exhibits presented. (See worksheets).

CONTINUED TO: 8/26/15 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 26, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 26, 2015      10:30 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria requested Mr. Prince provide a copy of the cd be provided to the court of the demonstrative images. Court stated any power point presentation and demonstrative exhibits prior to the end of trial.

JURY PRESENT: Testimony and exhibits presented (See worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding document to be discussed during testimony of Dr. Capanna. Mr. Prince argued document has been stipulated to in the exhibits. Arguments by Mr. Lauria. Court granted request to exclude testimony about suspension.

JURY PRESENT: Court noted question regarding suspension be stricken. Testimony and exhibits presented (See Worksheet).



**A-11-648041-C**

OUTSIDE PRESENCE OF THE JURY: Discussion regarding objections.

CONTINUED TO: 8/26/15 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 27, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 27, 2015      10:30 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria requested court sign an order for counsel to obtain medical records. ORDER SIGNED IN OPEN COURT.

JURY PRESENT: Testimony and exhibits presented. (See worksheet).

CONTINUED TO: 8/27/15 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 28, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 28, 2015      9:00 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** April Watkins

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE PRESENCE OF THE JURY:

Colloquy regarding witnesses and testimony.

JURY PRESENT:

Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Lauria moved for Rule 50(a) Motion and argued in support. Colloquy. Further argument by Mr. Lauria. Opposition by Mr. Prince. COURT ORDERED, motion DENIED. Court noted Pltf. will be withdrawing Ruggeroli claim and counsel precluded from bringing it up. Additional argument by

**A-11-648041-C**

Mr. Lauria.

Jury instructions argued by counsel and not settled.

Court recessed.

CONTINUED TO: 8/31/15 8:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**August 31, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**August 31, 2015      8:00 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- JURY PRESENT: Testimony and exhibits presented. (See worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Defense rests. Plaintiff's rebuttal witness sworn and testified. (See worksheet). Plaintiff rests. Court ADMONISHED jury and excused for the evening.

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled on the record. Mr. Prince moved for Rule 50(a) Motion and argued in support. Colloquy. Arguments by Mr. Lauria. Further arguments by Mr. Prince. COURT ORDERED, motion DENIED. Colloquy regarding exhibits.

CONTINUED TO: 9/1/15 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**September 01, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**September 01, 2015    10:00 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.                      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding exhibits and Jury Instructions.

JURY PRESENT: Court read jury instructions to the jury. Closing arguments by Mr. Prince.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria noted for the record objection regarding slide that was used during closing argument. COURT SO NOTED.

JURY PRESENT: Closing arguments continued. At the hour of 4.42 p.m., the Jury retired to begin deliberations.

CONTINUED TO: 9/2/15 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**September 02, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**September 02, 2015    10:00 AM      Jury Trial - FIRM**

**HEARD BY:** Herndon, Douglas W.                      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Capanna, MD, Albert H	Defendant
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

**JOURNAL ENTRIES**

- JURY PRESENT: Jury returned at 10:00 a.m. for deliberations. At the hour of 12.29 p.m., the Jury returned with a verdict for the Plaintiff. Jury polled. Court thanked and excused jury.

Request for Application of N.R.S. 41A.035, N.R.S. 42.021 FILED IN OPEN COURT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**October 14, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**October 14, 2015      9:00 AM      Motion to Stay**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Lauria, Anthony D      Attorney  
                 Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- Mr. Lauria argued judgment is improper as it exceed \$350,000, noting he filed a pleading the day of the verdict. Arguments by Mr. Prince argued as to the lack of procedural basis to stay Entry of Judgment. Further arguments by counsel. COURT ORDERED, Motion DENIED; Mr. Lauria to file appropriate motions. COURT FURTHER ORDERED, Briefing schedule SET as follows: defense to file motion on or before October 23, 2015; plaintiff to reply on or before November 4, 2014; defense to reply on or before November 13, 2015, matter SET for argument. Discussion regarding Entry of Judgment.

Discussion regarding whether or not the PowerPoint with the MRI cuts was marked as a court exhibit. Court stated he does not recall it being marked as an exhibit, however, it will need to be submitted if they were ordered by the Court.

11/18/15 9:00 AM ARGUMENT: MOTIONS



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**November 09, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**November 09, 2015      3:00 AM      Motion to Retax**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- As to the defendants motion to retax and settle costs, this Court orders that the motion for costs is GRANTED in part and DENIED in part. Specifically, this Court finds that a party who prevails in an action is entitled to move for its costs. See NRS 18.020. Here, plaintiff is a prevailing party, having prevailed at the conclusion of a jury trial, and is entitled to statutory costs per NRS 18.005 and 18.020. Having reviewed the memorandum of costs and accompanying documentation on file, and having evaluated the requested costs in light of Berosini, 114 Nev. 1348, the Court ORDERS that utilizing the eight categories in plaintiff s memorandum of costs, costs will be awarded in full as requested for Category (1) In House Expenses (which includes copies, postage, courier and long distance costs) - \$5,026.53; Category (3) Expert Fees - \$69,975.95 The Court specifically finds that all named experts were necessary to plaintiff s case and exceeding the statutory amounts is justified and reasonable for Dr. Yoo and Dr. Cash based on their roles in the litigation; Category (4) Express Mail - \$172.31; Category (5) Investigation/Service - \$528.48; Category (6) Medical/Financial Records - \$2055.90 and Category (8) Travel Expenses - \$488.00. Regarding Category (2) Deposition Expenses, the Court finds that the TrialSmith charge of \$868.00 and the Turner Reporting charge of \$372.25 are unjustified and the total amount awarded for that category will be \$4,679.75. Regarding Category (7) Misc. Expenses/Court Fees, the court notes that plaintiff has withdrawn its meal cost request so that category will be reduced to a total award of \$40,395.28.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**November 18, 2015**

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A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

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**November 18, 2015    9:00 AM            All Pending Motions**

**HEARD BY:** Herndon, Douglas W.                      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Argument: Motions...Defendant's Motion for Application of NRS 41A.035, NRS 42.021

Court stated counsel is requesting matter be continued until December 16, 2015 when the Motion for New Trial is set to be heard. COURT SO ORDERED.

CONTINUED TO: 12/16/15 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**December 16, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**December 16, 2015      9:00 AM      All Pending Motions**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eisenberg, Robert L.	Attorney
	Lauria, Anthony D	Attorney
	Prince, Dennis M	Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE, FOR AMENDMENT OF JUDGMENT...DEFENDANT'S MOTION FOR APPLICATION OF NRS 41A.035, NRS. 42.021

Court noted that the Motion for Attorney Fees and Costs will be done on his chambers calendar to allow him time to review all the billings. As to Defendant's Motion for a New Trial, Counsel submitted on the motion. Court stated FINDINGS and ORDERED, motion DENIED, noting the allegations fall under the seventh category of error in law.

As to Defendant's Motion for Application of NRS 41A.035, NRS 42.021, Mr. Lauria argued NRS 41A.035 and NRS 42.021 are mandatory per the statute. Arguments by Mr. Prince as to the jury award and the constitutionality of NRS 41A.035. Discussion regarding judgment of order. Mr. Prince to provide copies to the defense prior to signature in the future. Further arguments by counsel as to periodic payments and future damages. COURT ORDERED, Motion GRANTED as to 41A, Pain and Suffering awards reduced to \$350,000, noting law is constitutional; interest will start accruing at the time of the order. COURT FURTHER ORDERED, Motion GRANTED as to 42.021, periodic payments

set as follows: \$175,000 to be paid within six months, \$88,000 to be paid at the period of twelve months, and the remaining \$87,000 to be paid at the period of 18 months. Mr. Prince inquired as to the security for the payments. Mr. Eisenberg noted the statute states if the judgment debtor is not adequately insured, the Court can require security adequate to it. Court stated an amended judgment will be prepared and Mr. Prince will provide a copy to Mr. Lauria prior to signature. Further discussion regarding insurance. Court stated he will make the ruling on fees and costs and Mr. Prince may litigate security for the periodic payments in writing if he believes they should be entitled to it. Mr. Lauria to prepare orders on motions. Mr. Lauria noted for the record that he and Mr. Prince had an agreement that there would be no attempt to execute on the judgments until all the post trial orders are noticed or filed. Mr. Prince stated that he is not agreeing to counsel's representations. Further discussion regarding execution of judgment. Mr. Prince agreed to not seek any execution of judgment until the amended judgment order, order on today's motions, and order regarding Court's decision on fees and costs are filed.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**December 21, 2015**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**December 21, 2015      3:00 AM      Motion for Attorney Fees  
and Costs**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Upon review of the papers and pleadings on file herein, the Court notes that plaintiff, after prevailing at trial, has moved for an award of attorney s fees. The sole legal basis stated in plaintiff s request is NRS 18.010(2)(b). Pursuant to NRS 18.010(2)(b), attorney s fees are awardable to the prevailing party when the court finds the opposing party s claims were brought without reasonable grounds or to harass the prevailing party. Moreover, the court is to liberally construe the provisions of 18.010(2)(b). Plaintiff has alleged that all and/or at least the liability part, of defendant s defenses were maintained without reasonable grounds and therefore plaintiff should be awarded its appropriate attorney s fees. As with most, if not all, medical malpractice actions, issues regarding liability and damages are separate. Even when one issue or the other is agreed upon between the parties, evidence regarding each issue requires a different presentation to the jury. Generally speaking, where both issues are contested, the liability portion requires much more time and effort as you never even reach the issue of damages without first establishing liability. This case was no different. Although certain witnesses addressed both issues, the manner of the presentation on each issue is different and the time spent on presenting each issue is different. Understanding this is important in the instant case because the court cannot find that defendant s liability defense was maintained with reasonable grounds, although defending the issue of damages was made in good faith and with reasonable grounds. The presentation of evidence on liability, which it should be noted

included evidence and opinions from some of defendant's own experts, was overwhelming. It could not only be characterized as clearly exceeding the civil burden of proof standard but, arguably, the totality of evidence showing that the original surgery was performed at the wrong level of the spine would meet a beyond a reasonable doubt standard. Turning to the issue of time, it is difficult to ascertain with precision exactly how much time and effort is spent on liability issues versus damages issues over the course of a jury trial, particularly one such as this that spans the course of three weeks. However, a review of available information allows the Court to conclude that it is reasonable to characterize the presentation of liability issues (though jury selection, opening statements, evidence presentation and argument) as encompassing at least 80% of plaintiff's trial presentation. The Court has further evaluated the requested amounts, the documentation provided and, pursuant to *Schouweiler*, 101 Nev. 827 (1985), has taken into account the complexity of the case, the quality of the advocacy, the character of the work, the work actually performed and the results. The Court also finds that the application of NRS 7.095 is an appropriate mechanism to address attorney's fees. Based upon that, the Court finds that the total attorney's fees award of \$212,486.98 as requested in plaintiff's reply brief (which is less than the original amount requested in the motion) is an appropriate figure to which to apply the 80% designation described above. Therefore, having found pursuant to NRS 18.010(2)(b) that defendant maintained a liability defense without reasonable grounds and that plaintiff's liability presentation at trial encompassed at least 80% of their time and effort, the Court now ORDERS that attorney's fees will be awarded in the amount of \$169,989.58.

CLERK'S NOTE: A copy of this minute order has been emailed to Dennis Prince, Esq. and Anthony Lauria, Esq. dm3/17/16

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**March 16, 2016**

A-11-648041-C      Beau Orth, Plaintiff(s)  
vs.  
Albert Capanna, MD, Defendant(s)

**March 16, 2016      9:00 AM      Motion to Strike**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Lauria, Anthony D      Attorney  
                 Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- Mr. Prince argued reply brief improperly raised new arguments and law. Mr. Lauria argued the request is untimely and Plaintiff's arguments are not supported by legal authority. Court stated he does not feel it would be appropriate for Court to strike something that he considered and allowed to be part of previous argument. Further, Court stated he would be inclined to DENY the motion if he had jurisdiction, however, Supreme Court will decide if appropriate to consider Discussion regarding pending motions. Mr. Lauria requested sanctions be imposed regarding the time to prepare for the motion. COURT ORDERED, request for sanctions, DENIED, noting issue was appropriate to have been raised in front on the Court prior to the Supreme Court. Mr. Lauria to prepare order and provide to opposing counsel prior to submitting for signature.

**Beau Orth vs. Albert Capanna, M.D.**  
**Case No. A-11-648041-C; Department III**

**PLAINTIFF'S TRIAL EXHIBITS**

	Description	Stipulated	Objected	Offered	Admitted
1.	Medical records from International Neuroscience (P00001 - P00096)	X		8-24-15	8-24-15
2.	Billing records from International Neuroscience (P00097 - P00099)	X			
3.	Medical records from Desert Institute of Spine Care (P00100 - P00225)	X			
4.	Billing records from Desert Institute of Spine Care (P00226)	X			
5.	Medical records from Steinberg Diagnostic Medical Imaging (P00227 - P00232)	X			
6.	Billing records from Steinberg Diagnostic Medical Imaging (P00233 - P00235)	X			
7.	Medical records from McKenna and Ruggeroli Pain Specialists (P00236 - P00257)	X			
8.	Billing records from McKenna and Ruggeroli Pain Specialists (P00258 - P00259)	X			
9.	Medical records from Surgical Arts Center (P00260 - P00445) <i>P00318 removed by stipulation of counsel</i>	X			
10.	Billing records from Surgical Arts Center (P00446 - P00448)	X			
11.	Medical records from Desert Radiologists (P00449 - P00451)	X			
12.	Billing records from Desert Radiologists (P00452 - P00454)	X			
13.	Medical records from Axiom Imaging of Las Vegas (P00455 - P00457)	X			
14.	Medical records from Clinical Neurology Specialists (P00458 - P00473)	X			
15.	Medical records from Keith Kleven Physical Therapy (P00474 - P00714)	X			



	Description	Stipulated	Objected	Offered	Admitted
16.	Billing records from Keith Kleven Physical Therapy (P00715 - P00737)	X		8-24-15	8-24-15
17.	Medical records from University Medical Center (P00738 - P00793)	X			
18.	Billing records from University Medical Center (P00794 - P00798)	X			
19.	Medical records from Southern Hills Hospital (P00799 - P01045)	X			
20.	Billing records from Southern Hills Hospital (P01046 - P01052)	X			
21.	Billing records from Radiology Specialists (P01053 - P01054)	X			
22.	Medical records from PBS Anesthesia (P01055 - P01058)	X			
23.	Billing records from PBS Anesthesia (P01059)	X			
24.	Billing records from Andrew L. Zak, M.D. (P01060 - P02062)	X			
25.	Billing records from ProCare Medical Center (P01063)	X			
26.	Life Expectancy Table (P01064 - P01065)	X			
27.	Medical Billing Summary (P01066)		X	8-24-15	not Admitted
28.	University Medical Center - Call Sheet, July, 2008 - January, 2012 DMC (P01064 - P01111) P01067		X		not Admitted
29.	University Medical Center - Surgery Schedule of Albert Capanna, M.D., 1/1/2008 - 5/11/2015 (P01112 - P01125)		X		not Admitted
30.	Consent for Operation	8-24-15			not Admitted

# DEFENDANT'S EXHIBIT LIST

TRIAL DATE: Aug. 19, 2015

Case No.: <b>A648041</b>	Clerk: <i>Debbie Miller</i>
Dept.: <b>III</b> Judge: <b>Douglas Herdon</b>	Recorder: <i>Sara Richardson</i>
Pltf(s): <b>Beau Orth</b>	Pltf's Counsel: <b>Dennis M. Prince, Esq.</b>
	Jo _____
Deft(s): <b>Albert H. Capanna, M.D.</b>	Deft's Counsel: <b>Anthony D. Lauria, Esq.</b>
	<b>Paul A. Cardinale, Esq.</b>

Exh. No.	Description	Date Offered	Obj.	Date Admitted
A	Plaintiff's Complaint filed on September 8, 2011			
B	Defendant's Answer to Plaintiff's Complaint filed on January 11, 2012			
C	Medical records from Michael Milligan, M.D./A. Scott Martin, M.D. Bates Stamped: <i>C001 - C028</i>	<i>8-24-15</i>	<i>YCO</i>	<i>NOT Admitted</i>
D	Billing records from Michael Milligan, M.D. / A.S. Martin, M.D. Bates Stamped: <i>D001 - D029</i>	<i>8-24-15</i>	<i>Stip</i>	<i>8-24-15</i>
E	Medical records from Desert Radiologist Bates Stamped: <i>E001 - E017</i>			
F	Billing records from Desert Radiologist Bates Stamped: <i>F001</i>			
G	Medical records from McKenna and Ruggeroli Pain Specialists Bates Stamped: <i>G001 - G119</i>			
H	Billing records from McKenna and Ruggeroli Pain Specialists Bates Stamped: <i>H001 - H004</i>			
I	Medical records from Clinical Neurology Specialists Bates Stamped: <i>I001 - I009</i>			
J	Billing records from Clinical Neurology Specialists Bates Stamped: <i>J001</i>			
K	Medical records from International Neuroscience (Dr. Capanna) Bates Stamped: <i>K001 - K119</i>			
L	Billing records from International Neuroscience (Dr. Capanna) <i>L001 - L003</i>			

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
	<i>Bates Stamped:</i>			
M	Medical records from Axion Imaging of Las Vegas <i>Bates Stamped: M001 - M005</i>	8-24-15	stip	8-24-15
N	Medical records from University Medical Center <i>Bates Stamped: N001 - N059</i>			
O	Billing records from University Medical Center <i>Bates Stamped: 0001 - 005</i>			
P	Medical and billing records from PBS Anesthesia <i>Bates Stamped: P001 - P005</i>			
Q	Billing records from PBS Anesthesia <i>Bates Stamped: Q001</i>			
R	Medical records from Steinberg Diagnostic Medical Imaging <i>Bates Stamped: 0273-0285 R001 - R002</i>			
S	Billing records from Steinberg Diagnostic Medical Imaging <i>Bates Stamped: 0273-0285 S001</i>			
T	Medical records from Desert Institute of Spine Care (Dr. Cash) <i>Bates Stamped: 0287-0354 T001 - T121</i>			
U	Billing records from Desert Institute of Spine Care (Dr. Cash) <i>Bates Stamped: 0355 U001 - U002</i>			
V	Updated billing records from Desert Institute of Spine Care (Dr. Cash) <i>V001 - V028</i>			
W	Medical records from Southern Hills Hospital <i>Bates Stamped: W001 - W247</i>			
X	Billing records from Southern Hills Hospital <i>Bates Stamped: 0606-0614 X001 - X009</i>			

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
Y	Medical records from Keith Kleven Physical Therapy <i>Bates Stamped: 0615-0732</i> <i>Y001 - Y128</i>	8-24-15	Slip	8-24-15
Z	Billing records from Keith Kleven Physical Therapy <i>Bates Stamped: 0733-0742</i> <i>Z001 - Z013</i>			
AA	Billing records from Andrew L. Zak, M.D. <i>Bates Stamped: 0743-0745</i> <i>AA001 - A003</i>			
BB	Desert Radiologists, Medical Imaging Report dated 8/31/12 <i>Bates Stamped: B001 - B002</i>			
CC	Billing records from Desert Radiologists (Zotec Partners) dated 8/31/12 <i>Bates Stamped: CC001 - CC002</i>			
DD	Records from UCLV Athletic Training <i>DD001 - DD252</i>	8-24-15	yes	8-24-15
EE	Plaintiff's Answers to Defendant's Interrogatories	8-24-15	yes	8-31-15 Court Exhibit #13
FF	Plaintiff's Response to Defendant's Request for Production of Documents	8-24-15	yes	not Admitted
GG	Plaintiff's Supplement to Response to Defendant's Request for Production of Documents			
HH	Plaintiff's Response to Defendant's Second Set of Request for Production of Documents			
II	Plaintiff's Answers to Defendant's Second Set of Interrogatories			
JJ	Plaintiff's Response to Defendant's Third Set of Request for Production of Documents			
KK	Plaintiff's Answers to Defendant's Third Set of Interrogatories			
LL	Plaintiff's Response to Defendant's Fourth Set of Request for Production of Documents			Court Exhibit #14 8-31-15
MM	Plaintiff's Response to Defendant's Request for Admissions			not Admitted

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
NN	Curriculum Vitae, Testimony List and Fee Schedule for Allan Belzberg, B.Sc., M.D., FRCS	8-24-15	Y60	8-24-15
OO	Expert Report prepared by Allan Belzberg, B.Sc., M.D., FRCS			not Admitted
PP	Supplemental Expert Report prepared by Allan Belzberg, B.Sc., M.D., FRCS dated 7/20/15			
QQ	Curriculum Vitae, Testimony List and Fee Schedule for Marc D. Kaye, M.D.			
RR	Expert Report prepared by Marc D. Kaye, M.D. dated 8/5/13			
SS	Power Point prepared by Marc D. Kaye, M.D.			
TT	Updated Power Point prepared by Marc D. Kaye, M.D.			
UU	Curriculum Vitae, Testimony and Fee Schedule for Reynold L. Rimoldi, M.D.			
VV	Expert Report prepared by Reynold L. Rimoldi, M.D. dated 7/17/13			
WW	Supplemental Expert Report prepared by Reynold L. Rimoldi, M.D. dated 5/26/15			
XX	Supplemental Expert Report prepared by Reynold L. Rimoldi, M.D. dated 7/24/15			
YY	Steinberg Diagnostic Medical Imaging and records which include an MRI of the lumbar spine dated 3/21/14	8-24-15	stip	8-24-15
ZZ	Steinberg Diagnostic Medical Imaging billing records	8-24-15	stip	8-24-15
AAA	Surgical Arts Center billing including facility for injections by Dr. Ruggeroli on 3/26/14, 4/16/14, and 5/14/14			
BBB	Medical records from Surgical Arts Center			
CCC	Updated billing from Desert Institute of Spine Care through 3/18/14 (Dr. Cash)			
DDD	UNLV - MRI Lumbar spine dated 2/8/10			not Admitted

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
EEE	Axion Imaging – MRI Lumbar spine dated 9/2/10	8-24-15	stop	not Admitted
FFF	Axion Imaging – MRI Lumbar spine dated 9/2/10			
GGG	Dr. Capanna's Operative Report	8-24-15	stop	8-24-15
HHH	Dr. Cash's Operative Report	8-24-15	stop	8-24-15
III	Dr. Ruggeroli's Operative Report dated 4/16/14	8-24-15	stop	8-24-15
JJJ	Desert Radiologists, MRI taken 2/3/2009	8-24-15		NOT Admitted
KKK	Desert Radiologists, MRI taken 2/18/2010			
LLL	Desert Radiologists, MRI taken 8/31/2012			
MMM	Steinberg Diagnostics, MRI Lumbar taken 10/6/2010			
NNN	Steinberg Diagnostics, MRI Lumbar taken 3/13/2014			
OOO	Desert Institute of Spine Care, X-ray, Lumbar dated 10/12/10			
PPP	Desert Institute of Spine Care, X-ray, Lumbar dated 11/3/2010			
QQQ	Desert Institute of Spine Care, X-ray, Lumbar dated 12/1/2010			
RRR	Desert Institute of Spine Care, X-ray, Lumbar dated 2/8/2011			
SSS	Desert Institute of Spine Care, X-ray, Lumbar dated 8/28/2012			
TTT	Desert Institute of Spine Care, X-ray, Lumbar dated 10/12/10			
UUU	Article entitled Microdiscectomy for the treatment of lumbar disc herniation: an evaluation of reoperations and long-term outcomes, Evid Base Spine Care J., 2014	8-24-15	6/10	NOT Admitted

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
	Oct; 5(2): 77-86.			
VVV	Article entitled Limited microdiscectomy for lumbar disk herniation: a retrospective long-term outcome analysis, J. Spinal Disord Tech., 2014 Feb; 27(1):E8-E13.	8-24-15	yes	not Admitted
WWW	Article entitled Recurrent disc herniation and long-term back pain after primary lumbar discectomy: review of outcomes reported for limited versus aggressive disc removal, Neurosurgery, 2009 Feb; 64(2):338-44.			
XXX	Article entitled Long-term back pain after a single-level discectomy for radiculopathy: incidence and health care cost analysis, J Neurosurg Spine, 2010 Feb; 12(2):178-82.			
YYY	Article entitled Microdiscectomy for the treatment of lumbar disc herniation: an evaluation of reoperations and long-term outcomes, Evid Based Spine Care J., 2014 Oct; 5(2):77-86.			
ZZZ	Article entitled Mid- to long-term outcome of disc excision in adolescent disc herniation, Spine J, 2006 Jul-Aug; 6(4):380-4.			
AAAA	Article entitled The outcomes of lumbar microdiscectomy in a young, active population: correlation by herniation type and level, Spine (Phila Pa 1976). 2008 Jan 1; 33(1):33-8.			
BBBB	Article entitled Minimally invasive surgery for lumbar disc herniation: a systematic review and meta-analysis, Eur Spine J. 2014 May;23(5):1021-43.			
CCCC	Article entitled Is the rate of re-operation after primary lumbar microdiscectomy affected by surgeon grade or intra-operative lavage of the disc space? Br J Neurosurg., 2014 Apr; 28(2):247-51			
DDDD	Article entitled Reoperation for recurrent lumbar disc herniation: a study over a 20-year period in a Japanese population, J Orthop Sci., 2012 Mar; 17(2): 107-13.			

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
EEEE	Article entitled Long-term outcomes of lumbar microdiscectomy in a working class sample, Neurocirugia (Astur), 2011 Ju: 22(3):235-44.	8-24-15	ygo	Not Admitted
FFFF	Article entitled The efficacy of minimally invasive discectomy compared with open discectomy: a meta-analysis of prospective randomized controlled trial, J. Neurosurg Spine, 2012 May; 16(5):452-62.			
GGGG	Article entitled Reoperation rate after surgery for lumbar spinal stenosis without spondylolisthesis: a nationwide cohort study. Spine J. 2013 Oct; 13(10):1230-7.			
HHHH	Article entitled 5-year reoperation rates after different types of lumbar spine surgery. Spine (Phila Pa 1976). 1988 Apr 1; 23(7):814-20.			
IIII	Article entitled Revision surgery following operations for lumbar stenosis. J Bone Joint Surg Am. 2011 Nov 2; 93(21):1979-86.			
JJJJ	Article entitled Surgery for spinal stenosis: long-term reoperation rates, health care cost, and impact of instrumentation. Spine (Phila Pa 1976). 2014 May 20; 39(12):978-87.			
KKKK	Article entitled Complications, reoperation rates, and health-care cost following surgical treatment of lumbar spondylolisthesis. J Bone Joint Surg. Am, 2013 Nov 6; 95(21):e 162.			
LLLL	Article entitled Reoperation rate after surgery for lumbar herniated intervertebral disc disease: nationwide cohort study. Spine (Phila Pa 1976). 2013 Apr 1; 38(7):581-90			
MMMM	Article entitled Repeat surgery after lumbar decompression for herniated disc: the quality implications of hospital and surgeon variation. Spine J. 2012 Feb; 12(2):89-97			



**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
NNNN	Article entitled Risk of multiple reoperations after lumbar discectomy: a population-based study. Spine (Phila Pa 1976). 2003 Mar 15; 28(6):621-7	8-24-15	Yoo	not Admitted
OOOO	The deposition transcript of Beau Orth, dated April 14, 2015, and any exhibits thereto.	8-25-15	N	Court Exhibit #17 9-2-15
PPPP	The deposition transcript of Albert Capanna, M.D. dated January 15, 2015, and any exhibits thereto.	8-26-15	N	Court Exhibit #18 9-2-15
QQQQ	The deposition transcript of Allan Beizberg, M.D. dated May 29, 2015, and any exhibits thereto.	8-24-15	N	Court Exhibit #16 9-2-15
RRRR	The deposition transcript of Marc Kaye, M.D., dated June 15, 2015, and any exhibits thereto	8-31-15	N	Court Exhibit #19 9-2-15
SSSS	The deposition transcript of Reynold Rimoldi, M.D. dated June 17, 2015, and any exhibits thereto	not offered or Admitted		
TTTT	The deposition transcript of Michelle Bennion, dated April 7, 2015, and any exhibits thereto	not offered or Admitted		
UUUU	The deposition transcript of Eileen Rinaldi, dated April 8, 2015, and any exhibits thereto			
VVVV	The deposition transcript of Anthony Ruggeroli, M.D., dated May 21, 2015, and any exhibits thereto.			
WWWW	The deposition transcript of Frank Yoo, M.D., dated May 26, 2015, and any exhibits thereto			
XXXX	The deposition transcript of Andrew Cash, M.D., dated June 17, 2015, and any exhibits thereto.			
YYYY	The deposition transcript of Andrew Cash, M.D., dated June 23, 2015, and any exhibits thereto			
ZZZZ	The deposition transcript of Andrew Cash, M.D., dated May 27, 2015, and any exhibits thereto			
AAAAA	The deposition transcript of Stephanie Saxon, dated July 8, 2015, and any exhibits thereto			
BBBBB	Affidavit of Kevin Yoo, M.D. dated 9/7/2011	8-24-15	Yoo	not Admitted
CCCCC	Expert Report prepared by Kevin Yoo, M.D. undated and served on 7/17/15			
DDDDD	Supplemental Expert Report by Kevin Yoo, M.D. dated 7/17/2015			
EEEEE	Expert Report prepared by Andrew Cash, M.D. dated 4/1/2015			

**DEFENDANT'S EXHIBIT LIST**

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
FFFFF	Expert Report prepared by Anthony Ruggeroli, M.D. dated 4/27/2015	8-24-15	YNO	Not Admitted
GGGGG	Supplemental Expert Report prepared by Andrew Cash, M.D. dated 7/28/2015			
HHHHH	Medical Report prepared by Andrew Cash, M.D. dated 2/25/2011			
IIIII	Medical report prepared by Andrew Cash, M.D. dated 4/21/2011			
JJJJJ	Medical report prepared by Andrew Cash, M.D. dated 9/6/2012			
KKKKK	Medical report prepared by Andrew Cash dated 9/6/2012			
LLLLL	Medical report prepared by Andrew Cash dated 3/13/2014			
MMMMM	Medical report prepared for Andrew Cash, M.D. dated 3/19/2014			
NNNNN	McKenna, Ruggeroli and Helmi Pain Specialists notes			
OOOOO	Andrew Cash, M.D. letter to Eglet Prince dated May 14, 2015			
	Prior testimony of Dr. Frank Yoo			Not offered or Admitted
	Prior testimony of Andrew Cash, M.D.			
	Prior testimony of Anthony Ruggeroli, M.D.			
PPPPP	Chief Complaint - Decept Institute	8-31-15	YNO	
QAAAA	Letter dated 4-5-15			Not Admitted
RRRRR	Dr. Cook Bog - 3-1-07			
SSSSS	Billing for Dr. Cash	8-1-15	N	8-1-15
TTTTT	Affidavit of Timothy Spears	8-31-15	YNO	8-31-15

COURT'S EXHIBITS

CASE NO. A648041

	Date Offered	Objection	Date Admitted
1) Demonstrative	8/24/15	N	8/24/15
2) Demonstrative	8/24/15	N	8/24/15
3) Juror # 1 Question	8/25/15	N	8/25/15
4) Juror # 4 Question	8/26/15	N	8/26/15
5) Juror # 10 Question	8/26/15	didn't read	8/26/15
6) Juror # 6 Question	8/27/15	N	8/27/15
7) Juror # 1 Question	8/27/15	N	8/27/15
8) Juror # 6 Question	8/27/15	N	8/27/15
9) Juror # 10 Question	8/29/15	N	8/29/15
10) Juror # 3 Question	8/31/15	Y	8/31/15
11) Juror # 1 Question	8/31/15	NOT ASKED	8/31/15
12) Juror # 1 Question	8/31/15	NOT ASKED	8/31/15
13) Defense Exhibit EE	8/31/15	N	8/31/15
14) Defense Exhibit LL	8/31/15	N	8/31/15
15) Plaintiffs opening Powerpoint	9/2/15	N	9/2/15
16) Deposition of Allan Belzberg, MD	8-24-15	N	9/2/15
17) Deposition of Beau Onth	8-25-15	N	9/2/15
18) Deposition of Albert Capanna MD	8-26-15	N	9/2/15
19) Deposition of Marc D. Kaye, M.D.	8/3/15	-	9/2/15



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

DENNIS M. PRINCE, ESQ.  
400 S. SEVENTH ST., #400  
LAS VEGAS, NV 89101

DATE: March 23, 2016  
CASE: A648041

RE CASE: BEAU R. ORTH vs. ALBERT H. CAPANNA, M.D.

NOTICE OF APPEAL FILED: March 21, 2016

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order *re: Order filed August 22, 2015*

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

---

\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF CROSS-APPEAL; PLAINTIFF'S CROSS-APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER REGARDING DEFENDANT'S MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE, FOR AMENDMENT OF JUDGMENT; NOTICE OF ENTRY OF ORDER; ORDER REGARDING DEFENDANT'S MOTION FOR APPLICATION OF NRS 41A.035 AND 42.021; NOTICE OF ENTRY OF ORDER; ORDER REGARDING PLAINTIFF'S MOTION TO DECLARE NRS 42.021 AND NRS 41A.035 UNCONSTITUTIONAL; ORDER REGARDING PLAINTIFF'S MOTIONS IN LIMINE; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

BEAU R. ORTH,

Plaintiff(s),

vs.

ALBERT H. CAPANNA, M.D.,

Defendant(s),

Case No: A648041

Dept No: III

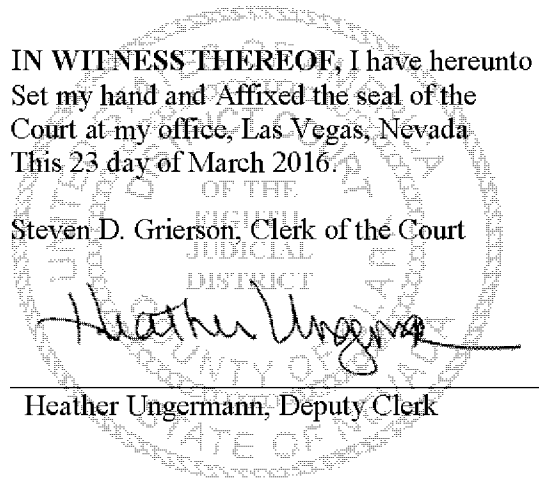
now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 23 day of March 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk



EGLET PRINCE  
COST ACCOUNT  
400 S. 7TH STREET SUITE 400  
LAS VEGAS, NV 89101  
702-450-5400

BANK OF NEVADA  
94-177/1224

14908

A648041

3/21/2016

PAY TO THE ORDER OF Clerk of the Supreme Court

\$250.00

Two Hundred Fifty and 00/100\*\*\*\*\*

DOLLARS

PROTECTED AGAINST FRAUD



Clerk of the Supreme Court  
Tracie Lindeman, Clerk  
201 E. Carson Street, Suite 201  
Carson City, NV 89701



*Kathryn D Hardesty*

MEMO 244178/Beau R. Orth/Notice of Appeal filing fee/brg

⑈014908⑈ ⑆122401778⑆ 7502280804⑈

EGLET PRINCE/COST ACCOUNT

14908

Clerk of the Supreme Court

3/21/2016

244178/Beau R. Orth/Notice of Appeal filing fee/brg

250.00

Cost Acct-Eglet Law 244178/Beau R. Orth/Notice of Appeal filing fee/

250.00

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