

REC'D & FILED ✓

2016 JUL 14 PM 3:55

RICHY L. ANDREW # 75578

NORTHERN NEVADA CORR. CENTER

P.O. BOX 7000

CARSON CITY, NV. 89702

SUSAN MERRIWETHER

Electronically Filed
Jul 21 2016 09:46 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

PLAINTIFF, IN PROPER PERSON

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

RICHY L. ANDREW

PLAINTIFF,

CASE NO. 16-TRT-00010-1B

VS.

STATE OF NEVADA, ET. AL.,

DEPT. NO. II

DEFENDANTS

NOTICE OF APPEAL

PLEASE TAKE NOTICE, PLAINTIFF, RICHY L. ANDREW,
IN HIS PROPER PERSON, APPEALS TO THE NEVADA SUPREME
COURT, THIS COURT'S DECISION DISMISSING HIS
CIVIL ACTION, ENTERED ON JUNE 29, 2016.

RESPECTFULLY SUBMITTED THIS 12TH DAY OF JULY 2016

~~Richey L. Andrew~~

RICHEY L. ANDREW

PLAINTIFF, IN PROPER PERSON

CERTIFICATE OF SERVICE

I, RICHIEY L. ANDREW, CERTIFY ON THIS DATE I
DID SERVE A TRUE AND CORRECT COPY OF THE
FOREGOING NOTICE OF APPEAL UPON DEFENDANTS
BY PLACING SAME IN THE U.S. POSTAL SERVICE,
POSTAGE FULLY PREPAID AND ADDRESSED TO:

ADAM PAUL LAYALT
JAMES N. BOLOTIN
NEVADA ATTORNEY GENERAL
100 N. CARSON STREET
CARSON CITY, NV. 89701-4717

DATED THIS 12TH DAY OF JULY, 2016



RICHIEY L. ANDREW
PLAINTIFF, IN PROPER PERSON

REC'D & FILED

2016 JUL 14 PM 4:24

SUSAN MERRIWETHER
CLERK

BY *[Signature]*
DEPUTY

In The First Judicial District Court of the State of Nevada
In and for Carson City

RICHEY L. ANDREW,

Petitioner(s),

vs.

SHARON COSTER; NEVADA
DEPARTMENT OF CORRECTIONS;
STATE OF NEVADA,

Respondent(s).

) Case No.: 16 TRT 00010 1B

) Dept. No.: II

) **CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

- RICHEY L. ANDREW

2. Identify the judge issuing the decision, judgment, or order appealed from:

- HONORABLE JAMES E. WILSON, JR.

3. Identify each appellant and the name and address of counsel for each appellant:

- RICHEY L. ANDREW #75578 (PROPER PERSON)
P.O. BOX 7000
CARSON CITY, NV 89702

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

- SHARON COSTER; NEVADA DEPARTMENT OF CORRECTIONS; STATE
OF NEVADA (DEFENDANTS)
ADAM PAUL LAXALT, ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NV 89701-4717

1
2 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
3 licensed to practice law in Nevada and, if so, whether the district court granted that
4 attorney permission to appear under SCR 42 (attach a copy of any district court order
5 granting such permission):

6 - NOT APPLICABLE

7 6. Indicate whether appellant was represented by appointed or retained counsel in the
8 district court:

9 - APPELLANT IN PROPER PERSON IN DISTRICT COURT

10 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

11 - APPELLANT IN PROPER PERSON ON APPEAL

12 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
13 of entry of the district court order granting such leave:

14 - ORDER GRANTING REQUEST TO PROCEED IN FORMA PAUPERIS
15 FILED MAR. 8, 2016

16 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
17 indictment, information, or petition was filed):

18 - CIVIL ACTION MEDICAL MALPRACTICE NEGLIGENCE (JURY TRIAL
19 DEMANDED) FILED MAR. 9, 2016

20 10. Provide a brief description of the nature of the action and result in the district court,
21 including the type of judgment or order being appealed and the relief granted by the
22 district court:

23 - ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FILED JUN.
24 29, 2016

25 11. Indicate whether the case has previously been the subject of an appeal to or original writ
26 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
27 number of the prior proceeding:

28 - NOT APPLICABLE

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12. Indicate whether this appeal involves child custody or visitation:
- NOT APPLICABLE

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:
- NOT APPLICABLE.

Dated this 14th day of July, 2016.

SUSAN MERRIWETHER, Carson City Clerk
885 E. Musser St., #3031
Carson City, NV 89701

By  Deputy

Judge: WILSON JR, JAMES E

Case No. 16 TRT 00010 1B
Ticket No.
CTN:

ANDREW, RICHEY L

By:

-vs-

COSTER, SHARON

DRSPND

By:

Dob:
Lic:
NEVADA DEPARTMENT OF
CORRECTIONS

Sex:
Sid:
DRSPND

By: LAXALT, ADAM PAUL

100 NORTH CARSON STREET
CARSON CITY, NV 89701

Dob:
Lic:
STATE OF NEVADA

Sex:
Sid:
DRSPND

By: LAXALT, ADAM PAUL
100 NORTH CARSON STREET
CARSON CITY, NV 89701

Dob:
Lic:

Sex:
Sid:

Plate#:
Make:
Year: Accident:
Type:
Venue:
Location:

ANDREW, RICHEY L

PLNTPET

Bond:
Type:

Set:
Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	07/14/16	CASE APPEAL STATEMENT	1BJHIGGINS	0.00	0.00
2	07/14/16	NOTICE OF APPEAL	1BCCOOPER	24.00	0.00
3	07/05/16	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
4	06/30/16	MOTION TO DISMISS BY DEFENDANT	1BCGRIBBLE	0.00	0.00
5	06/29/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCGRIBBLE	0.00	0.00
6	06/29/16	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS	1BCGRIBBLE	0.00	0.00
7	06/09/16	REQUEST FOR SUBMISSION; MOTION TO DISMISS	1BVANESSA	0.00	0.00
8	06/09/16	REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS	1BVANESSA	0.00	0.00
9	06/06/16	OPPOSITION TO DEFENDANTS MOTION TO DISMISS	1BCCOOPER	0.00	0.00
10	05/20/16	DEFENDANTS' MOTION TO DISMISS	1BVANESSA	0.00	0.00
11	04/25/16	PROOF OF SERVICE (3)	1BVANESSA	0.00	0.00
12	04/25/16	SUMMONS & ADD'L SUMMONS (2)	1BVANESSA	0.00	0.00
13	03/08/16	MOTION FOR WAIVER OF REQUIREMENTS OF NRS 41A.071	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
14	03/08/16	ISSUING SUMMONS & ADD'L SUMMONS (2)	1BJHIGGINS	0.00	0.00
15	03/08/16	CIVIL ACTION MEDICAL MALPRATICE NEGLIGENCE	1BJHIGGINS	265.00	0.00
16	03/08/16	ORDER GRANTING REQUEST TO PROCEED IN FORMA PAUPERIS	1BJHIGGINS	0.00	0.00
17	02/29/16	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	1BJHIGGINS	0.00	0.00
18	02/29/16	INMATE REQUEST/FILING - CIVIL (NEW FILING)	1BJHIGGINS	0.00	0.00
Total:				289.00	0.00

Totals By: COST 289.00 0.00
INFORMATION 0.00 0.00
*** End of Report ***

REC'D & FILED

2016 JUN 29 AM 11:08

SUSAN MERRIWETHER
CLERK

BY SW

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

8 RICHEY L. ANDREW,

9 Plaintiff,

Case No. 16 TRT 00010 1B

10 vs.

Dept. No. II

11 SHARON COSTER, NEVADA DEPT. OF
12 CORRECTIONS, STATE OF NEVADA (real
party in interest)

13 Defendants.

14 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

15 Before this Court is Defendants' Motion to Dismiss for Lack of Viable Medical Affidavit.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. PROCEDURAL HISTORY**

18 Richey L. Andrew, ("Plaintiff") is an inmate incarcerated in the Nevada Department of
19 Corrections (NDOC) and is currently housed at Northern Nevada Correctional Center (NNCC)
20 in Carson City, Nevada. Plaintiff filed his state tort law medical malpractice Complaint on
21 March 9, 2016.

22 **II. COURT'S ANALYSIS**

23 In an action for medical malpractice in the district court, NRS 41A.071 unambiguously
24 requires that:

25 "the district court shall dismiss the action, without prejudice, if the
26 action is filed without an affidavit, supporting the allegations contained
27 in the action, submitted by a medical expert who practices or has
practiced in an area that is substantially similar to the type of practice
engaged in at the time of the alleged malpractice."

28 NRS 41A.071 (emphasis added).

1 “[T]he NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the
2 notice-pleading standard, and thus, it must be ‘liberally construed . . . in a manner that is
3 consistent with [the Supreme Court’s] NRCP 12 jurisprudence.” *Zohar v. Zbiegien*, 130 Nev.
4 ___, ___, 334 P.3d 402, 406 (2014).

5 “The plain language of NRS 41A.071 makes no mention of professional negligence.
6 NRS 41A.071 refers expressly to ‘medical malpractice,’ which in turn is defined as pertaining
7 to physicians,¹ hospitals,² and hospital employees.” *Egan v. Chambers*, 129 Nev. ___, ___,
8 299 P.3d 364 (2013) (quoting NRS 41A.009).

9 “A medical malpractice complaint filed without a supporting medical expert affidavit is
10 void *ab initio*, meaning it is of no force and effect. Because a complaint that does not comply
11 with NRS 41A.071 is void *ab initio*, it does not legally exist . . .” *Wheble v. Eight Judicial Dist.*
12 *Court*, 128 Nev. ___, ___, 272 P.3d 134, 137 (2012) (citing *Washoe Medical Center v. Dist.*
13 *Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (footnote omitted)). In other words,
14 the presence of a proper affidavit confers jurisdiction on the Court to hear a medical
15 malpractice case. See *Szydel v. Markman*, 121 Nev. 453, 461, 117 P.3d 200, 205 (2005)
16 (Hardesty, J., *dissenting*). Thus, this Court lacks jurisdiction to hear Plaintiffs case and must
17 dismiss it.

18 **III. ORDER**

19 The COURT FINDS that Plaintiff intended to file an action for medical malpractice, and
20 knew about the requirements of NRS 41A.071, as evidenced by his attached, self-attested
21 “Affidavit” wherein he explains why he did not include the required affidavit.

22 The COURT FINDS that Plaintiff failed to adhere to the plain language of NRS
23 41A.071, by filing an action for medical malpractice in the district court without an affidavit
24 from a medical expert supporting the allegations contained in the action.

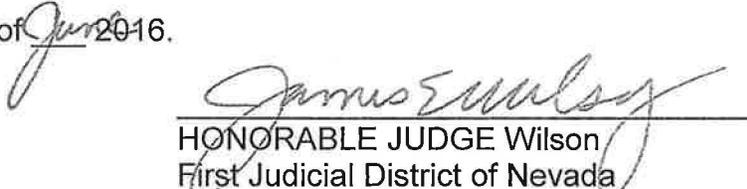
25 _____
26 ¹ Cf. NRS 41A.013 (“‘Physician’ means a person licensed pursuant to chapter 630[, ‘Physicians,
27 Physician Assistants, Medical Assistants, Perfusionists and Practitioners of Respiratory Care,’] or 633[,
28 ‘Osteopathic Medicine,’] of NRS.”).

² Cf. NRS 449.012 (“‘Hospital’ means an establishment for the diagnosis, care and treatment of human
illness, including care available 24 hours each day from persons licensed to practice professional nursing who
are under the direction of a physician, services of a medical laboratory and medical, radiological, dietary and
pharmaceutical services.”).

1 The COURT FINDS that due to the missing affidavit, Plaintiff's Complaint is void *ab*
2 *initio* pursuant to NRS 41A.071, and with no legal claims remaining therein, subject to
3 dismissal.

4 This Court having considered the papers and pleading on file herein,
5 IT IS HEREBY ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE

6 DATED this 27 day of June 2016.

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9 HONORABLE JUDGE Wilson
10 First Judicial District of Nevada
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20 SUBMITTED BY:
21 ADAM PAUL LAXALT
22 Attorney General
23 JAMES N. BOLOTIN
24 Deputy Attorney General
25 Nevada Bar No. 13829
26 Bureau of Litigation
27 Public Safety Division
28 100 N. Carson Street
Carson City NV 89701
(775) 684-1259

CERTIFICATE OF SERVICE

1 I certify that I am an employee of the Office of the Attorney General, State of Nevada,
2 and that on this 20th day of May, 2016, I caused to be deposited for mailing, a true and correct
3 copy of the foregoing, (proposed) **ORDER GRANTING DEFENDANTS' MOTION TO**
4 **DISMISS**, to the following:
5

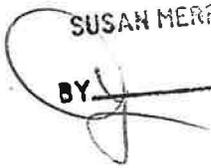
6 Richey L. Andrew #75578
7 Northern Nevada Correctional Center
8 P.O. Box 7000
9 Carson City, NV 89702

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11 An employee of the
12 Office of the Attorney General
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REC'D & FILED

2016 JUL -5 PM 2:52

SUSAN MERRIWETHER
CLERK

BY:  DEPUTY

1 ADAM PAUL LAXALT
Attorney General
2 JAMES N. BOLOTIN
Deputy Attorney General
3 Nevada Bar No. 13829
Bureau of Litigation
4 Public Safety Division
100 N. Carson Street
5 Carson City, Nevada 89701-4717
(775) 684-1159
6 *Attorneys for Defendants*

7 Affirmation pursuant to NRS 239B.030
8 The undersigned affirms that this
9 document does not contain the
10 personal information of any person

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

13 RICHEY L. ANDREW,

14 Plaintiff,

Case No. 16 TRT 00010 1B

15 vs.

Dept. No. II

16 STATE OF NEVADA, et al.,

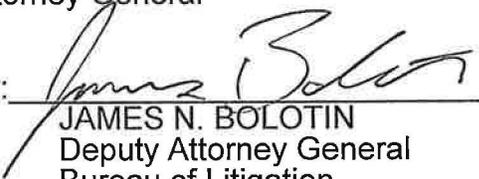
Defendants.

17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that on June 29, 2016, the above-referenced court entered an
19 Order Granting Defendants' Motion to Dismiss. A copy of said order is attached hereto as
20 Exhibit 1.

21 DATED this 5th day of July 2016.

22 ADAM PAUL LAXALT
Attorney General

23 By: 
24 JAMES N. BOLOTIN
25 Deputy Attorney General
26 Bureau of Litigation
27 Public Safety Division

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 5th day of July, 2016, I caused to be deposited for mailing, a true and correct copy of the foregoing, **NOTICE OF ENTRY OF ORDER**, to the following:

Richey L. Andrew #75578
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

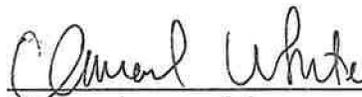

An employee of the
Office of the Attorney General

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

2016 JUN 29 AM 11:08

SUSAN MERRIWETHER
CLERK

G. WINDER

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7 **IN AND FOR CARSON CITY**

8 RICHEY L. ANDREW,

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25 _____
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28 ² Cf. NRS 449.012 (“‘Hospital’ means an establishment for the diagnosis, care and treatment of human
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5 IT IS HEREBY ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE

6 DATED this 27 day of June 2016.

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9 _____
10 HONORABLE JUDGE Wilson
11 First Judicial District of Nevada
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20 SUBMITTED BY:
21 ADAM PAUL LAXALT
22 Attorney General
23 JAMES N. BOLOTIN
24 Deputy Attorney General
25 Nevada Bar No. 13829
26 Bureau of Litigation
27 Public Safety Division
28 100 N. Carson Street
Carson City NV 89701
(775) 684-1259

DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada
 Case No. 16 TR 00010
 (Assigned by Clerk's Office)

REC'D & FILED

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

Plaintiff(s) (name/address/phone): <u>Richey L. Andrew #75578</u> <u>NUCC - P.O. Box 200</u> <u>CARSON CITY, NV 89702</u>	Defendant(s) (name/address/phone): <u>SHARON COSTER</u> <u>SUSAN MERRIWETHER</u> <u>NV. DEPT. of Corrections</u> <u>STATE OF NEVADA</u> <u>CLERK</u> <u>DEPUTY</u>
Attorney (name/address/phone): <u>In Proper Person</u>	Attorney (name/address/phone): <u>NV. ATTY. GENERAL</u> <u>100 CARSON STREET</u> <u>CARSON CITY, NV 89701</u>

2016 FEB 29 PM 6:07

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types		
Real Property	Negligence	Torts
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <input type="checkbox"/> Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <input type="checkbox"/> Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <input checked="" type="checkbox"/> Malpractice <input checked="" type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<input type="checkbox"/> Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
<input type="checkbox"/> Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <input type="checkbox"/> Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <input type="checkbox"/> Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<input type="checkbox"/> Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <input type="checkbox"/> Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <input type="checkbox"/> Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
<input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

2/22/16 Date

[Signature]
 Signature of initiating party or representative

See other side for family-related case filings.