

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,
Appellant/Cross-Respondent,
vs.
BEAU R. ORTH,
Respondent/Cross-Appellant.

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Elizabeth A. Brown
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ALBERT H. CAPANNA, M.D.,
Appellant,
vs.
BEAU R. ORTH,
Respondent.

No. 70227

**APPELLANT/CROSS-RESPONDENT'S NOTICE OF
SUPPLEMENTAL AUTHORITIES**

Appellant/Cross-Respondent (Capanna) hereby submits the following supplemental authorities, pursuant to NRAP 31(e). Oral argument is not presently scheduled.

Under Rule 31(e), supplemental authorities may be filed when pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision. Such authorities must state concisely, and without argument, the legal proposition for which each supplemental authority is cited, with references to the pages of the party's brief that is being supplemented.

On December 28, 2017, this court issued its published opinion in *Peck v. Zipf*, 133 Nev. Adv. Opn. 108. Capanna hereby offers *Peck* as relevant authority on respondent's cross-appeal, and as a supplement to Capanna's Reply/Answering

Brief, pages 46-49, and 52-55. Capanna cites *Peck* for the following legal propositions:

1. The right of a medical malpractice plaintiff to sue for damages caused by a medical professional does not involve a fundamental constitutional right.
2. Medical malpractice plaintiffs do not constitute a suspect class, for purposes of constitutional implications.
3. To withstand a challenge based upon equal protection or due process, NRS 42.021(1) only needs to be rationally related to a legitimate governmental purpose.
4. Legitimate governmental purposes can include dealing with a medical malpractice insurance crisis, dealing with medical malpractice insurance premiums, and encouraging doctors to practice medicine in Nevada.

Furthermore, on December 28, 2017, this court issued its published opinion in *McCrosky v. Carson Tahoe Regional Medical Center*, 133 Nev. Adv. Opn. 115. Capanna offers the *McCrosky* decision as relevant authority on the cross-appeal, supplementing Capanna's Reply/Answering Brief at pages 50-56. Capanna cites *McCrosky* for the following legal propositions:

1. NRS 42.021(1) is a legitimate exception to the collateral source rule in the medical malpractice context.

2. The purpose of the statute is to prevent medical malpractice plaintiffs from receiving payments from health care providers (i.e., medical malpractice defendants) *and* collateral sources for the same damages.
3. Although NRS 42.021 cannot prevent recovery of federal Medicaid payments, “NRS 42.021 remains intact with respect to state or private collateral source payments.” *McCrosky*, at 12, fn 2.

DATED: Dec 29, 2017

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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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