32. Have you EVER surrendered your state or federal controlled substance registration or had it revoked or restricted in any way? ____Yes ✓ No
(If "Yes," attach explanation on separate sheet.)

33. List all hospitals where you have had staff privileges denied, suspended, limited, revoked or not renewed by the hospital. List any and all resignations from any medical staff in lieu of disciplinary or administrative action. (Please Note: Do not include suspensions or restrictions for failure to complete hospital medical records, attend hospital department or staff meetings, or maintain required malpractice insurance)

Hospital	Mailing Address	Type of Action	Dates of Action From (Mo./Yr.) To (Mo./Yr.)
N/A			

RECEIVED
NOV 12 2009
NEVADA STATE BOARD OF MEDICAL EXAMINERS

(All information must begin on the application. If more space is needed, please attach separate sheet.)

CHILD SUPPORT STATEMENT

The law of the state of Nevada requires that all applicants for issuance of a license be required to provide the following information concerning the support of a child. You are advised that this questions is part of your application, your response is given under oath, and any response herein which is false, fraudulent, misleading, inaccurate or incomplete, may result in your application being denied. You must mark one of the following responses, and failure to mark one of the responses may result in denial of your application.

Please place a check mark next to one of the following statements:

✓ (a) I am not subject to a court order for the support of a child;

____ (b) I am subject to a court order for the support of one or more children and am in compliance with the order or am in compliance with a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order; OR

____ (c) I am subject to a court order for the support of one or more children and am NOT in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

I, Steven H. Spillers, MD, being duly sworn, depose and say that the answers to the foregoing questions and statements made in the above application as well as any and all further explanations contained on any separate attached pages are true and correct, that I am the person named in the credentials to be submitted and that the same were procured in the regular course of instruction and examination without fraud or misrepresentation. I understand that if any of my responses on this application are false, fraudulent, misleading, inaccurate, or incomplete, my application for licensure will be denied.

(signature of applicant) 11-9-09 (date)

(NOTARY SEAL)

CORI M HARDGRAVES NOTARY PUBLIC STATE OF COLORADO

My Commission Expires 09-02-13

State of CO County of El Paso

Subscribed and sworn to before me this 9th day of November, 2009

Notary Public for the State of Colorado

My Commission Expires: 9-2-2013

Residing at: 5550 Powers Center Pt Colorado Springs, CO 80920

Signature of Notary: Cori M Hardgraves

NSBME-Spillers006

Exhibit "G"

Exhibit "G"

FAXED 2/13/12

STAT pt ptt + INR @ 2-17-12 @ 8:00 am

Dr. Michael Elkanich
Bone & Joint Specialists
2020 Palomino Lane, Suite 220 Las Vegas, NV 89106 (702) 474-7200
2680 Crimson Canyon Drive, Las Vegas, NV 89128 (702) 228-7355

Please fax pre-op Clearance Letter and all results to Paige @ fax # 702-474-0009 Thank You

Surgical Clearance Request

Date: 2/13/12

****STOP ALL BLOOD THINNERS 10 DAYS PRIOR TO SURGERY****

Dear Dr. Nassir

Fax: 702-876-0133 or 873-6010
Ofc: 702-876-4449

Our mutual patient, Mary Ann Haase DOB 10-19-70 is planning on having a

Lumbar 3 thru 5, Lumbar 4 Vasu 5 (B) Microdiskotomy

Surgery on February 27th, 2012

He/She will need to be cleared before surgery. Please perform the following tests on our patient and send all testing along with a note stating MEDICALLY CLEARED FOR SURGERY to Attn: Paige FAX (702) 474-0009 (Mon & Thur) or (702) 228-4499 (Tues, Wed & Fri).

Required Tests (please send results)

EKG ~~STRESS TEST (AGE 50+) (within 1 year)~~
CHEST X-RAY – AP & LATERAL
CBC- (all labs within 30 days of surgery)
COMPREHENSIVE METABOLIC PANEL
CHEMISTRY PANEL ~~*CARDIAC CLEARANCE (Needed~~
T4 ~~*PULMONARY CLEARANCE (If smoker~~
HIV
HEPATITIS PANEL
PT/PTT&INR *NOTE STATING "MEDICALLY CLEARED
URINALYSIS FOR SURGERY"
*Female pts: Pregnancy Test

DEFENDANT'S EXHIBIT G Case No. A-13-677611-C

THANK YOU,
G. MICHAEL ELKANICH, M.D.

ELKANICH048

Appx000155

SURGERY PRE-OP ORDERS FOR DR. ELKANICH

1. Contact Primary Care doctor for pre-operative testing and assessment prior to surgery date, and have your doctor's office fax over all testing results and assessment as soon as possible to Paige
   Date Completed: _____

2. Pre-register at the surgical facility at least 3 days prior to your surgery date.
   Date Completed: March 2nd, 2012

3. Pre-Op appointment preferably 1 week prior to surgery, and make sure to bring any questions or concerns you may have.
   Appointment Date: Feb. 23rd, 2012

4. Make sure not to eat or drink anything 12 hours prior to surgery. (This includes: gum, water, and certain medications)

5. Any deductible's and co-insurance amounts will be due prior to surgery. Paige will contact you before your surgery. They will notify you as to how much your portion will be.

- In case of any abnormal test results, contact our office and your primary care physician for any further treatment.

- If you are sick prior to surgery, please make sure to contact our office to reschedule your procedure, At least one week prior to your surgery.

Shaniqua Haase — 2-22-12

Patient's Signature — Date

PRE-OPERATIVE ADMISSION ORDERS

Surgery Phone: 388-4825 Surgery Fax: 388-8414
Admitting Phone: 671-8695 Admitting Fax: 388-4636

☐ENDOSCOPY ☒OUTPATIENT SURGERY ☐INPATIENT ADMISSION ☐CARDIOLOGY

Patient Name: Mary Ann Haase S.S. #: 595-30-1085 Age: 41

Admitting M.D.: Dr. Michael Elkanich M.D.

Primary M.D.: Dr. Norris Date to be Admitted: March 5, 2012 @ 11:30am

Surgeon: Dr. Michael Elkanich M.D. Procedure Date: March 5, 2012 @ 11:30am

Dx: LBP (Lower Back Pain Radiculopathy)

Procedure/Consent: Lumbar 3 thru 5 Laminectomy Lumbar 4 thru 5 Bilateral Medial Facetectomy Authorization #: Will be required

ALLERGIES:

PRE-PROCEDURE ADMISSION ORDERS: **Pre-procedure tests to be drawn at:**

DIET: ☒NPO after ☐**CLEAR LIQUIDS** until

LAB TESTS:

☐Panel 6	☐PTT	☐Hepatitis Panel	☐Glucose
☐CBC	☐Chemistry Panel	☐Lipid Panel	☐Acid Phos
☐UA	☐BUN	☐Thyroid Panel	☐Urine Culture
☐Electrolytes	☐Creatnine	☐Liver Panel	☐Cardiac Enzyme
☐Pro Time	☐Cross #_____ Units	☐Serum Pregnancy	☐Coag. Panel
☐HIV	☐Type/Screen	☐Platelets #_____ Units	☐_____
☐H/H	☐Other_____		

X-RAY: ☐Chest ☐IVP ☐BE ☐GB ☐Upper GI ☐Small Bowel

CARDIO-PULMONARY: ☐EKG ☐Echo ☐Arterial Blood Gas ☐PFT Screening

If pre-procedure tests are to be obtained/or have been completed other than at Valley Hospital indicate:

Where:

Tests Performed:

DAY OF PROCEDURE ORDERS:

☒I.V. start KVO:

☒Antibiotics: Ancef 1gm IV Once

☐PT. AM meds to be taken prior to procedure: ☐B/P ☐Cardiac ☐Insulin/Diabetic Meds

☐Eye GTTS

☒TED Hose

☐SCDs

☐STAT Labs / Urine Pregnancy

☒Other: Decadron 10mg I.V. Once

(Have ready for Dr. Gunalp / Anesthesiologist in OR.)

PREPS: (To be done at home by patient.) ☐Shower With Antibacterial Soap ☐Betadine Douche ☐Soap Suds Enemas Until Clear ☐Fleets Enema

COMMENTS:

M.D. Signature: License #: 10887 Date/Time: 3-1-12

BAR CODE

PO0010 - Physician Orders

Valley Hospital Medical Center
A Member of The Valley Health System

PRE-OPERATIVE ADMISSION ORDERS
(PMM# 79272662) (R 10/08) (IKON COPY CENTER)

PATIENT IDENTIFICATION

ELKANICH050

Exhibit "H"

Exhibit "H"

CONTRACT LABOR AGREEMENT

THIS CONTRACT LABOR AGREEMENT ("Agreement") is made as of the ___ day of _____, 2010 between Valley Hospital and NEUROMONITORING ASSOCIATES. ("Contractor") (collectively "the parties") as follows:

RECITALS

WHEREAS, Hospital has from time to time need of intraoperative monitoring services of Contractor on a subcontractor basis; and

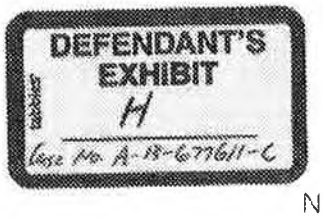
WHEREAS, Contractor from time to time wishes to provide intraoperative monitoring services to Hospital on a subcontractor basis;

NOW for good and valuable consideration, the existence and adequacy of which the parties hereby mutually acknowledge, they agree as follows:

1. Nature of Relationship. This is a Contractor Labor Agreement. During the term of this Agreement, the Hospital agrees that the Contractor shall have the right to provide intraoperative monitoring services for inpatients receiving medical treatment at the Hospital. Contractor agrees to provide all technical personnel to perform services, all equipment and required technical support to provide these services, as well as reporting on the accuracy of the equipment. It is mutually understood and agreed that the services to be performed by Contractor pursuant to this Agreement shall be provided as an independent contractor. All of said services shall be the sole responsibility of Contractor and shall be its acts and services as independent contractors. The Hospital shall neither have or exercise any control or direction over the methods used by Contractor in the performances of its work and functions, but Contractor agrees that its work shall be carried out in strict accordance with currently approved methods and the standards of the Joint Commission on Accreditation of Healthcare Organizations. The Hospitals sole interest is to be assured that all services shall be performed and rendered in a competent, efficient and satisfactory manner.

2. Term. The Initial Term of the Agreement shall commence on ___Oct 1st 2010__, and shall expire on _Oct. 1 2013__. Thereafter, this Agreement shall automatically renew for an additional term of two(2) years, unless a party to this Agreement gives notice of its intent not to renew the Agreement not less than sixty (60) days prior to the expiration of the initial Term.

3. Termination of Agreement. Notwithstanding the provisions of paragraph 2 above, this Agreement shall be terminated upon least sixty (60) days notice on either of the following events:



(a) Contractor informs Hospital in writing that Contractor will no longer serve as an independent contractor for Hospital; or

(b) Hospital informs Contractor in writing that Hospital no longer desires Contractor's services as an independent contractor.

Provided, certain terms and conditions and covenants and warranties made in this Agreement shall survive the date of termination as set forth below.

4. Terms of the Agreement

(a) Contractor shall provide intra-operative monitoring services for Hospital, as needed, including responding to all emergency requests for services during both working and nonworking hours, such that intra-operative monitoring services are available on a seven (7) day, twenty-four (24) hours per day basis. A report shall be placed in each patients chart.

(b) Employees of Contractor or anyone under contract and providing services for Contractor shall carry $1 million/$3 million in Liability Insurance coverage which coverage shall cover acts of Contractor arising out of the performance of this Agreement, regardless of when the claim is brought (i.e., during or after the Agreement has terminated).

(c) For services rendered by Contractor for, non-Medicare/non-Medicaid patients, Contractor shall charge patients directly for professional services rendered. Fees charged shall be in conformance with third party reimbursement rules and regulations, managed care contracts, community standards and other appropriate indicators. The contractor shall bill Medicare/Medicaid in accordance with Federal guidelines and billing regulations.

(d) Employees of Contractor or anyone under contract and providing services for Contractor shall provide data gathering services only. Any interpretation of gathered data is the responsibility of the primary surgeon of each operative procedure for which data is gathered.

(e) All employees of Contractor shall be certified or in the process of certification by the Neuromonitoring Certification Board. Additionally, employees will have completed a 3 month proficiency training prior to any services rendered, and will accumulate 20 hours of continued education annually. All cases will be monitored or closely supervised by a PhD in Neurophysiology.

(f) The Contractor shall do monthly Quality Control on all instruments to be used in Hospital. These tests are performed via the manufacturer of the

software/hardware. If the Hospital performs their own, the contractor shall be subject to these tests as well. Failure of any test will result in immediate attention to the instrument and a substitution of instrumentation for the case at hand. All results can be provided upon written request.

(g) Quality Indicators such as number of tests, test results, quality control results, training certification, operation reports and readings, law suits pending (if any), hospitals in which work was performed, and any others requested shall be submitted to Joint Commission if/when surveyed.

(h) Employees of the Contractor shall provide written proof of health, both mentally and physically, required by the Hospital for admittance.

5. Completeness of Instrument. This Agreement contains all of the agreements, understandings, representations, conditions and covenants made between Hospital and Contractor, and supersedes all previous discussions, agreements and understandings between them. This Agreement may not be amended, supplemented or modified except in signed by both Hospital and Contractor.

6. Controlling Law. This Agreement is hereby deemed and Contractor to have been entered State of Nevada and shall be and construed in accordance with the law of Nevada if it were to be performed solely within the borders writing and Controlling by Hospital into in the interpreted substantive contract to of the State of Nevada by residents of the State of Nevada.

7. Invalidity. If any part of this Agreement is constructed as unconstitutional, illegal or otherwise invalid by a court of competent jurisdiction, the invalid party shall in no way invalidate the effect of the remainder of this Agreement.

8. Attorney's Fees. In the event of any dispute concerning, arising out of, or in any fashion connected with this Agreement or in any action to enforce any Section or provision or term of this Agreement, the prevailing party shall be entitled to recover from the other its reasonable attorney's fees and court costs incurred in such action as allowed by law.

9. Books and Records. Until the expiration of four (4) years after the furnishing of Services under this Agreement, the Contractor shall make available, upon written request by the secretary of Health and Human Services, or by the Controller General, or any of their duly authorized representatives, this Agreement and any books, documents and records of the Contractor in providing services under this Agreement. Furthermore, if the Contractor cost of TEN THOUSAND ($10,000) DOLLARS or more over a twelve (12) month period, such subcontractor's books, documents and records shall be available in the same manner and under the same conditions as set forth above.

10. Joint Commission. The Hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission"), must adhere to the "hospital accreditation standards" promulgated by the Joint Commission in order to maintain its accreditation. By entering into this Agreement, the Contractor agrees to abide by and provide services pursuant to this contract in accordance with the Joint Commission standards for hospitals. Services shall be rendered by the Contractor within the time constraints imposed by the Medical Staff Bylaws (if applicable) and/or elsewhere in this contract and in the absence of such in a manner that will foster patient care.

11. Health Insurance Portability and Accountability Act. If and to the extent, and for so long as, required by the provisions of 42 U.S.C. Section 1171 et seq. and regulations promulgated there under to enact the Health Insurance Portability and Accountability Act of 1996, all as amended from time to time (collectively "HIPAA"), Contractor will appropriately safeguard, in accordance with HIPAA, all Protected Health Information (as such term is defined in HIPAA)(IIPHIII) made available Contractor by, or obtained by Contractor from, Hospital (or any of Hospitals employees, affiliates, contractors or agents), without limitation of the Provisions of this subsection, Contractor shall (i) not use or further disclose any PHI other than permitted or required by the terms of the Agreement; (ii) not use or further disclose any PHI in a manner that would violate the requirements of applicable law (including but not limited to HIPAA) if done by Hospital; (iii) use appropriate safeguards to prevent the use or disclosure of such PHI other than as provided for by this Agreement; (iv) immediately report to Hospital any use or disclosure of such PHI not provided for by this Agreement of which Contractor becomes aware; (v) ensure that any subcontractor or agent to whom Contractor provides such PHI to agree in writing to the same restrictions and conditions that apply to Contractor with respect to such information; provided, however, that Contractor shall not provide any PHI to any subcontractor or agent without the prior written consent of Hospital; (vi) make such PHI available for inspection and copying by the subjects thereof in accordance with applicable law (including but not limited to HIPAA); (vii) make Contractor's internal practices, books and records relating to the use and disclosure of such PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining Hospitals compliance with applicable law (including but not limited to HIPAA); provided, however, that in all events, Contractor shall immediately notify Hospital, upon receipt by Contractor of any such request, and shall provide Hospital with a copy thereof and of all materials so disclosed; (viii) at termination of the Agreement, return or destroy all PHI that Contractor maintains in any form and retain no copies of such PHI; and (ix) incorporate any amendments or corrections to such PHI when notified by Hospital thereof.

Without limiting any right or remedy of Hospital provided elsewhere in the Agreement or available under applicable law (including but not limited to HIPAA), Hospital may terminate this Agreement without penalty or recourse to

Hospital if Hospital determines that Contractor has violated any material term of this Section 11.

In order to assure that the Agreement is and remains consistent with HIPAA, Contractor agrees that this Section may be amended from time to time upon written notice from Hospital to Contractor as to the revisions required to be made to this Agreement consistent with HIPAA.

Anti-Discrimination Statement:
Neuromonitoring Associates and the Hospital agree not to discriminate in the referral, selection and placement of students (…or hiring…or transfer/acceptance/admittance of patients…) on the basis of race, color, national origin, sex, religion, age and disability (including AIDS and related conditions).

Indemnification Clause:
Neuromonitoring Associates agrees to indemnify, defend and hold harmless the Hospital from claims for personal injury, death, or property damage caused by the negligence or willful misconduct of Neuromonitoring Associates

IN WITNESS WHEREOF, Hospital and Contractor, having each of them read this Agreement and with full understanding and acceptance of its terms and conditions, and having had due opportunity to consult with counsel regarding same, have executed this Agreement and placed their hands and seals to same as of the date first set forth above.

If for Hospital:

Valley Hospital

By: Kevin Stockton

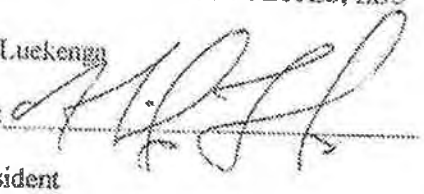
Signature: _____

Title: CEO/Managing Director

If for Contractor:

NEUROMONITORING ASSOCIATES, LLC

By: Nick Luekenga

Signature: 

Title: President

Exhibit "I"

Exhibit "I"

Neuromonitoring Associates
1817 West 800 North
Farmington, Utah 84025

Independent Consultant Contract

Prepared for: Rebecca Gillilan of Neurotrack (the consultant)
Prepared by: Nick Luekenga of Neuromonitoring Associates (the contractor)

The following contract between Neuromonitoring Associates and Neurotrack is to have an indefinite time frame, but can be adjusted from time to time with written consideration from either party. Additionally, this contract is for services provided on an independent basis.

The Terms of this contract will come into effect August 1st 2012.

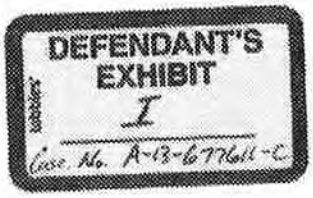
Surgery Coverage Payment:

- Neuromonitoring Associates will pay Neurotrack 40% of global collections for all cases covered by Becky Gillilan.
- Neuromonitoring Associates will pay Neurotrack 40% of global collections for all cases not covered for Becky Gillilan IF Becky covers a minimum of 10 cases during the given month.
    - If Becky does NOT cover the minimum numbers of cases in the month, Neurotrack will be paid 50% of the Technical collection for those cases NOT covered by Becky Gillilan.
- Neuromonitoring Associates will pay Neurotrack 25% (50% split with Nick Mathis) of the Technical collections for any Dr. Dan Lee cases Malina Lewis covers (to expire December 1st or when Becky assumes a regular Dr. Lee case load upon returning from Maternity leave).
    - Becky will receive 40% of available global for Dr. Dan Lee cases she covers (to expire December 1st or when Becky assumes a regular Dr. Lee case load upon returning from Maternity leave).
- BEGINNING DECEMBER 1ST (or when Becky assumes a regular Dr. Lee case load upon returning from Maternity leave):
    - Neurotrack to split ALL Dr. Lee collections with Nick Mathis at 25%/25% (50% to be retained as usual by Neuromonitoring Associates) as long as the case is covered and billed by Neuromonitoring Associates.

The Contractor Responsibilities

- Neuromonitoring Associates shall ONLY be responsible for supplies, machine expenses, machine accessories (including internet), reading Physician, billing/collection and any approved expenses deemed necessary by The Contractor.

Marketing



MA00022

- Becky Gillilan and Nick Mathis are responsible for indicating which Physician(s) they would like to market to. Any prior engagement from any other representatives of NMA shall be discussed.
- If it is determined that Becky Gillilan will be the "lead" in marketing to the Physician(s) all other representatives of NMA will halt their efforts, for the specific Physician(s) for a pre-determined period.
- Instances of "co-marketing" will be discussed beforehand. Compensation for Surgeons who were co-marketed to will be shared equally between those involved in marketing.
- Besides Nick Mathis, no other representatives of Neuromonitoring Associates will directly compete with Rebecca Gillilan by bringing new Physicians on board.

Terms

- The terms of this contract shall cancel any previous contract. These terms will take effect August 1st 2012.

- The Consultant has the right to reject cases as he wishes, however The Consultant should assist the Contractor in providing someone to cover the rejected case.
- If Interference arises, by either The Contractor or The Consultant, complete cancellation of this agreement will result with 90 days written notice.

_____
Print

_____
Sign

Date:

Rebecca Gillilan
Print

Sign

Date: August 10th 2012.

NM0023

NEUROMONITORING ASSOCIATES
8301 BROAD PEAK AVE.
LAS VEGAS, NEVADA 89131

Independent Consultant Contract

Prepared for: Rebecca Gillilan of Neurotrack (the consultant)
Prepared by: Nick Luekenga of Neuromonitoring Associates (the contractor)

The following contract between Neuromonitoring Associates and _____is to have an indefinite time frame, but can be adjusted from time to time with written consideration from either party. Additionally, this contract is for services provided on an independent basis.

The Terms of this contract will come into effect immediately AFTER the date of signature. During the initial 120 days the Contractor and Consultant may agree upon a draw if needed in cash flow circumstances.

Routine Cases
Definition: a case beginning at 6:30 am – 5:59 pm.

-The Contractor will pay The Consultant 50% of The Contractors earnings from the Surgery.

"On Call" Cases
Definition: a case beginning at 6:00 pm – 6:29 am

-The Contractor will pay The Consultant 60% of The Contractors earnings from the Surgery.

Weekend Cases
Definition: a case beginning on either Saturday or Sunday

-The Contractor will pay The Consultant 60% of The Contractors earnings from the Surgery.

Training
Definition: a case in which The Consultant is training a tech at the request of The Contractor.

-The Contractor will pay The Consultant 60% of The Contractors earnings from the Surgery.

Travel and Expense
Definition: any activity in which travel of over 90 miles or outside state lines is required AND/OR is approved by The Contractor.

-The Contractor will reimburse The Consultant for the following and ONLY the following:

*all food and beverage not to exceed $50 per day
*all gas needed for travel to and from the area

NAR024

*all lodging not to exceed $150 per night
*entertainment of a surgeon IF approved by The Contractor
The Consultant will provide these receipts to The Contractor monthly for reimbursement on the up coming Consultant payment.

The Contractor Responsibilities

-The Contractor shall pay The Consultant ON or before the 30th of every month. They shall pay the fees to the consultant after they have received reimbursement from the payer (insurance, patient, attorney, etc.).

-The Contractor shall ONLY be responsible for supplies, machine expenses, machine accessories (including internet), reading Physician, billing/collection and any approved expenses deemed necessary by The Contractor.

Terms

-The terms of this contract shall cancel any previous contract. These terms will take effect from the time The Contractor and The Consultant reach a signed agreement. Until that time The Contractor agrees to honor any previous written agreements. This contract will supersede any contract and it's terms will begin January 1st.

-The Consultant has the right to reject cases as he wishes, however The Consultant should assist the Contractor in providing someone to cover the rejected case. If Interference arises, by either The Contractor or The Consultant, complete cancelation of this agreement will result.

_____
Print

_____
Sign

Date:

_____
Print

_____
Sign

Date:

NAI0025

Exhibit "J"

Exhibit "J"

DISTRICT COURT - CLARK COUNTY, NEVADA

-oOo-

MADDEN DUDA, a minor by and Through Jovan Duda, his Natural Father and Guardian, Plaintiffs, -vs- GEORGE MICHAEL ELKANICH, MD; FEZA GUNALP, MD; REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC., a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; ROE CORPORATIONS I through X, inclusive, And Does I through X, inclusive, Defendants.	Case No. A-13-677611-C Consolidated with: Case No. A-13-677720-C DEPOSITION OF: **NICK LUEKENGA** Location: Tempest Reporting, Inc. 175 South Main, Suite 710 Salt Lake City, Utah 84111 Date: December 6, 2013 9:04 a.m. Reporter: Denise Kirk, CSR/RPR
AUTUMN MATESI, et al., Plaintiffs, -vs- VALLEY HOSPITAL MEDICAL CENTER, Et al., Defendants.	

A P P E A R A N C E S

For Plaintiff Madden Duda:

ROBERT E. MURDOCK
MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
Las Vegas, Nevada 89101
Tel: 702-384-5563
Lasvegasjustice@aol.com

For Defendant Neuromonitoring Associates:

JAMES MURPHY
LAXALT & NOMURA, LTD.
6720 Via Austi Parkway
Suite 430
Las Vegas, Nevada 89119
Tel: 702-388-1551
Fax: 702-388-1559
Jmurphy@laxalt-nomura.com

For Defendant George M. Elkanich, MD and Jocelyn Segovia, PA-C:

KATHERINE L. TURPEN
COTTON DRIGGS WALCH HOLLEY
WOLOSON THOMPSON
400 South 4th Street,
3rd Floor
Las Vegas, Nevada 89101
Tel: 702-791-0308
Fax: 702-791-1912
Jturpen@cdwnvlaw.com

For Defendant Feza Gunalp, MD:

JOAN C. FOY
LAW OFFICES OF ARTHUR W. TUVERSON
7201 West Lake Mead Boulevard
Suite 570
Las Vegas, Nevada 89128
Tel: 702-631-7855
Fax: 702-631-5777
Jfoy@awtlawoffice.com

(Appearances Continued)

A P P E A R A N C E S

For Defendant Rebecca Gillilan, CNIM:

ALAYNE M. OPIE
LEWIS BRISBOIS BISGAARD & SMITH, LLP
6385 South Rainbow Boulevard
Suite 600
Las Vegas, Nevada 89118
Tel: 702-893-3383
Fax: 702-893-3789
Aopie@lbbslaw.com

For Defendant Valley Hospital Medical Center:

CASEY W. TYLER
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive
Suite 200
Las Vegas, Nevada 89144
Tel: 702-212-1454
Fax: 702-384-6025
Ctyler@hpslwa.com

-oOo-

I N D E X

-oOo-

E X H I B I T S

-oOo-

December 6, 2013 9:04 a.m.

P R O C E E D I N G S

NICK LUEKENGA,

Called as a witness herein, being

First duly sworn was examined

And testified as follows:

EXAMINATION

BY MR. MURDOCK:

Q. Would you please state you your name for the record.

A. Nick Luekenga.

Q. Mr. Luekenga, have you ever had your deposition taken before?

A. Yes.

Q. On how many occasions?

A. One.

Q. When was that?

A. That was probably about three years ago.

Q. What was it in conjunction with?

A. There was a noncompete for somebody, and I was asked to -- actually, I was a witness.

Q. Did that involve Neuromonitoring Associates?

A. Yes.

Q. Who was your lawyer?

A. No.
Q. How did you find TCMD Billing?
A. Recommendation.
Q. Why didn't you just do it by yourself?
A. I didn't know how.
Q. When did you first come in contact with -- I can't do this -- with Rebecca Gillilan?
A. That would have been in June 2011.
Q. How did you meet her?
A. Through another technician. Probably a couple other technicians.
Q. How did you come in contact with Dr. Steven Spilders?
A. Through Gulf Coast Billing.
Q. Could you explain that for me.
A. At the time the laws dictating neuromonitoring changed to where you needed to have a remote reading physician or have a reading physician. Prior to that, you did not.
Q. When did that law change?
A. That was probably 2010.
Q. Okay. So let me see. Prior to 2010, there was no supervising or reading physician needed; correct?
A. As far as I understand, yes.

Q. Okay. Well, did you have one at the time?
A. We did not.
Q. Okay. But somebody told you that you needed one?
A. Yes.
Q. And who told you that?
A. Gulf Coast Billing.
Q. Did Gulf Coast suggest Dr. Spillers?
A. Yes.
Q. Was he your only reading physician at the time?
A. Yes.
Q. Is he currently your only reading physician?
A. No.
Q. Between -- let's say in March of 2011, did you have any other reading physicians besides Dr. Spillers?
MR. MURPHY: Form.
Q. You can go ahead.
A. I want to say no, but there's a chance -- if Dr. Spillers was off and he had somebody work for him in this place, there's the potential. But as far as my knowledge, no.
Q. Okay. Did you enter into any agreements

with any physicians, be it oral agreements, written agreements or whatever, besides Dr. Spillers?

A. No.

Q. So even though Dr. Spillers may have had some other arrangements, the only physician you had an arrangement with was Dr. Spillers; correct?

MR. MURPHY: Form.

A. Correct.

Q. Okay. How did you get in contact with Dr. Spillers? In other words, did you mail him? Did you phone him? Did you e-mail him? How did that work?

A. Initially?

MR. MURPHY: Vague.

Q. Yeah, initially.

A. I don't know. Probably e-mail.

Q. Do you have an e-mail address?

A. Yes.

Q. Did you have an e-mail address back in 2010 or so?

A. Yes.

Q. Is it the same?

A. Yes.

Q. Can you give me the e-mail?

A. NickLuekenga@Yahoo.com.

Q. Is this your personal e-mail address?

A. Yes.
Q. But it's also your Neuromonitoring Associates e-mail address; is that correct?
A. Yes.
Q. You use it for both?
A. Yes.
Q. Do you recall, did Dr. Spillers e-mail you back?
A. I don't recall, but probably.
Q. And somehow you entered into an arrangement with him; is that correct?
A. Yes.
Q. Can you explain the arrangement?
A. Yeah. He would read cases for the technicians that we worked with and if it was a private non-government payer, we would bill it. If it was a government payer, he would bill it.

On the private payers, we would pay him an hourly rate for his services.

Q. Let me see if I can understand this a little bit. There was some kind of health insurance that was not Medicare, Medicaid?
A. Correct.
Q. You would bill it -- when I say "you", Neuromonitoring Associates would bill it?

A. Yes.

Q. And you would pay Spillers an hourly wage; is that correct?

A. Correct.

Q. Do you recall what that hourly wage was?

A. I don't recall. I believe it was $150 an hour.

Q. How would he submit bills to you to get paid?

A. He would submit these via e-mail on a spreadsheet, Excel.

Q. Okay. Now, on the other hand, if it was Medicare or Medicaid patients, you said he would bill?

A. Correct.

Q. Why is that? Why was there a separation there?

A. Because Medicare dictates how many cases -- how many surgeries the remote reading -- I shouldn't say "remote" -- the reading physician can read at one time, which at that time was three.

And because he read for multiple other companies in addition to ourselves, he had to have control over -- he knew what surgeries he was reading at what time.

So if all of us billed the government

A. Correct.
Q. What supplies would you pay for?
A. The electrodes.
Q. Would you pay for the Internet?
A. Yes.
Q. How would you pay for the Internet? Explain that.
A. There's really not an expense for the Internet. All the hospitals have WIFI. But in the scenario if they did not and she had to use her phone or some sort of air card or something, I would pay for that time. But that was never a scenario.
Q. But you would have?
A. I would have, yes.
Q. And you did pay for the reading physician; correct?
A. Correct.
Q. And it's the reading physician that you chose; correct?
MR. MURPHY: Form.
A. That I --
Q. You chose the reading physician; correct?
A. No.
Q. Did Ms. Gillilan choose her own reading physician?

A. I introduced her to a reading physician, but she certainly had the liberty to choose others.
Q. Who did you introduce her to?
A. Dr. Spillers.
Q. How did you introduce her to Dr. Spillers?
A. Let her know this was the reading physician that I had a contract with.
Q. Right.
A. And that she could use and here's his number.
Q. Did you send her an e-mail?
A. Not that I recall.
Q. Do you recall sending any e-mails to Ms. Gillilan about Dr. Spillers? Any call?
A. I don't recall, no.
Q. Is it possible you did?
A. It's possible.
Q. So did you expect that she would use Dr. Spillers?
MR. MURPHY: Speculation.
A. I expected, yes.
Q. You would also do the billing and collection; correct?
A. Correct. Or I would -- I had a contract with a billing company that would do. So I would

facilitate it.

Q. Right.

A. Right.

Q. Nevertheless, Neuromonitoring would take care of it?

A. Right.

Q. How they take care of it is up to you but, nevertheless, it gotten taken care of by Neuromonitoring Associates; correct?

A. Correct.

Q. The document also states: "The terms of this contract shall cancel any previous contract." Do you see that? It's on the second page under terms.

A. Yes.

Q. Was there a previous contract?

A. No.

Q. Was there any previous agreement?

A. No.

Q. Okay. Was this agreement in effect on March 5, 2012?

MR. MURPHY: Calls for a legal conclusion.

MS. OPIE: Join.

Q. Well, do you believe this contract was in effect on March 5, 2012?

MR. MURPHY: Same thing.

Exhibit "K"

Exhibit "K"

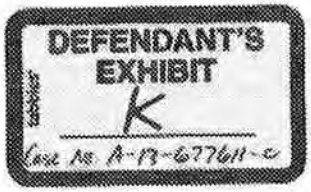
The Valley Health System

Valley Hospital Medical Center

A Member of The Valley Health System

MEDICAL STAFF BYLAWS

FEBRUARY 16, 2012



Approved by Medical Executive Committee: September 10, 2010
Approved by Medical Staff: October 21, 2010
Approved by Board of Governors: February 16, 2012

Table of Contents

DEFINITIONS

ADVERSE DECISION: means a professional review action (as defined by the federal Health Care Quality Improvement Act) in which the Board or Medical Executive Committee denies, terminates, limits, suspends or modifies a grant of Privileges or Medical Staff membership for reasons relating to professional conduct or competency.

ALLIED HEALTH PROFESSIONAL (AHP): An individual who provides direct patient care services in the Hospital, generally under a defined degree of supervision unless permitted by State law and the Hospital's policy to practice independently, exercising judgment within the areas of documented professional competence and consistent with applicable law. AHPs are designated by the Board to be credentialed through the Medical Staff system and are granted Privileges as either a dependent or independent healthcare professional as defined in these Bylaws. AHPs are not eligible for Medical Staff membership. The Board has determined the categories of individuals eligible for Privileges as an AHP are physician assistants (PA), certified nurse midwives (CNM), clinical psychologists (Ph.D.) and advanced registered nurse practitioners (ARNP).

ANCILLARY MANUALS: means the Credentials Manual and Corrective Action and Fair Hearing Manual.

BOARD, HOSPITAL BOARD or GOVERNING BOARD: means the local governing body of the Hospital which has been delegated specific authority and responsibility, and appointed by the Board of Directors of the Hospital. The Board is the "governing body" as described in the standards of the Joint Commission and the Medicare Conditions of Participation.

BOARD CERTIFICATION: The designation conferred by one of the affiliated specialties of the American Board of Medical Specialties (ABMS), the American Osteopathic Association (AOA), the American Board of Oral and Maxillofacial Surgery, or American Board of Podiatric Surgery (ABPS) as applicable, upon a physician, dentist, or podiatrist who has successfully completed an approved educational training program and an evaluation process, including passing an examination, in the applicant's area of clinical practice.

BYLAWS: means these Medical Staff Bylaws that provide the framework for the organized Medical Staff, its responsibilities, and mechanisms for self-governance of the Medical Staff; and the working relationship with and accountability to the Board.

CHAIR: The individual responsible for directing the functions and meetings of a clinical department or a committee.

CHIEF EXECUTIVE OFFICER (CEO): The individual appointed by the Board to act on its behalf in the overall administrative management of the Hospital.

CHIEF OF STAFF: A member of the active Medical Staff who is elected in accordance with these Bylaws to serve as chief officer of the Medical Staff of the Hospital.

CORRECTIVE ACTION: An action taken by the Medical Staff or Board which restricts, modifies, limits, denies, or terminates the privileges or Medical Staff membership of a Practitioner for reasons concerning professional conduct or concerns about competency, which entitles the Practitioner to procedural rights as outlined in these Bylaws. Required evaluations, warning, reprimands, and performance monitoring are not considered Corrective Actions.

CREDENTIALS COMMITTEE: means the credentialing and privileging committee of the Valley Health System which reviews applications for initial membership and reappointment to medical staffs of Valley Health System hospitals, makes recommendations to the Medical Executive Committee of these hospitals regarding assignment of Privileges, recommends policies and procedures related to the credentialing of Practitioners, conducts investigations when applicable and may serve as a peer review committee.

CVO: Credentials Verification Organization of the Valley Health System

DATE OF RECEIPT: The date any Notice, Special Notice, or other communication is delivered personally, by facsimile, or by electronic mail (email); or if such Notice, Special Notice, or communication was sent by mail, it shall mean seventy-two (72) hours after the Notice, Special Notice, or communication was deposited, postage prepaid, in the United States mail.

DAYS: Calendar days, unless otherwise noted.

DELEGATION OF FUNCTIONS: means when a function is to be carried out by a person or committee, the person, or the committee through its Chairperson, may delegate performance of the function to one or more qualified designees.

DENTIST: A dentist or oral surgeon holding a D.D.S. or equivalent degree and a valid license to practice dentistry in the State of Nevada.

DEPENDENT HEALTHCARE PROFESSIONAL: means a professional not employed by the Hospital who provides patient care services in support of, or under the direction of, a Medical Staff member. Dependent Healthcare Professionals shall include, without limitation, medical device or pharmaceutical representatives, operating room nurses and technicians, perfusionists, surgical first assistants, clinical assistants, autotransfusionists, orthotists/prosthetists, registered and practical nurses, dental technicians, lactation consultants, and medical assistants. The foregoing categories of Dependent Healthcare Professionals are separate and distinct from AHPs. Hospital policies and procedures shall govern the actions and patient care services provided by Dependent Healthcare Professionals and shall have their qualifications and ongoing competence verified and maintained through a process administered by the Hospital.

DIRECTOR OF MEDICAL EDUCATION (DME): The individual responsible for implementation of, and compliance with, the requirements of the Residency Program as established by the MEC and GMEC; for ensuring that monitoring activities are fulfilled; and

for the quality of the residency training programs. The DME serves as spokesperson for the GMEC and provides reports on the Residency Program to the MEC.

EX OFFICIO means service as a member of a body by virtue of an office or position held and, unless otherwise expressly provided, means ***with*** voting rights.

GRADUATE MEDICAL EDUCATION COMMITTEE (GMEC) means the committee responsible for developing, maintaining, and evaluating the educational program/curriculum of the Residency Program; selecting the interns, residents and fellows for the Residency Program; providing evaluations of the faculty, interns, residents and fellows in the Residency Program; and implementing disciplinary actions related to interns, residents or fellows.

HOSPITAL means Valley Hospital Medical Center and includes all of its facilities and all of its personnel and organizational entities, including the Medical Staff.

HEALTH SYSTEM or SYSTEM means the Valley Health System, including all of its hospitals and clinical entities, if any.

JOINT CONFERENCE: means a meeting between representatives of the Board (appointed by the Board Chair) and representatives of the Medical Staff (appointed by the Chief of Staff).

MEDICAL EXECUTIVE COMMITTEE (MEC): means the executive committee of the Medical Staff.

MEDICAL STAFF or STAFF: means the formal organization of Members privileged through the organized medical staff process in these Bylaws accountable to the Board. The Medical Staff is a self-governing entity accountable to the Board and operates under these Bylaws, Rules and Regulations and Policies adopted by the voting Members and approved by the Board.

MEDICAL STAFF YEAR: means the period from January 1 to December 31 of each calendar year.

MEMBER: means a Practitioner who has been appointed by the Board to the Medical Staff.

MONTHLY: means each month of the calendar year. However, committees required to meet monthly shall hold at least ten (10) meetings in a calendar year but need not hold twelve (12) meetings.

NOTICE: A written or electronically transmitted communication delivered personally to the addressee or sent by United States mail, first-class postage prepaid, addressed to the addressee at the last address as it appears in the official records of the Medical Staff or Hospital.

ORGANIZED HEALTH CARE ARRANGEMENT: A clinically integrated care setting in which individuals typically receive health care from more than one provider and which is defined in 45 C.F.R. § 160.103 commonly known as the HIPAA Privacy Regulations.

PEER REVIEW: The review of an individual's performance of clinical professional activities as part of the Medical Staff's quality oversight and performance improvement responsibilities.

PEER REVIEW COMMITTEE: refers to any group of Medical Staff and Hospital personnel who are organized to address matters of quality performance and professional conduct on the part of a Medical Staff Member or Practitioner.

PHYSICIAN: An individual with an M.D, DMD, DPM. or D.O., degree who is licensed to practice in the State of Nevada.

POLICIES: All Medical Staff, Hospital, and Health System policies approved by the MEC and ratified by the Board referred to in these Medical Staff Bylaws including the Ancillary Manuals all of which can be obtained through the Medical Staff office of the Hospital or the Hospital CEO.

PRACTITIONER: Any clinician (Physician or Allied Health Professional) who has been granted clinical Privileges by the Governing Board.

PRIVILEGE: The permission granted by the Board to a Practitioner to render or exercise specific diagnostic, therapeutic, medical, surgical or dental services and/or procedures in the Hospital or any of its facilities.

PRONOUNS: The use of the male pronoun (he/his/him) throughout these Bylaws is applicable to either male or female individuals.

RESIDENCY PROGRAM: means the training and educational program for graduate medical training, including a continuum of graduated experience and responsibility.

RULES & REGULATIONS: Are Medical Staff policies approved by the MEC and ratified by the Board.

SPECIAL NOTICE: Written notification sent by hand delivery, certified or registered mail return receipt requested.

STATE: The State in which the Hospital operates and is licensed to provide patient care services, which is Nevada.

SYSTEM PEER REVIEW COMMITTEE: means the Peer Review Committee of the Valley Health System which reviews quality of performance and professional conduct of a Medical

Staff Member or Practitioner upon referral of the MEC and conducts investigations upon request of the MEC.

TIME LIMITS: All time limits referred to in these Bylaws, the Ancillary Manuals, or in any other Medical Staff Policies are advisory only, and are not mandatory unless a specific provision states that a particular right is waived by failing to take action within a specified time period.

ARTICLE I

PURPOSE

The Medical Staff of Valley Hospital Medical Center is established by the Governing Board to assist the Hospital in meeting its mission and to carry out duties assigned to it by the Board in order to enhance the quality and safety of care, treatment, and services provided to patients. The Medical Staff is considered part of an Organized Healthcare Arrangement.

ARTICLE II

MEDICAL STAFF MEMBERSHIP & CATEGORIES

2.1 Eligibility and Qualification for Membership

Membership on the Medical Staff is a privilege granted only to professionally competent applicants who continuously meet the qualifications, standards and requirements set forth in these Bylaws and in Medical Staff Hospital and Health System Policies.

To be eligible to apply for initial appointment or reappointment to the Medical Staff of Hospital applicants must hold a license to practice in the State of Nevada as a Doctor of Medicine, Doctor of Osteopathy, Doctor of Podiatry, or Dentist with a Doctor of Dental Medicine or Dental Surgery degree. Applicants to the Medical Staff have the burden of documenting to the satisfaction of the Board that they will contribute to meeting the mission of the Hospital and have the ability to do so competently, safely, and collaboratively by providing requested information on their:

a. background
b. clinical experience
c. education and training
d. clinical judgment
e. demonstrated professional competence
f. individual character and ability to work with others collaboratively
g. physical and mental capabilities and ability to safely and competently exercise any clinical Privileges requested
h. intended practice plans, and
i. adherence to the ethics of their profession.

Specifically, physicians, podiatrists, and dentists must:

j. Have a current unrestricted license to practice in Nevada;
k. Be board certified or board admissible by the appropriate board. New applicants to the Medical Staff must become board certified within five (5) years of initial appointment to the Medical Staff if not already certified. All Medical Staff

members who are members prior to January 1, 2010 and are not board certified will be grandfathered and this requirement will be waived.

l. Where applicable to his practice, have a current unrestricted Federal Drug Enforcement Agency registration and Nevada State Pharmacy registration;

m. Possess current, valid professional liability insurance that covers all privileges requested with an insurance carrier authorized by the State of Nevada Department of Insurance as a licensed provider of professional malpractice insurance. Insurance must be carried in a form and amount as determined from time to time by the Board, but never less than 1 million/3 million dollars of coverage;

n. Have a practice or residence close enough to the Hospital to provide timely and continuous care for their patients as determined by the Board;

o. Not be seeking only clinical Privileges that are subject to an exclusive contract with the Hospital;

p. Be eligible to participate in Medicare, Medicaid, and other federally sponsored healthcare reimbursement programs;

q. Be able to demonstrate the ability to work cooperatively with others and to treat others within the Hospital with respect at all times. Evidence of ability to display appropriate conduct and behavior shall include, but shall not be limited to, responses to related questions provided in information from training programs, peers, and other facility affiliations.

r. A practitioner who is 69 or older shall renew his privileges annually. As a routine part of the recredentialing process, an applicant 69 or older shall complete an annual physical and mental health examination to ensure that he is still competent to perform the privileges requested. The physical and mental exams are to be conducted by a practitioner who is deemed acceptable to the Credentials Committee and/or MEC. The outcome should be documented on a form approved by the MEC and submitted to the Credentials Committee and/or MEC by the date requested. The results of the exams must indicate that the applicant has no physical or mental problem that may interfere with the safe and effective provision of care permitted under the privileges granted. In addition to the physical and mental exam, an applicant may be required to undergo proctoring of his clinical performance as part of the assessment of his capacity to perform the requested privileges. Such proctoring may be required in the absence of any previous performance concerns. The scope and duration of the proctoring shall be determined by the MEC on recommendation of the Department Chair and the Credentials Committee.

s. Understand that if there is any material misstatement in, or material omission from, an application for appointment or reappointment, the Hospital may stop processing the application because the application will be deemed incomplete. There shall be no entitlement to a hearing or appeal if the application is deemed incomplete; and

t. Additional membership and privileging requirements considered associated details can be found in the Medical Staff Credentials Manual or in the Medical Staff's delineation of privileges forms.

An applicant who does not meet the basic qualifications is ineligible to apply for Medical Staff membership and his application shall not be processed. The qualifications for membership must be documented with sufficient adequacy to satisfy the Medical Staff and Board that each has enough information to make a fully informed decision regarding appointment and assignment of privileges.

No applicant may be entitled to membership on the Medical Staff or to the exercise of particular Privileges in the Hospital merely by virtue of licensure to practice in Nevada or any other state, membership in any professional organization, certification by any American Board of Medical Specialty (ABMS), privileges at another hospital, or the demonstration of clinical competence.

No applicant shall be appointed to the Medical Staff if the Hospital, in its sole discretion, does not provide the service to which the applicant is applying or Hospital is unable to provide adequate facilities and support services for the applicant or his patients. Refusal to accept or review requests for Staff Membership or Privileges based upon Hospital's ability to accommodate, as described in this section, shall not constitute a denial of Staff Membership or Privileges and shall not entitle the individual to any procedural rights of hearing or appeal. Any portion of the application which is accepted (e.g., requests for Privileges that are not subject to a limitation) shall be processed in accord with these Bylaws.

The Board may make exceptions or additions to any of the above qualifications and requirements after consultation with the Medical Staff through a Joint Conference.

2.2 Non-Discrimination

The Hospital will not discriminate in granting Medical Staff Membership and/or privileges on the basis of gender, race, religion, national origin, age, sexual orientation disability unrelated to the provision of patient care or required Medical Staff responsibilities, or any other basis prohibited by applicable law, to the extent the applicant is otherwise qualified.

2.3 Responsibilities of Membership

Each Member of the Medical Staff must continuously comply with the provisions of these Bylaws, the Ancillary Manuals and Medical Staff Rules and Regulations. Members also must:

a. Provide continuous and timely care to all patients for whom the individual has responsibility;
b. Provide, with or without request, new and updated information to the Hospital as it occurs, pertinent to any question found on the initial application or reappointment forms;
c. Appear for personal interviews (in person or by teleconference) in regard to an application for initial appointment or reappointment, as requested by the Hospital;

d. Refrain from illegal fee splitting or other illegal inducements relating to patient referrals;
e. Refrain from deceiving patients as to the identify of any individual providing treatment or services;
f. Seek an appropriate consultation whenever necessary to assure adequate quality of care;
g. Complete in a timely manner all medical and other required records, inputting all information required by the Hospital;
h. Satisfy continuing medical education requirements for licensure and as may be required under policies adopted from time to time by the Medical Staff;
i. Supervise the work of any Allied Health Professional under his direction;
j. Assist other Practitioners in the care of their patients when asked in order to meet an urgent patient need or assure the well-being of a patient;
k. Treat employees, patients, visitors, and other physicians in a dignified and courteous manner at all times.
l. Maintain back-up coverage to be provided by a Member of the Hospital's Medical Staff.

Furthermore, each Member of the Medical Staff by accepting Medical Staff appointment agrees:

m. To abide by these Bylaws, all supplemental Medical Staff manuals and Medical Staff Rules and Regulations;

n. To participate in and collaborate with the peer review and performance improvement activities of the Medical Staff, Hospital, and Health System. These include monitoring and evaluation tasks performed by the Medical Staff, and compliance with Hospital efforts to meet standards such as those established by the Joint Commission, insurers, Centers for Medicare and Medicaid Services (CMS) and other governmental agencies (e.g. core measures);

o. To assist the Hospital in fulfilling its responsibilities for providing emergency and charitable care in accordance with policies passed by the MEC and Board;

p. To permit the Hospital and Medical Staff to share peer review and performance information with the Medical Staffs and governing boards of all hospitals in the Health System at which the Member holds membership and/or privileges and with the Credentials Committee;

q. To undergo any type of health evaluation by a consultant selected by the Hospital, including random drug testing, as requested by the officers of the Medical Staff, Chief Executive Officer (CEO), and/or MEC when it appears necessary to protect the well-being of patients and/or staff, or when requested by the MEC or Credentials Committee as part of an evaluation of the Member's ability to exercise privileges safely and competently, or as part of a post-treatment

monitoring plan consistent with the provisions of any Medical Staff and Hospital Policies addressing physician health or impairment.

r. To participate in any type of competency evaluation when determined necessary by the MEC and/or Board in order to properly delineate that Member's clinical privileges.

s. To provide patient care and management only within the parameters of his professional competence, as reflected in the scope of Privileges granted to the Practitioner by the Board.

t. To hold harmless and agree to refrain from legal action against any individual, the Medical Staff, Hospital, or Health System that appropriately shares peer review and performance information with a legitimate health care entity or state licensing board assessing the credentials of the Member.

u. To abide by the current Principles of Medical Ethics of the American Medical Association, the American Osteopathic Association, the Code of Ethics of the American Dental Association, or the ethical standards governing the Member's practice. The Member shall also agree to abide by any applicable codes of conduct adopted by the Medical Staff, Hospital, and/or Health System.

v. To abide by all local, State and federal laws and regulations, Joint Commission standards, and State licensure and professional review regulations and standards, as applicable to the Member's professional practice.

2.4 Categories of Medical Staff Membership

The Medical Staff shall be divided into the following categories: Active, Associate, Refer and Follow and Honorary. Category status for each Physician will be recommended by the MEC at appointment or reappointment and ratified by the Board.

2.4.1 Active Staff

Qualifications: Appointees to this category must:

Be involved in a minimum of thirty-six (36) patient contacts at the Hospital, over a twenty-four (24) month period or at time of reappointment, whichever is sooner. A patient contact is defined as any admission, inpatient evaluation, consultation, or procedure, performed for the Hospital. The patient contact must be documented in the medical record. After initial appointment, category status will be assigned at reappointment time based on contact activity during the previous twenty-four (24) month period or at anytime by request of the Medical Staff Member. Members may be promoted to this category at any such time, at their request, when they meet the minimum required patient contacts at the Hospital. Where a Physician brings

particular skills, contributions, or benefits to the Hospital and Medical Staff, the Board may appoint the Physician to the Active Staff even if the Physician does not meet the minimum activity requirements.

Prerogatives: Appointees to this category may:

a. Exercise those clinical Privileges granted by the Board.
b. Vote on all matters presented at general and special meetings of the Medical Staff, and at meetings of department(s) and committees to which he is appointed.
c. Hold office and sit on or act as chair of any committee, unless otherwise specified elsewhere in these Bylaws.

Responsibilities: Appointees to this category must:

a. Meet the basic responsibilities of Medical Staff membership, as defined in Article 2.3, and contribute to the organizational and administrative affairs of the Medical Staff.
b. Actively participate in recognized functions of staff appointment, including performance improvement, peer review, risk and utilization management, the monitoring of initial appointees, credentialing activities, medical records completion, and the discharge of other Medical Staff functions and departmental obligations as may be required from time to time.
c. Comply with these Bylaws, the Ancillary Manuals and all applicable Hospital, Medical Staff and Health System Rules and Regulations.
d. Participate in providing Emergency call and in other coverage arrangements as defined in Policies.
e. Perform such further duties as may be required under these Bylaws or Policies, including any future changes to these documents.

2.4.2 Associate Staff

Qualifications: Appointees to this category must:

a. Be interested in the clinical affairs of the Hospital and hold Privileges to actively manage patient care or to refer and follow hospitalized patients.
b. Admit or otherwise be involved in the care or treatment of less than thirty-six (36) patient contacts (as defined in Section 2.4.1 under the Active Category) in an appointment period.
c. Engage in the active practice of medicine at some location so that the Medical Staff and Board can assess the Member's compliance with membership and privileging requirements as stated under these Bylaws and Policies.

At each reappointment time, the Associate Staff Member may be asked to provide evidence of clinical performance at other hospitals where the Member holds privileges. In addition, especially for an Associate Staff Member who does not maintain appointment at another hospital, the Member shall provide other information as may be requested by the Medical Staff or Board in order to perform an appropriate evaluation of qualifications. Such information may include, but will not be limited to, data from the Member's office practice, information from managed care organizations in which the Member participates, and/or receipt of confidential evaluations forms completed by referring/referred to physicians.

Prerogatives: Appointees to this category may:

a. Exercise those Privileges granted by the Board.
b. Attend meetings of the Staff and Department to which he is appointed in a non-voting capacity, except in committees to which the Member is appointed. Associate Staff may attend all educational programs presented by the Medical Staff and/or Hospital.
c. Not vote or hold office within the Medical Staff organization. An Associate Staff Member may serve on committees of the Medical Staff or Hospital as a voting Member and may also attend Medical Staff and Department meetings, but as a non-voting Member.

Responsibilities: Appointees to this category must:

a. Meet the basic responsibilities of Medical Staff membership, as defined in Article 2.3, and contribute to the organizational and administrative affairs of the Medical Staff.
b. Actively participate, when asked, in recognized functions of Staff appointment, including performance improvement, peer review, risk and utilization management, the monitoring of initial appointees, credentialing activities, medical records completion, and the discharge of other Medical Staff functions and departmental obligations as may be required from time to time.
c. Comply with these Bylaws, the Ancillary Manuals and all applicable Policies and Rules and Regulations.
d. Participate in providing Emergency call and other coverage arrangements as defined in policies adopted by the MEC and Hospital Board.
e. Perform such further duties as may be required under these Bylaws or Medical Staff Policies, including any future changes to these documents.

2.4.3 Refer and Follow

Qualifications: The Refer and Follow Staff category shall consist of Physicians who are not actively involved in Medical Staff affairs and are not major contributors to fulfillment of Medical Staff functions, due to practicing primarily at another hospital

or in an office-based specialty, or other reasons, but who wish to remain affiliated with the Hospital for referral of patients or other patient care purposes.

Appointees to this category may;

Refer patients for outpatient diagnostic testing and specialty services provided by the Hospital;

Refer patients to other appointees of the Medical Staff for admission, evaluation, and/or care and treatment;

Visit their hospitalized patients, review their hospital medical records and provide advice and guidance to the attending physician, but shall NOT be permitted to admit patients, to attend patients, to exercise any Privileges, to write orders or progress notes, to make any notations in the medical record or to actively participate in the provision of care or management of patients in the hospital. They are encouraged to attend educational programs sponsored by the Hospital or Medical Staff and attend meetings of the full Medical Staff and the Department to which they are assigned.

Appointees of this category shall not vote on Medical Staff matters, or hold office, but may serve and vote on Medical Staff Committees, if assigned. Appointees of this category further acknowledge that appointment and reappointment to Refer and Follow Staff Category is a courtesy which may be terminated by the Board upon recommendation of the MEC with sixty (60) days written notice, without right to due process, as set forth in these Bylaws.

2.4.4 Honorary Medical Staff

The Honorary Staff Category is restricted to Members the Medical Staff wishes to honor. Criteria for this status include, but are not limited to, Physicians who have actively participated in Hospital affairs, committee activity and have had a Medical Staff leadership role. The Department or the MEC may forward the names of Members being considered for this category and will submit a recommendation to the MEC for consideration and decision. Such Staff appointees are not eligible to admit patients to the Hospital or to exercise Privileges in the Hospital, nor vote at any meetings attended. Honorary Staff may, however, attend Medical Staff and Department meetings and educational programs. They may also be appointed as voting or non-voting members of committees when interested so that the Medical Staff may take advantage of their unique experience or talents. Honorary Staff shall not vote or hold office within the Medical Staff organization. An Honorary Staff Member may serve on committees of the Medical Staff or Hospital as a voting Member and may also attend Medical Staff and department meetings, but as a non-voting Member.

Prerogatives:

- Individuals in the Honorary Medical Staff category shall be invited and welcome to attend education and social functions of the Hospital and Medical Staff as appropriate.

Responsibilities:

- Individuals in the Honorary Medical Staff category will conduct themselves at all times in a manner that will not diminish or tarnish the reputation of the Medical Staff, Hospital or Health System.

2.4.5 Change in Staff Category

Pursuant to a request by the Medical Staff member, upon a recommendation by the Credentials Committee, or pursuant to its own action, the MEC may recommend a change in Medical Staff category of a Member consistent with the requirements of these Bylaws. The Board shall approve any change in category. Determinations regarding assignment of Staff category are not subject to review under the due process provisions of these Bylaws.

2.4.6 Limitation of Prerogatives

The prerogatives of Medical Staff membership set forth in these Bylaws are general in nature and may be subject to limitation or restriction by special conditions attached to an individual's appointment, reappointment, or Privileges, by Sstate or federal law or regulations, by other provisions of these Bylaws or by other Policies, or by commitments, contracts, or agreements of the Hospital.

2.5 Member Rights

Members appointed to the Medical Staff shall have the following rights, in addition to the procedural due process rights enumerated in these Bylaws:

2.5.1 Each Member of the Active Staff has the right to an audience with the MEC on matters relevant to the responsibilities of the MEC. In the event that such Member is unable to resolve a matter of concern after discussion with the appropriate Department or committee chair or other appropriate Medical Staff leader(s), that Member may, upon written notice to the Chief of Staff at least two weeks in advance of a regular meeting of the MEC, meet with the MEC or MEC subcommittee to discuss the issue. The Chief of Staff will have discretion regarding the timing and placement of the issue on the MEC agenda or direction of the issue to a subcommittee.

2.5.2 Each Member of the Active Medical Staff has the right to initiate a recall vote of Medical Staff officers or Department chairs in accordance with the recall provisions provided in these Bylaws.

2.5.3 Each Member of the Active Staff has a right to call a special meeting of the general Medical Staff to discuss a matter relevant to the Medical Staff. Upon presentation by the Member of a petition signed by twenty-five percent (25%) of Members of the Active Staff category, the MEC shall schedule a special meeting of the Medical Staff for the specific purposes addressed by the petitioners. No business other than that detailed in the petition may be transacted at this meeting.

2.5.4 Each Member of the Active Staff may raise a challenge to any Policy established by the MEC. If presented by such Member with a petition signed by twenty-five percent (25%) of the Active Staff Members of the Medical Staff, the MEC will do one of the following:

a. Provide the petitioners with information clarifying the intent of such policy and the justifications for its adoption; and/or
b. Schedule a meeting with the petitioners to discuss the issues raised with regard to the policy. The conflict management process set forth in Article XI Section 11.6 of these Bylaws shall apply.

2.5.5 Any Member of the Active Staff or Associate Staff may call for a department meeting by presenting a petition signed by twenty-five percent (25%) of the Members of the Department. Upon presentation of such a petition, the Department Chair will schedule a Department meeting to discuss the concerns raised by the petitioners.

2.5.6 The above sections on Member Rights (2.5.1 through 2.5.5) do not pertain to issues involving individual peer review or performance evaluation (including focused and ongoing professional practice evaluation), formal investigations of professional performance or conduct, denial of requests for appointment or privileges, restriction or conditions placed on appointment or Privileges, or any other matter relating to individual Membership or Privileges. Recourse with regard to these matters is described in Article X.

2.6 Allied Health Professionals

2.6.1 Category: AHPs are person(s) other than Physicians who are granted Privileges to practice in the Hospital and are directly involved in patient care but are not Members of the Medical Staff. Such persons may be employed by Physicians on the Medical Staff, but whether or not so employed, must be under the direct supervision and direction of a Physician, unless permitted by State law and the Hospital's policy to practice independently, and not exceed the limitations of practice set forth by their respective State licensing board.

2.6.2 Qualifications: Only AHPs holding a license, certificate or other official credential as provided under State law, shall be eligible to provide specified services in the Hospital as delineated by the MEC and approved by the Board.

AHP's must:

a. Document their professional experience, background, education, training, demonstrated ability, current competence and physical and mental health status with sufficient adequacy to demonstrate to the Medical Staff and the Board that any patient treated by them will receive quality care and that they are qualified to provide needed services within the Hospital;

b. Establish, on the basis of documented references, that they adhere strictly to the ethics of their respective provisions, work cooperatively with others and are willing to participate in the discharge of AHP Staff responsibilities;

c. Have professional liability insurance in the amount required by these Bylaws;

d. Provide a needed service within the Hospital; and

e. Unless permitted otherwise by law and by the Hospital to practice independently, provide written documentation that a Physician has assumed responsibility for directing and supervising the AHP.

2.6.3 Prerogatives: Upon establishing experience, training and current competence, AHPs, as identified in this Section 2.6, shall have the following prerogatives:

a. To exercise judgment within the AHP's area of competence, providing that a Physician has the ultimate responsibility for patient care except as otherwise specifically permitted;

b. To participate directly, including writing orders to the extent permitted by law, in the management of patients under the supervision or direction of a Physician; and

c. To participate as appropriate in patient care evaluation and other quality assessment and monitoring activities required of the Medical Staff, and to discharge such other Staff functions as may be required from time-to-time.

2.6.4 Conditions of Appointment:

a. AHPs shall be credentialed in the same manner as outlined in Article III of the Medical Staff Bylaws for credentialing of Medical Staff Members and other Practitioners. Each AHP shall be assigned to one (1) of the Departments and shall be granted Privileges relevant to the care provided in that Department. The Board in consultation with the MEC shall determine the scope of the activities which each AHP may undertake. Such determinations shall be furnished in writing to the AHP and shall be final and not subject to due process, except as specifically and expressly provided in these Bylaws.

b. Appointment of AHPs must be approved by the Board and may be terminated by the Board or the CEO. Adverse actions or recommendations affecting AHP privileges shall not be afforded the same due process set forth in Article X of these Bylaws. However, the affected AHP shall have the right to request to be heard before the Credentials Committee or Performance Improvement Committee, as applicable, with an opportunity to rebut the basis for termination. Upon receipt of a written request, the Credentials Committee or Performance Improvement Committee shall afford the AHP an opportunity to be heard by the Committee concerning the AHP's grievance. Before the appearance, the AHP shall be informed of the general nature and circumstances giving rise to the action, and the AHP may present information relevant thereto. A record of the appearance shall be made. The Credentials Committee or Performance Improvement Committee shall, after conclusion of the investigation, submit a written decision simultaneously to the MEC and to the AHP.

c. The AHP shall have a right to appeal to the Board any decision rendered by the Credentials Committee or Performance Improvement Committee. Any request for appeal shall be required to be made within fifteen (15) days after the date of the receipt of the Credentials Committee's or Performance Improvement Committee's decision. The written request shall be delivered to the Chief of Staff and shall include a brief statement of the reasons for the appeal. If appellate review is not requested within such period, the AHP shall be deemed to have accepted the action involved which shall thereupon become final and effective immediately upon affirmation by the MEC and the Board. If appellate review is requested the Board shall, within fifteen (15) days after the receipt of such an appeal notice, schedule and arrange for appellate review. The Board shall give the AHP notice of the time, place and date of the appellate review which shall not be less than fifteen (15) days nor more than ninety (90) days from the date of the request for the appellate review. The appeal shall be in writing only, and the AHP's written statement must be submitted at least five (5) days before the review. New evidence and oral testimony will not be permitted. The Board shall thereafter decide the matter by a majority vote of those Board members present during the appellate proceedings. A record of the appellate proceedings shall be maintained.

d. AHP Privileges shall automatically terminate upon revocation of the Privileges of the AHP's supervising Physician, unless another qualified Physician indicates his willingness to supervise the AHP and complies with all requirements hereunder for undertaking such supervision. In the event that an AHP's supervising Physician's Privileges are significantly reduced or restricted, the AHP's Privileges shall be reviewed and modified by the Board upon recommendation of the MEC. Such actions shall not be covered by the due process provisions of Article X of these Bylaws. In the case of CRNAs who are supervised by an operating surgeon, the CRNA's privileges shall be unaffected by the termination of a given surgeon's privileges so long as other surgeons remain willing to supervise the CRNA for purposes of their cases.

2.6.5 Responsibilities:

a. Provide his patients with continuous care at the generally recognized professional level of quality;

b. Abide by these Medical Staff Bylaws and other lawful standards, Policies and Rules & Regulations of the Medical Staff, and personnel policies of the Hospital, if applicable;

c. Discharge any committee functions for which he is responsible;

d. Cooperate with members of the Medical Staff, administration, the Board and employees of the Hospital;

e. Adequately prepare and complete in a timely fashion the medical and other required records for which he is responsible;

f. Abide by the ethical principles of his profession and specialty; and

g. Notify the CEO and the Chief of Staff immediately (but in no case later than five (5) days) if:

(1) His professional license in any state is suspended or revoked;

(2) His professional liability insurance is modified or terminated;

(3) He is named as a defendant, or is subject to a final judgment or settlement, in any court proceeding alleging that he committed professional negligence or fraud; or

(4) He ceases to meet any of the standards or requirements set forth herein for continued enjoyment of AHP appointment and/or Privileges;

(5) He becomes ineligible to participate in Medicare, Medicaid, and other federally sponsored healthcare reimbursement programs.

h. Comply with all State and federal requirements for maintaining confidentiality of patient identifying medical information, including the Health Insurance Portability and Accountability Act of 1996, as amended, and its associated regulations, and execute a health information confidentiality agreement with the Hospital.

2.7 Dependent Healthcare Practitioners Not Employed by Hospital.

Other categories of dependent healthcare professionals who are not Hospital employees but who provide patient care services in support of, or under the direction of, a Medical Staff member shall have their qualifications and ongoing competence verified and maintained through a process administered by the Hospital. Dependent Healthcare Professionals are not considered AHPs. Although a Medical Staff members may provide employment, sponsorship and supervision of a non-Hospital-employed Dependent Healthcare Professional through the terms of a sponsorship agreement which shall impose binding responsibilities upon the Medical Staff members, these Bylaws shall not apply to such Dependent Healthcare Professionals.

ARTICLE III
CREDENTIALING AND THE DETERMINATION OF PRIVILEGES

3.1 Appointment and Reappointment of Medical Staff Membership

The following steps describe the process for credentialing (appointment and reappointment) of Medical Staff members and other Practitioners. Associated details may be found in the Medical Staff Credentials Manual.

a. Individuals interested in appointment to the Medical Staff or Privileges may request from the Hospital or the CVO an application and a list of the eligibility requirements for Membership and/or Privileges. Eligible Members of the Medical Staff will automatically be sent an application for reappointment in a timely fashion.

b. Upon completion and submission of the application to the CVO, a designated individual will verify the contents and confirm that the applicant is eligible to have the application processed further. If the application shows the applicant is not eligible for Membership or Privileges, he will be notified that no further evaluation or action will occur regarding the application.

c. A completed and verified application will be forwarded by the CVO to the Hospital Medical Staff Office. The Medical Staff Office will prepare the file for review and evaluation by the appropriate Department Chair (or designee). This review will include consideration of the applicant's individual character, individual clinical competence, individual training, individual experience, and individual professional judgment and conduct. The Department Chair will forward a recommendation concerning appointment of the applicant to the Credentials Committee.

d. The Credentials Committee will review the application and forward its recommendation to the MEC.

e. The MEC will review the application and forward its recommendation to the Hospital Board regarding membership and if appropriate, Staff category, and Department assignment. The MEC may refer an application back to the Credentials Committee if it feels more information or evaluation of the applicant is necessary.

f. The Board will review the application and determine whether to offer the applicant membership and whether any restrictions or conditions should be attached to an offer of Membership and/or Privileges. Membership will be offered upon action by the Board and membership will become effective upon acceptance of the offer by the applicant.

g. The time period for the processing of, consideration of and determination on completed applications described in Sections 3.1(b), (c), (d), (e) and (f) shall occur

within one hundred eighty (180) days of the CVO's receipt of a completed application.

h. Applicants may appeal adverse recommendations by the MEC and adverse decisions made by the Board in accordance with provisions in these Bylaws, except in cases where the application is deemed incomplete or minimum criteria for processing are not met or where the due process set forth in Article X is not applicable.

3.2 Granting of Clinical Privileges

The following steps describe the process for granting Privileges to qualified applicants. Associated details may be found in the Medical Staff Credentials Manual and on Medical Staff Delineation of Privileges documents. Practitioners shall be entitled to exercise only those Privileges specifically granted to them by the Hospital Board. The Medical Staff may recommend clinical Privileges for Practitioners who are not Members of the Medical Staff but who hold a license to practice independently.

a. Applicants initially applying for Medical Staff Membership or for reappointment must complete the appropriate forms to request specific Privileges. Applicants ineligible for Medical Staff Membership but eligible for Privileges will complete the appropriate request forms. These forms are available from the Hospital or CVO.

b. Upon completion and submission of the appropriate forms to the CVO, a designated individual will confirm that the applicant is eligible to have the requests processed further. Privilege requests that do not demonstrate compliance with eligibility requirements will not be processed further.

c. Completed Privilege request forms will be forwarded by the CVO to the appropriate Department Chair (or designee) for review and evaluation. This review will include consideration of the applicant's individual character, individual clinical competence, individual training, individual experience, and individual professional judgment and conduct.

d. The Department Chair will forward a recommendation to the Credentials Committee.

e. The Credentials Committee will review the applicant's requests and the input of the Department Chair and recommend a specific action to the Hospital MEC.

f. The MEC will review the privileging requests and recommend specific actions on them to the Hospital Board.

g. The Hospital Board will review the privileging requests and either reject the requests, modify them, or grant the Privileges being sought.

h. Applicants may appeal adverse recommendations by the MEC and adverse decisions made by the Board in accordance with provisions in these Bylaws and the associated details in the Medical Staff Corrective Action and Fair Hearing Manual.

3.3 Telemedicine Privileges

Practitioners who wish to provide telemedicine services, as defined in these Bylaws, in prescribing, rendering a diagnosis, or otherwise providing clinical treatment to a Hospital patient, without clinical supervision or direction from a Medical Staff Member, shall be required to apply for and be granted Privileges for these services as provided in the Medical Staff Bylaws and Associated Manuals. The Medical Staff shall define in the Rules and Regulations or Medical Staff policy which clinical services are appropriately delivered through a telemedicine medium, according to commonly accepted quality standards. Consideration of appropriate utilization of telemedicine equipment by the telemedicine practitioner shall be encompassed in clinical privileging decisions.

3.4 Temporary Privileges

As further detailed in the Medical Staff Credentials Manual, temporary priivelges may be granted to a Practitioner to provide for an important care need for a limited time, not to exceed one hundred twenty (120) days.

3.5 Disaster Privileges

a. In case of a disaster in which the Health System Emergency Management Plan has been activated and the Hospital is unable to meet the immediate patient needs, the Chief Executive Officer or the CEO's designee may grant disaster privileges to Licensed Independent Practitioners (LIP) or Allied Healthcare Practitioners (AHCP). If the CEO is unable to grant disaster privileges or is unable to name a designee, one of the following individuals may grant disaster privileges: the Chief of staff, any elected officer of the Medical Staff, a department chairperson or incident commander. The grant of privileges under this subsection shall be on a case-by-case basis at the sole discretion of the individual authorized to grant such privileges in accordance with the needs of the Hospital, its patients and the qualifications of the LIP or AHCP. An initial grant of disaster privileges shall be reviewed by a person authorized to grant disaster privileges within 72 hours to determine whether the disaster privileges should be continued.

b. The verification process for the credentials and privileges of individuals who receive disaster privileges under this Section 3.5 shall be developed in advance fo a disaster situation and set forth in the Health System Medical Staff Disaster Privileges Policy.

3.6 Medical Staff Credentials Manual

The Medical Staff delegates to the MEC the authority to adopt associated details elaborating on the credentialing and privileging process. Such associated details are found in the Medical Staff Credentials Manual which may be modified from time to time.

ARTICLE IV
OFFICERS

4.1 Officers of the Medical Staff

The officers of the Medical Staff shall be:

- Chief of Staff
- Vice-Chief of Staff
- Treasurer
- Immediate Past Chief of Staff

4.2 Qualifications

Officers of the Medical Staff must satisfy the following criteria at the time of nomination and continually throughout the term of their office:

a. be an appointee to the Active Staff;

b. have no pending adverse recommendation before the Board concerning Medical Staff appointment or Privileges;

c. have constructively participated in Medical Staff activities, including, but not limited to activities such as performance improvement and professional peer review;

d. be willing to discharge faithfully the duties and responsibilities of the position;

e. have experience in a medical staff leadership position, or other involvement in performance improvement functions for at least two years;

f. be willing to attend continuing education programs relating to Medical Staff leadership and/or credentialing functions prior to or during the term of office;

g. be in compliance with any and all Policies including Conflicts of Interest; and,

h. must have demonstrated an ability to work well with others.

4.3 Selection

The Nominating Committee as outlined in Article VI of these Bylaws shall select nominees for placement on the election ballot for officers at least sixty (60) days prior to election. The Immediate Past Chief of Staff will automatically assume this position whenever he leaves the office of Chief of Staff, unless removed for cause. In event there is not an Immediate Past Chief of Staff, the Chief of Staff will appoint an Active Member of the Medical Staff to serve in this capacity.

4.4 Election

a. Officers of the Medical Staff shall be elected using a confidential ballot which may be distributed to eligible voting members of the Medical Staff at a general Medical Staff meeting, by mail, or electronically. The mechanics of distributing ballots and counting votes will be determined by the MEC. Only Members of the Active Staff shall be eligible to vote. The winner of an election shall be the individual who receives the greatest number of votes from Active Staff Members who received ballots and voted. Voting by proxy is not permitted.

b. Officers shall be eligible to assume office once the Board has ratified their election. Such ratification cannot be unreasonably withheld.

c. Elections for officers will take place in the October, November or December of even numbered years as scheduled by the Hospital under procedures approved by the MEC.

4.5 Term

All elected officers shall take office on the first day of the calendar odd year and will serve a term of two (2) years. All officers may be re-elected. The Immediate Past Chief of Staff will serve until a current Chief of Staff completes his elected term(s) and steps down from that office.

4.6 Duties of Elected Officers

a. Chief of Staff:

The Chief of Staff shall serve as the Chief Administrative Officer and principal elected official on the Medical Staff. As such, he shall be responsible for implementing the general responsibilities of the Medical Staff, including, without limitation:

1. Aiding and coordinating Medical Staff activities with the activities and concerns of the Board, Administration of the Hospital, Nursing, and other patient care services.

2. Accounting to the Board and Medical Staff in conjunction with the MEC and the respective Departments for the quality, efficiency and performance of patient care services within the Hospital.

3. Developing and implementing, in coordination with the chairs of the respective Departments, continuing education programs, utilization review, performance improvement programs, and methods for credentials review, delineation of privileges, and monitoring of patient care within Departments.

4. Communicating and representing the concerns and recommendations of the Medical Staff to the Board, the CEO, and other leaders of the Medical Staff.

5. Assuming responsibility for the enforcement of these Bylaws and any Policies, Rules and Regulations, for implementation of appropriate sanctions where indicated, and for the Medical Staff's compliance with procedural safeguards in all instances where appropriate, as provided under these Bylaws.

6. Calling and presiding at all general and special meetings of the Medical Staff and of the MEC.

7. Serving as chair of the MEC, and as an ex-officio Member of all Medical Staff committees.

8. Appointing the members of all Standing, Special and multi-disciplinary Medical Staff committees, except the MEC, in consultation with the Chair of each such committee.

9. Serving as an ex-officio Member of the Board.

10. Performing all other functions as may be assigned to the Chief of Staff by these Bylaws, the Medical Staff, the MEC, or the Board.

b. Vice-Chief of Staff:

The Vice-Chief of Staff shall be a member of the MEC and shall be required to assist the Chief of Staff and to perform such duties as may be assigned to him by the Chief of Staff. In the absence of the Chief of Staff or upon the occurrence of a vacancy in the office of Chief of Staff, the Vice-Chief of Staff shall assume the responsibilities, exercise the authority, and perform the duties assigned to the Chief of Staff until the Chief of Staff returns or that office is filled.

c. Treasurer:

The Treasurer shall be a member of the MEC. Duties shall include keeping accurate complete records regarding receipts and expenditures of the medical staff fund and periodically reporting to the Medical Executive Committee on fiscal matters of the medical staff.

d. Immediate Past Chief of Staff:

The Immediate Past Chief of Staff shall be a member of the MEC and shall serve as an advisor to the Chief of Staff and perform those functions delegated to him by the Chief of Staff.

4.7 Removal

a. Officers of the Medical Staff may be removed by an affirmative vote of two-thirds (2/3) of the Active Staff present and voting at any general or special meeting, subject to the approval of the Governing Board, in circumstances where such removal is necessary to protect the interests of the Hospital. Each of the following conditions constitutes cause for removal of an officer from office:

1. Failure to comply with or support enforcement of these Medical Staff Bylaws, Policies and Rules and Regulations;
2. Failure to perform the required duties of the office;
3. Failure to adhere to professional ethics;
4. Abuse of office;
5. Conduct unbecoming a Medical Staff member and officer; and
6. Failure to continuously satisfy the criteria set forth in Article IV Section 4.2 of these Bylaws.

b. At least ten (10) days prior to the initiation of any removal action, the officer shall be given special notice of the date of the meeting at which action is to be considered. The officer shall be afforded an opportunity to speak to the Medical Staff prior to a vote on removal.

c. Automatic removal will occur (without need for a vote) in the event any of the following affects the officer in question:

1. Loss or suspension of the officer's medical license in the State of Nevada;
2. Ineligibility of membership to the Active Staff;
3. Recommendation by the MEC to the Board for the imposition of corrective action or the acceptance of such recommendation by the Board, limited to summary suspension or recommendation for suspension or revocation.

d. Where the Chief of Staff is removed from that position, he shall be ineligible to hold the office of Immediate Past Chief of Staff.

4.8 Vacancies

If the Chief of Staff is temporarily unable to fulfill the responsibilities of the office, the Vice Chief of Staff shall assume these responsibilities until the Chief of Staff can resume those duties. When a vacancy occurs in the Chief of Staff office, the Vice Chief of Staff will assume this position for the remainder of the existing term. The MEC shall appoint a Vice Chief of Staff to complete the term whenever this position is vacated. If the Immediate Past Chief resigns or is not eligible to hold this position, the Chief of Staff shall appoint another former Chief of Staff to fulfill the remainder of the term or it shall remain vacant until the current Chief of Staff becomes available to carry out the role.

ARTICLE V
CLINICAL DEPARTMENTS AND SERVICES

5.1 Designation of Clinical Departments

The Medical Staff shall be divided into the following Departments:

- Medicine Department
- Surgery Department
- Maternal/Child Department

The Board, with input from the MEC, may create additional Medical Staff clinical departments where this would improve the effectiveness of the Medical Staff in carrying out its responsibilities.

5.2 Organization of Clinical Departments

Each Department shall be organized as an organizational division of the Medical Staff and shall have a qualified Chair that has the authority, duties, and responsibilities set forth in these Bylaws. Each Department is accountable to the oversight and authority of the MEC and the Board.

5.3 Functions of Departments

a. Review and Evaluation Activities

Each Department's primary responsibility shall be to implement and conduct specific review and evaluation activities that contribute to the preservation and improvement of the quality and efficiency of patient care provided by members of the Department. These may include discussion of information relevant to the care and treatment of patients served by members of the Department along with the detailed consideration of relevant cases, including, without limitation, operative and other procedure review, medical record review, infection control review, pharmacy and therapeutic review, blood utilization review, efficiency of clinical practice patterns, significant departures from established patterns of clinical practice, quality review reports, patient safety initiatives, and medical assessment and treatment of patients within the Department and the Hospital.

b. Additional Activities

At the discretion of Department members and its Chair, the Department may be utilized to organize and promote any of the following collegial and professional activities: continuing medical education; communication and dialogue regarding issues relevant to members of the Department; social networking; and interdisciplinary projects and coordination.

c. Member Accountability

Members and other Practitioners assigned to the Department are accountable to the Department Chair and must be responsive to requests for information, participation in departmental activities, participation in a mandatory special meetings, and compliance with Hospital, Health System, Medical Staff, or Department Rules and Regulations, policies, procedures, or requirements.

5.4 Department Chair

a. Qualifications

Each Department Chair shall be:

(1) A Member of the Active Staff;

(2) Board certified by a specialty board recognized by the American Board of Medical Specialties (ABMS) or American Osteopathic Association (AOA) or found to have comparable competency by actions of the MEC;

(3) Qualified by experience within the Department and by administrative ability to supervise the functions of the department, and

(4) Willing and able to discharge the functions of the Department Chair.

b. Selection

1. Each Department Chair shall be elected by a plurality of the votes cast by Members of the Department on the Active Staff. Department Chairs shall be selected using a secret ballot which may be distributed to eligible voting Members of the Medical Staff by mail, or electronically. The mechanics of distributing ballots and counting votes will be determined by the MEC. Only Members of the Active Staff shall be eligible to vote. The winner of an election shall be the Member who receives the greatest number of votes from Active Staff Members who received ballots and voted. Voting by proxy is not permitted.

2. Department Chairs shall be eligible to assume office once the Governing Board has ratified their election. Such ratification cannot be unreasonably withheld.

3. Elections for Chairs will take place in the October, November or December of odd numbered years as scheduled by the Hospital under procedures approved by the MEC.

4. If there is a vacancy prior to completion of a term of office, an election will take place at the next scheduled meeting of the Department to select an interim Chair

to complete the unfilled term. Elections will be organized and conducted by the Hospital in a manner satisfactory to the MEC.

5. Any member of the Department may be placed, by request, on the ballot unless he does not meet the qualifications in Article V. Section 5.4.a above. A member must give assent to be placed on the ballot.

c. Term

1. Each Department Chair shall take office on the 1st first day of the even calendar year and shall serve a term of two (2) years.

2. A Department Chair may be elected for successive terms, unless otherwise provided by the MEC or Board.

5.5 Removal of Department Chairman

Upon petition by twenty-five percent (25%) of Department Members or upon recommendation of the MEC, the Medical Staff office shall arrange for a recall vote at the next scheduled meeting of the Department. Removal may be accomplished by a two-thirds (2/3) vote of those eligible members of the Department voting and following ratification of the action by the Hospital Board.

5.6 Functions of the Department Chair

Responsibilities:

Each Department Chair shall have responsibility for the organization and administration of the Department, including, without limitation:

1. All clinically related activities of the Department;

2. All administratively related activities of the Department (including presiding at all meetings of the Department), unless otherwise provided for by the Hospital;

3. Continuing surveillance of the professional performance of all individuals in the Department who have delineated Privileges;

4. Recommending to the Medical Staff the criteria for clinical Privileges that are relevant to the care provided in the Department;

5. Recommending Privileges for each Member of the Department;

6. Assessing and recommending to the relevant Hospital authority off-site sources for needed patient care services not provided by the Department or the organization.

7. The integration of the Department or service into the primary functions of the organization;

   a. The coordination and integration of interdepartmental and intradepartmental services;

   b. The development and implementation of policies and procedures that guide and support the provision of services;

   c. The recommendations for a sufficient number of qualified and competent persons to provide care or service;

   d. Advising on the qualifications and competence of Department or service personnel who are not licensed independent practitioners and who provide patient care services.

   e. The continuous assessment and improvement of the quality of care and services provided;

   f. The maintenance of quality control programs, as appropriate;

   g. The orientation and continuing education of all persons in the Department or service; and

   h. Recommending space and other resources needed by the Department or service.

5.7 Clinical Services

a. The MEC may recognize any group of Members and/or Practitioners interested in forming an optional clinical service. Such a clinical service shall be completely optional and shall exist to perform any of the following:

   1. Provide a forum for discussion for clinicians in a particular specialty or interdisciplinary group of specialties.

   2. Offer continuing medical education and discussion of patient care issues.

   3. Sponsor "grand rounds", morbidity & mortality (M&M) conferences, or clinico-pathologic conferences (CPCs).

   4. Provide a vehicle for discussion of policies & procedures or equipment needs in a specialty or service line area.

   5. Create an opportunity for networking and collegial interaction among Practitioners with common interests.

6. Develop recommendations for submission to the MEC.

7. Participate in the development of criteria for Privileges when requested for input by the Credentials Committee or MEC.

8. Participate in the development of clinical protocols when asked to by the MEC or an appropriate Medical Staff Committee.
9. Discuss a specific issue at the request of a Medical Staff Committee.

b. Clinical Services are not required to hold regular meetings, keep minutes or track attendance, and have no regularly assigned responsibilities. A written report is required only when a clinical service wishes to make a formal recommendation to the MEC, another Medical Staff Committee, or to the Hospital's administrative team.

ARTICLE VI
MEDICAL STAFF COMMITTEES AND LIAISONS

6.1 Types of Committees

There shall be an Executive Committee of the Medical Staff (referred to in these Bylaws as the Medical Executive Committee or MEC) and such other standing and special committees of the Medical Staff accountable to the MEC as may be established in these Bylaws or created by the Chief of Staff or MEC to accomplish Medical Staff functions. The Medical Staff shall also carry out its responsibilities through participation in committees of the Health System.

Current standing committees are the MEC and Medical Staff Performance Improvement Committee. The Medical Staff will also provide membership to the standing Credentials Committee of the Health System and the System Peer Review Committee, each of which shall be considered a standing committee of this Medical Staff. The Nominations Committee is a special committee formed every two (2) years to carry out the responsibilities listed in Section 6.6 below. Special committees are generally time limited and/or ad hoc in nature to address specific matters which may occur episodically or on a recurring basis with relative infrequency.

6.2 Committee Chair

a. Selection: With the exception of the MEC, departmental committees, and Health System committees, the Chair of each standing or special committee shall be appointed by the Chief of Staff, subject to the approval of the MEC. The Chief of Staff shall serve as Chair of the MEC.

b. Term: Unless specified otherwise in these Bylaws, each committee Chair shall be appointed to a term of two (2) years.

6.3 Membership and Appointment

a. Eligibility

1. Members of the Active Staff shall be eligible for appointment to any standing or special committee of the Medical Staff established to perform one or more of the functions required by these Bylaws.

2. Members of the Associate Staff shall be eligible for appointment to any standing or special committee of the Medical Staff established to perform one or more of the functions required by these Bylaws, with the exception of the Nominating Committee and MEC.

3. Where specified in these Bylaws, or where the MEC deems it appropriate to the functions of a committee of the Medical Staff, Members of the Refer and Follow

or the Honorary Staff category and representatives from various services of the Hospital, including, without limitation, Administration, Laboratory, Nursing, Information Management and Pharmacy Services, shall be eligible for appointment to specific committees of the Medical Staff.

4. Where specified in these Bylaws, or where the MEC deems it appropriate to the functions of a committee of the Medical Staff, residents in the Residency Program shall be eligible for appointment to specific committees of the Medical Staff, including Infection Control, Pharmacy & Therapeutics, Medical Records and the Medical Staff Performance Improvement Committee.

b. Selection

Unless otherwise provided in these Bylaws, Medical Staff members of any Medical Staff committees, other than the MEC, shall be appointed by the Chief of Staff in consultation with the Chair of that committee. Members of the Medical Staff committees representing non-Medical Staff Hospital services shall be appointed by the Chief Executive Officer or designee.

c. Chief Executive Officer

Unless otherwise provided in these Bylaws, the CEO or his designee shall serve as an ex-officio member, without a vote, of all Medical Staff committees.

d. Voting

Only Medical Staff members in the Active or Associate Staff may vote on Medical Staff committees, unless specified otherwise in these Bylaws or Medical Staff policies or manuals.

e. Term

Unless specified otherwise in these Bylaws, each Medical Staff committee member shall be appointed to a term of two (2) years, and may be reappointed as often as the individual or party responsible for such reappointment may deem advisable.

6.4 Medical Executive Committee

a. Membership

All Members of the organized Medical Staff, of any discipline or specialty, are eligible for membership on the MEC providing that they have attained Active Medical Staff membership. MEC members shall not serve on more than one hospital's MEC at the same time.

b. Composition

The MEC shall consist of not more than twenty-five (25) voting Members as follows:

- Chief of Staff
- Vice-Chief of Staff
- Treasurer
- Immediate Past Chief of Staff
- The Chairs of the Departments
- Three members of the Active staff elected at-large by the Medical Staff Members
- One representative from each of the following specialties if not already represented on the MEC by an elected position, Department chair, or at-large member: Radiology, Emergency Medicine, Pathology, Anesthesiology, Pediatrics/Neonatology, Surgery, Medicine, Cardiology, and Obstetrics/Gynecology.

    - The Chair of the Performance Improvement Committee chosen by the Chief of Staff and ratified by the MEC.
    - A representative to the Credentials Committee chosen by the Chief of Staff and ratified by the MEC.
    - A representative to the System Peer Review Committee chosen by the Chief of Staff and ratified by the MEC.

The following individuals will be non-voting members of the MEC:

- Valley Health System Chief Medical Officer
- Hospital CEO
- Hospital Chief Operating Officer (COO)
- Hospital Chief Nursing Officer
- Hospital Medical Staff Services Professional
- Hospital Administrative Director of Quality
- Pharmacy representative

The MEC may invite additional guests as needed to assist in carrying out its work.

c. Election and Appointment of MEC members

At-Large members of the MEC will be voted on in even numbered years utilizing the same methodology as elections for Medical Staff Officers. Any Member in the Active category of the Medical Staff may run for an At-Large spot by notifying the Nominating Committee ninety (90) days prior to the election. Officers and the designated committee and Department Chairs are all ex-officio appointments to the MEC. The remaining voting members of the MEC will be appointed by the Chief of Staff and ratified by the MEC, and their term shall run concurrent with that of the Chief of Staff who appointed them.

d. Removal from the MEC

Officers and Chairs serving on the MEC will lose their membership if removed from their position as an officer, Department or committee chair as described elsewhere in these Bylaws. At-Large and appointed members of the MEC may be removed by an affirmative vote of two-thirds (2/3) of the MEC membership. Grounds for removal include:

- Failure to attend at least 50% of scheduled Medical Executive Committee meetings.
- Disruptive conduct at MEC meetings; and
- Failure to carry out assigned duties as an MEC member.

Members of the MEC will be considered to have voluntarily resigned from the committee if any of the following occur:

- Termination or suspension of the member's license to practice in the state of Nevada;
- Loss of membership on the Active Staff;
- The MEC recommends to the Board that the member be subject to Corrective Action.

e. Quorum

A quorum for MEC shall consist of at least fifty percent (50%) of the current voting Members of the committee in attendance in person or via telephonic or electronic conferencing.

f. Responsibilities

The Medical Staff assigns the responsibilities identified in this Section to the MEC and delegates the authority needed to carry out these responsibilities to the MEC. The MEC is not authorized to independently change its responsibilities or expand its authority. The Medical Staff may remove or modify the MEC's delegated responsibilities by amending the Bylaws through the amendment process identified in Article XII hereof. The MEC shall represent the Medical Staff, assume responsibility for the effectiveness of all medical activities of the Medical Staff, act on matters of concern and importance to the Medical Staff and act at all times as the authorized delegate of the Medical Staff in regard to general and specific functions of the Medical Staff.

1. The MEC shall represent the Medical Staff, assume responsibility for the effectiveness of all medical activities of the Medical Staff, act on matters of concern and importance to the Medical Staff and act at all times as the authorized

delegate of the Medical Staff in regard to general and specific functions of the Medical Staff.

2. The MEC is empowered to act for the Medical Staff in intervals between general Medical Staff meetings.

3. The MEC receives and acts on reports and recommendations from Medical Staff committees, Departments, Clinical Services, Hospital committees, consultants, and other relevant individuals.

4. The MEC consults with Hospital administrators on quality-related aspects of contracts for patient care service with entities outside the Hospital.

5. The MEC shall refer investigations in accordance with these Bylaws and the associated detail in the Corrective Action and Fair Hearing Manual to the System Peer Review Committee and review the results of such investigation before making recommendations to the Board to terminate, limit, or restrict a Member's membership or a Practitioner's Privileges.

6. The MEC is responsible for making Medical Staff recommendations directly to the Board for its approval. Such recommendations pertain to at least the following:

   a The Medical Staff's structure;

   b The mechanism used to review credentials and to delineate individual Privileges;

   c Recommendations of individuals for Medical Staff Membership;

   d Recommendations for delineated clinical privileges for each eligible individual;

   e The participation of the Medical Staff in organization performance improvement activities;

   f The mechanism by which Medical Staff membership may be terminated;

   g The mechanism for fair-hearing procedures; and

   h The MEC's review of and actions on reports of Medical Staff committees, Departments, and other assigned activity groups.

g. Meetings

The MEC shall meet monthly at least ten (10) times per year and shall maintain a permanent record of all proceedings and actions at its meetings. The Chief of Staff or designee will preside at all meetings of the MEC.

h. Call of Special Meeting

The Chief of Staff may call special meetings of the MEC at any time. Such meetings may be held in person, through telephonic or electronic conferencing.

i. Notice

Notice of a Special Meeting of the MEC shall be by means of facsimile, telephone, posting of notice or e-mail.

6.5 Nominating Committee

a. Composition

The Nominating Committee shall consist of:

1. Immediate Past Chief of Staff who will serve as Chair. If the Immediate Past Chief is not available, then the Chief of Staff will appoint a member from the MEC to serve in this capacity.

2. Three additional members of the Active Staff appointed by the Chief of Staff. The Chief of Staff will give consideration to appointing other past Medical Staff officers to the committee. Members of the Nominating Committee cannot request nomination to run in a current election.

3. The Chief Medical Officer of the Health System in a non-voting capacity

4. The CEO or designee in a non-voting capacity.

b. Responsibilities

The Nominating Committee shall be responsible for identifying nominees for officers of the Medical Staff and At-Large MEC members when elections are held for these positions.

c. Procedures

1. The Nominating Committee will meet at least sixty (60) days, but no more than ninety (90) days prior to the General Staff Meeting at which the results of the election will be announced. The Nominating Committee shall circulate its list of nominees to the Active Members of the Medical Staff at least sixty (60) days prior to scheduled voting.

2. In order for a nomination to be placed on the ballot the following criteria must be met:

   a. Candidates must meet the qualifications listed in these Bylaws for the position to which they wish to be elected. The Nominations Committee will have discretion to determine if these criteria have been met.

   b. Candidates must be approved by the Nominations Committee for placement on the ballot.

   c. Members of the Active staff who are not initially chosen by the Nominations Committee and wishing to have their names included on the election ballot must submit the signatures of ten percent (10%) of the Active Staff in support of their nomination or twenty (20) signatures of the Active Staff, whichever is less. Eligible members of the Medical Staff who wish to be included on the ballot, must file the required supporting signatures with the Medical Staff Office at least forty-five (45) days prior to the General Staff Meeting at which the results of the election will be announced.

3. The Nominating Committee shall notify each Active Staff member of its nominees for the positions set forth, not less than sixty (60) days before the biennial election of the Medical Staff officers, as set forth in these Bylaws.

6.6 Health System Credentials Committee

a. Composition.

The Health System Credentials Committee shall consist of:

1. Two (2) Active Medical Staff Members of each Health System Hospital, each subject to the approval of the MEC of their respective Hospital;
2. Chief of Staff of Hospital shall act as an alternate member;
3. The CEO or his designee from administration shall serve as ex-officio, without voting rights;
4. The Chief Medical Officer of the Health System without voting rights;
5. Risk Manager from at least one Health System Hospital;
6. Administrative Director of Quality Outcomes of Hospital.

The Health System Credentials Committee is responsible to the MEC, Administration, and the Board for the overall operations of the credentialing activities within the Health System.

b. Responsibilities.

The Health System Credentials Committee shall be responsible for the performance of functions concerning the initial assessment and continuing review

of the granting and exercise of membership status and privileges and the provision of specified services by Medical Staff Members respectively, including, without limitation, the following:

1. Submitting reports to the MEC in accordance with the procedures set for the in these Bylaws regarding the Committee's review and evaluation of the qualifications of each applicant for Medical Staff membership, for Department affiliation, and for particular privileges, and the qualifications of Allied Health Professionals for specific services.

2. Continuing surveillance of the professional performance of all individuals who have delineated Privileges, to include OPPE/FPPE;

3. Recommending to the Medical Staff the criteria for Privileges that are relevant to the care provided in the Hospital;

4. Investigating, reviewing and reporting on matters concerning the professional or ethical conduct of any Practitioner assigned or referred to the committee by the MEC or Board.

5. Submitting regular reports to the MEC regarding the status of pending applications, including specific reasons for delays in the processing or applications or requests.

c. Procedures

1. The Health System Credentials Committee shall meet monthly or at least ten (10) times per year to carry out its functions. The Health System Credentials Committee recommendations will be reported to each MEC. The MEC shall act in its own discretion to accept, modify or reject recommendations from the Health System Credentials Committee and shall not be bound by any recommendation made by the Health System Credentials Committee.

2. The Health System Credentials Committee shall maintain a permanent record of its proceedings and actions and shall report to the MEC and the Board on all of its activities.

d. Quorum

A quorum for Credentials Committee shall consist of at least three (3) of the current voting members of the Credentials Committee, representing at least two (2) of the Health System hospitals. In attendance in person or via telephonic or electronic conferencing.

6.7 Medical Staff Performance Improvement Committee

a. Composition

The Medical Staff Performance Improvement Committee shall consist of:

1. At least six (6) members of the Medical Staff appointed to two (2) year terms by the Chief of Staff. The Chair of the committee will be appointed by the Chief of Staff. In selecting members, the Chief of Staff will look for Physicians who represent a diversity of specialties, have experience in peer review and/or performance improvement activities, have participated in peer review or performance improvement education, and/or have prior experience on the committee or a similar peer review committee. The Chair and Medical Staff Members who serve on the Committee are subject to the approval of the MEC.

2. The Vice Chief of Staff as an ex officio member.

3. CEO or designee as an ex officio non-voting member.

4. Performance Improvement/Quality representatives on the Hospital staff who support the Medical Staff peer review and performance improvement activities.

b. Responsibilities

The Medical Staff Performance Improvement Committee is responsible to the MEC and Board for the overall operation of Medical Staff peer review and performance improvement activities and for collaborating with Hospital administration as needed to improve quality of care, treatment and services and patient safety. These responsibilities of the Committee include, but are not limited to:

1. Instituting activities for measuring, assessing, and improving processes that primarily depend on the actions of one or more privileged Practitioners;

2. Providing on-going measurement, assessment, and improvement of the:

   (a) medical assessment and treatment of patients;

   (b) use of medications;

   (c) use of blood and blood components;

   (d) use of operative and other procedures;

   (e) efficiency of clinical practice patterns;

(f) significant departures from established patterns of clinical practice;

(g) education of patients and families;

(h) coordination of care with other practitioners and Hospital personnel, as relevant to the care, treatment, and service of an individual patient;

(i) accurate, timely and legible completion of patients' medical records; and

(j) compliance with insurer, accrediting agency, and governmental performance expectations, such as core measures, national patient safety goals, and others as identified from time to time by the Hospital.

3. Review of sentinel event data and patient safety data collected by the Hospital staff;

4. Establishment of Peer Review policies and protocols for implementation by clinical Departments to assure reliability and consistency across specialties; and coordinate interdisciplinary approaches to peer review.

5. Review of Ongoing Professional Practice Evaluation data to identify trends or problems with the performance of an individual Practitioner and to work with Medical Staff leaders to address clinical or conduct deficiencies in a satisfactory manner;

6. Draw conclusions, make recommendations, take action and follow-up based upon the assigned responsibilities and duties.

7. Assess the compliance of Practitioners with expectations for professional conduct, including compliance with Policies on professional conduct.

8. The Medical Executive Committee and/or Chief of Staff will validate any report to the Health System Peer Review Committee of any significant performance trends or recommendations for suspension or other adverse action against a Practitioner's membership or Privileges.

9. Upon referral by the MEC, review of Focused Professional Practice Evaluation (FPPE) relating to quality of care issues;

10. Upon referral by the MEC, review of Ongoing Professional Practice Evaluation (OPPE), deviating from service;

11. Upon notification of a summary suspension by the Hospital CEO or Chief of Staff, commencing and conducting of an investigation;

12. Upon notification by the Hospital CEO or Chief of Staff for recommendation to deny, terminate, or modify Privileges and/or Medical Staff Membership commencing and conducting of an investigation;

13. Request from the MEC for commencing and conducting an investigation relating to professional conduct or professional competency; and

14. Any other matter upon request of the MEC.

c. Meetings

The Medical Staff Performance Improvement Committee shall meet monthly or at least ten (10) times per year. Committee action will be reported to the MEC.

d. Peer Review Procedures

Peer Review recommendations will be reported to the MEC. The MEC shall act in its own discretion to accept, modify or reject recommendations of the Performance Improvement Committee and shall not be bound by any recommendation made by the Performance Improvement Committee.

6.8 Graduate Medical Education Committee

a. Composition

The Graduate Medical Education Committee shall consist of:

1. The Director of Medical Education who shall serve as Chair and spokesperson to the MEC. The DME shall communicate to the MEC about the safety and quality of patient care, treatment, and services provided by the Residency Program trainees, as well as the educational and supervisory needs of the Residency Program.

2. The program directors for the Residency Program. The program director for outplacement shall serve as spokesperson to outplacement facility or facilities and shall communicate to such facility or facilities regarding the safety, quality, and educational needs for the Residency Program.

3. The faculty of the Residency Program

4. Representatives from the Hospital and from Touro University College of Osteopathic Medicine (TUCOM)

5. The CEO or designee in a non-voting capacity spokesperson who shall serve as spokesperson to the Governing Board. The CEO or designee shall communicate to the Governing Board regarding the quality of care, treatment, services and educational needs of the Residency Program.

b. Responsibilities

The GMEC shall have the following responsibilities:

1. To assist in developing, maintaining, and evaluating the educational program and curriculum for the Residency Program

2. Selection of interns, residents and fellows

3. To provide evaluations of the faculty, interns, residents and fellows

4. To implement disciplinary actions related to interns, residents or fellows

The DME shall have the following responsibilities:

1. To implement and ensure compliance with the Bylaws and rules and regulations of the Residency Program

2. To ensure that monitoring activities are fulfilled

3. To ensure the quality of the residency training programs including using the performance improvement processes to ensure that quality care is provided by supervising staff practitioners, teaching physicians, interns, residents and/or fellows.

4. To serve as spokesperson for the GMEC to the MEC and provide reports, at least quarterly, describing the safety and quality of patient care provided by interns, residents and fellows and the related educational and supervisory needs of the participants in the Residency Program.

c. Meetings

The GMEC shall meet monthly. When monthly attendance is not possible by a representative of an affiliate institution, including TUCOM, verification of communication between the GMEC and such representative shall be maintained with the GMEC meeting minutes for that month.

6.9 Health System Peer Review Committee

a. Composition

The Health System Peer Review Committee (PRC) shall consist of the:

1. Performance Improvement Chairman or his designee from each Health System hospital.
2. Chief of Staff of each Health System hospital shall appoint one additional active medical staff representative to serve, subject to the approval of the MEC.
3. CEO or his designee from administration.
4. Chief Medical Officer of the Health System.

The Health System Peer Review Committee is responsible to the MEC, Administration, and the Board for the overall operation of the Performance Improvement Plan relating to Peer Review.

b. Responsibilities

The Health System Peer Review Committee has the following responsibilities:

1. Upon referral by the MEC, review of Focused Professional Practice Evaluation (FPPE) relating to quality of care issues;
2. Upon referral by the MEC, review of Ongoing Professional Practice Evaluation (OPPE), deviating from service;
3. Upon notification of a summary suspension by the Hospital CEO or Chief of Staff, commencing and conducting of an investigation;
5. Upon notification by the Hospital CEO or Chief of Staff for recommendation to deny, terminate, or modify clinical privileges and/or Medical Staff Membership commencing and conducting of an investigation;
6. Request from any MEC for commencing and conducting an investigation relating to professional conduct or professional competency; and
7. Any other matter upon request of the MEC.

The Health System Peer Review Committee will draw conclusions and make recommendations to the MEC for consideration.

c. Procedure

The Health System Peer Review Committee shall meet monthly. The System Peer Review Committee recommendations action will be reported to each MEC at which

the Practitioner who was the subject of a review holds medical staff membership. The MEC shall act in its own discretion to accept, modify or reject recommendations of the System Peer Review and shall not be bound by any recommendation made by the System Peer Review Committee.

6.10 Medical Staff Representation on Hospital Committees:

In order to further carry out the functions of the Medical Staff and to provide Medical Staff input where appropriate, the Chief of Staff may appoint Members to Hospital Committees. Operational Hospital Committees to which Medical Staff members may be assigned include, but are not limited to: Quality, Cancer, Infection Control, Critical Care, Pharmacy & Therapeutics, Medical Records, Continuing Education, Bioethics, Patient Safety, Graduate Medical Education, Disaster, and Transfusion. When Medical Staff members sit on a Hospital committee the minutes of that committee shall be available to the MEC. It shall be the responsibility of the Medical Staff member(s) sitting on a Hospital committee, to bring to the attention of the MEC or a Medical Staff officer any matter brought before such committee that requires the attention of the Medical Staff leadership.

6.11 Medical Staff Liaisons

When the Medical Staff is required by regulatory bodies or internal policies to collaborate with Hospital staff in carrying out a particular function, the Chief of Staff may appoint a member of the Medical Staff to serve as a formal liaison for that work. The liaison will report periodically to the MEC or other appropriate committee when matters require the attention of Medical Staff leaders.

6.12 Special or Ad Hoc Committees

The Chief of the Medical Staff or MEC may appoint ad hoc committees to address specific issues or concerns on behalf of the Medical Staff. In establishing such committees, there will be a notation made in the minutes of the MEC enumerating the committee's purpose and charge, and timeframes for its work, and the duration of its appointment. Such committees will report to and be accountable to the MEC.

ARTICLE VII
GENERAL MEDICAL STAFF MEETINGS

7.1 General Medical Staff Meetings

There shall be at least one (1) meeting of the Medical Staff held each year during the fourth quarter. Written notice of the meeting shall be sent in a manner determined by the Medical Staff office to all Medical Staff members. The MEC shall determine the time and place at which the meeting shall be held. The Chief of Staff or MEC may call additional general meetings for any reason they deem appropriate, including to promote communication with the Medical Staff, provide a forum for discussion on matters of Medical Staff interest, review quality and safety data and concerns, present educational programs, or address proposed changes to these Bylaws.

7.2 Special Meetings of the Medical Staff

a. Call of Special Meeting

A special meeting of the Medical Staff may be called at any time by the Chief of Staff, and shall also be called at the request of the Governing Board, the MEC or in response to a petition presented to the Chief of Staff and signed by twenty-five percent (25%) of the Active Staff. No business shall be transacted at any special meeting, except that for which the meeting is called and stated in the notice of such meeting.

b. Notice

Notice stating the time, place and purpose(s) of any special meeting of the Medical Staff shall be conspicuously posted and shall be sent to each member of the Medical Staff in a manner determined by the Medical Staff office at least seven (7) days before the date of such meeting. The attendance of a member of the Medical Staff at the meeting shall constitute a waiver of notice of such meeting.

7.3 Attendance at Meetings

Members of the Medical Staff are encouraged to attend Medical Staff meetings.

7.4 Quorum

Those Active Staff members present and eligible to vote shall constitute a quorum at any meeting, unless otherwise specified in these Bylaws.

7.5 Minutes

Minutes of each regular and special meeting of the Medical Staff shall be prepared and shall include a record of the attendance of members and any votes taken on matters presented at the meeting. The minutes shall be signed by the presiding officer and maintained in a permanent file in the Medical Staff office. Minutes shall be made available to any Medical Staff member upon request.

7.6 Conduct of Meetings

Meetings of the Medical Staff and meetings of committees and Departments (as described in Article VIII) will be run in a manner determined by the chair or designee who shall preside. Compliance with rules of parliamentary procedure is not required.

ARTICLE VIII
COMMITTEE AND DEPARTMENT MEETINGS

8.1 Regular Meetings

Departments and committees may, by resolution, establish the time for holding regular meetings without providing members notice other than by announcement of such resolution in meeting minutes.

8.2 Special Meetings

A special meeting of any committee or Department may be called by or at the request of the Chair thereof, by the Chief of Staff, or by written request signed by twenty-five (25%) percent of the current members of the committee or Department, but not by fewer than two (2) such members. Such meetings will be held within a reasonable period of time after their request.

8.3 Notice of Meetings

Written or oral notice stating the place, day and hour of any special meeting or any regular meeting, to each member of the committee or department that is to meet, not less than five (5) days before the time of such meeting. If mailed, the notice of the meeting shall be posted to the member, at his address as it appears on the records of the Medical Staff, at least seven (7) days before the meeting. The attendance of a member at a meeting shall constitute a waiver of notice of such meeting.

8.4 Quorum

A quorum for the MEC will be at least fifty percent (50%) of the eligible voting Active Staff. For all other committees and Departments, unless otherwise specified in these Bylaws, a quorum will be those Members present and eligible to vote, but not fewer than two (2) members.

8.5 Manner of Action

The action of a majority of the Members present at a meeting at which a quorum is present shall be the action of a committee or Department. Action may be taken without a meeting by unanimous consent in writing, setting forth the action so taken and signed by each member who would be entitled to vote at that meeting.

8.6 Minutes

Minutes of required committees and any special meetings shall be prepared, including a record of the Members in attendance and the results of any votes taken at the meeting. The minutes shall be signed by the presiding officer and copies thereof shall be submitted to the attendees for approval. All minutes shall be made available to the

MEC. Each committee and Department shall maintain a permanent file in the Medical Staff office of the minutes of each meeting.

8.7 Attendance Requirements

Members of the MEC and Medical Staff Performance Improvement Committee are expected to attend at least seventy-five (75%) of committee meetings held each year. Failure to attend at least fifty-percent (50%) of the meetings will make the Member eligible for removal by action of the Chief of Staff with ratification by the MEC.

8.8 Mandatory Special Appearance Requirement

Whenever suspected deviation from standard clinical or professional practice is identified, the Practitioner may be required to attend a meeting of a standing or ad hoc committee considering the matter. The Practitioner will be given special notice of the conference, including the date, time and place, a statement of the issue involved, and a statement that the Practitioner's appearance is mandatory. Failure to attend a meeting when asked, unless excused by the Chief of Staff upon showing good cause, shall be considered an immediate and voluntary relinquishment of Privileges. The Practitioner is required to provide for patient coverage during any scheduled mandatory appearance.

ARTICLE IX
CONFIDENTIALITY, IMMUNITY, AUTHORIZATIONS AND RELEASES

9.1 General and Specific Releases

Each applicant, Practitioner or Member shall, when requested by the Hospital, execute general and specific releases and provide documents when requested by the Chief of Staff, chair of the Credentials or Peer Review Committee, the Hospital CEO or their respective designees. Failure to execute such releases or provide requested documentation shall result in an application for appointment, reappointment, and/or clinical privileges being deemed voluntarily withdrawn, and it shall not be further processed. By submitting an application for Medical Staff appointment or reappointment, or for by applying for or exercising privileges or providing specified patient care services within the Hospital, all applicants, Practitioners or Members, without limitation:

a. Authorize representatives of the Health System, Hospital and of the Medical Staff to solicit, procure, provide, and/or act upon information bearing on or reasonably believed to bear upon the his professional abilities and qualifications;

b. Agree to be bound by the provisions of these Bylaws, Policies and Rules and Regulations regardless of whether membership or clinical Privileges are granted or subsequently restricted;

c. Acknowledge that the provisions of this Article are express conditions to an application for, or acceptance of, Staff Membership, and the continuation of such Membership and/or the exercise of clinical privileges or provision of specified patient care services at the Hospital;

d. Agree to release from legal liability and hold harmless the Hospital and Health System, Medical Staff, and any representative of the Hospital, Health System or Medical Staff who acts to carry out Medical Staff or Hospital policies or functions, including all persons engaged in Peer Review. In addition, all Practitioners agree that their sole remedy for any Corrective Action or Peer Review action taken or recommended by the MEC for failure to comply with these Bylaws, Policies or Rules and Regulations, will be the right to seek legal or equitable relief only after they have exhausted all the administrative remedies in these Bylaws.

e. Agree to release from legal liability and hold harmless any individual who or entity which provides information (including Peer Review information) regarding the Practitioner to the Hospital or its representatives;

f. Authorize the release of information (including Peer Review information) about the applicant, Practitioner or Member to other entities in the Health System where the applicant has or requests membership or privileges, notwithstanding the

provisions set forth in N.R.S. §49.265. This means that all of the entities within the Health System are authorized to release information concerning the applicant, Practitioner or Member to each other hospital within the Health System.

9.2 Confidentiality

Information with respect to any applicant, Practitioner or Member that is submitted, collected or prepared by any representative of this or any other health care facility or organization or Medical Staff, for the purpose of evaluating and improving quality patient care, reducing morbidity or mortality, promoting efficiency, or contributing to medical education or clinical research, shall, to the fullest extent permitted by law, be confidential. Confidential information shall not be disseminated to anyone other than a representative(s) of the Health System, Hospital or of the Medical Staff with a legitimate need for access in order to carry out required functions or third party health care entities performing legitimate credentialing and peer review activities. Such confidentiality shall also extend to information of like kind that may be provided by third parties.

9.3 Immunity from Liability

a. For Actions Taken

Representatives of the Health System, Hospital and the Medical Staff shall have absolute release from any and all liability in any judicial proceeding for damages or other relief for any action taken or statement or recommendation made within the scope of their duties as such representatives, after a reasonable effort under the circumstances to ascertain the facts underlying such actions, statements or recommendations and in the reasonable belief that the action, statement or recommendation is warranted by such facts.

b. Providing Information

Representatives of the Health System, Hospital, the Medical Staff and any third party shall have absolute release from any and all liability in any judicial proceeding for damages or other relief by reason of providing information, including otherwise privileged or confidential information, to a representative of the Hospital or of the Medical Staff or to any other hospital, organization or health professionals, or other health-related organizations, concerning practitioners who are or have been an applicant to or member of the Staff or who did or does exercise privileges or provide specified services at this Hospital.

9.4 Activities and Information Covered

a. Activities

The provisions of this Article shall apply to acts, communications, reports, recommendations, or disclosures in connection with this or any other health-related institution's or organization's activities concerning, but not limited to:

1) Applications for appointment, clinical privileges or specified services;

2) Periodic reappraisals for reappointment, clinical privileges or specified services;

3) Disciplinary measures, including warnings and reprimands;

4) Corrective Actions;

5) Hearings and appellate reviews;

6) Performance Improvement activities including the creation and dissemination of performance profiles;

7) Peer Review activities, including external peer review;

8) Utilization and claims reviews; and

9) Other Hospital, Department or committee activities related to monitoring and maintaining of quality patient care and appropriate professional conduct

b. Information

The acts, communications, reports, disclosures and other information referred to in this Article may relate to a Practitioner's professional qualifications, clinical or procedural abilities, judgment, character, physical and mental health, emotional stability, professional ethics, professional conduct or any other matter that might directly or indirectly affect patient care.

9.5 Cumulative Effect

Provisions in these Bylaws and in application forms relating to authorizations, releases, confidentiality of information and immunities from liability shall be in addition to other protections provided by local, state and federal law and not in limitation thereof.

ARTICLE X
CORRECTIVE ACTION AND FAIR HEARING

10.1 Investigations

a. When reliable information indicates that a Practitioner may have exhibited acts, demeanor, or conduct, reasonably likely to be:

1. detrimental to patient safety or to the delivery of quality patient care within the Hospital;

2. unethical or illegal;

3. contrary to the Medical Staff Bylaws or Rules and Regulations;

4. harassing or intimidating to Hospital and/or Health System employees, Medical Staff colleagues, patients or their families;

5. disruptive of Hospital or Medical Staff operations;

6. below applicable professional standards for competency or as established by the Medical Staff; or

7. harmful to the reputation of the Hospital and/or Medical Staff, a request for an investigation or action against such Practitioner may be initiated by the Governing Board, Chief of Staff, MEC, Chief Medical Officer of the Health System, or the Hospital CEO, such request must be submitted to the MEC.

b. If the MEC concludes an investigation is warranted, it shall direct an investigation to be undertaken by the Health System Peer Review Committee or its designated subcommittee. In the event the Governing Board believes the MEC has incorrectly determined an investigation unnecessary, it may request the Peer Review Committee directly to undertake an investigation.

c. The investigation shall proceed in a prompt manner and a written report of the investigation findings will be submitted to the MEC as soon as practicable. The MEC will determine if it is complete and sufficient for the MEC to make a determination whether Corrective Action should be recommended.
The Medical Staff delegates to the MEC the authority to adopt associated detail elaborating on investigations. Such associated detail is located in the Corrective Action & Fair Hearing Manual.

10.2 Imposition of Adverse Actions.

a. Temporarily Suspension ("Precautionary Suspensions") of Privileges Procedures

1. The Chief of Staff, a Department chair, the CMO of the Health System, the Hospital CEO or the Governing Board shall each have the authority to temporarily suspend all or any portion of Practitioner's Privileges whenever it perceives a reasonable possibility that failure to do so may pose danger to the health and/or safety of any individual or to the orderly operations of the Hospital. Such a suspension will not become effective until it is agreed to by one other individual (and one must be the CEO) having the authority to suspend. This suspension will take place immediately and the Chief of Staff, and the Hospital CEO or his designee will promptly inform the affected Practitioner. This temporary suspension shall be considered a "precautionary suspension."

2. The Practitioner will be afforded an interview with the MEC if such request is made within five (5) days of notification of the precautionary suspension. The imposition of the suspension will be affirmed by the MEC no later than fourteen (14) days of the precautionary suspension. The Practitioner shall be entitled to request a fair hearing if the suspension exceeds fourteen (14) days.

   The Medical Staff delegates to the MEC the authority to adopt associated detail elaborating on precautionary suspension. Such associated detail is located the Corrective Action & Fair Hearing Manual.

b. Automatic Suspensions/Limitations/ and Voluntary Relinquishments

Automatic suspensions and limitations on Medical Staff membership and Privileges and voluntary resignations/relinquishments of Medical Staff membership and Privileges that occur for administrative reasons relating to failure to meet eligibility requirements of membership or compliance with requirements for Medical Staff membership or Privileges found in these Bylaws, Policies and Rules and Regulations. The following reasons will result in either automatic suspension, limitations on Medical Staff membership or Privileges, or voluntary resignations/relinquishments of Medical Staff membership and Privileges:

- Revocation or suspension of license
- Conviction of a felony
- Suspension for failure to complete medical records
- Failure to attend specially noticed committee or department meetings when requested unless good cause is shown
- Revocation or suspension of DEA number or Nevada Pharmacy Board License
- Failure to maintain liability insurance for a period of thirty (30) days

- Exclusion from federal or state insurance programs or conviction for insurance fraud
- Failure to participate in an evaluation or assessment
- Failure to notify Hospital of disciplinary or final malpractice actions
- Failure to return from leave of absence
- Failure to maintain and provide evidence of required certifications to comply with The Joint Commission, regulatory or other requirements of Medical Staff Membership.

The reasons listed above are not based on determinations of competence or unprofessional conduct and are not considered professional review actions, and are not entitled to the procedural due process rights. The Medical Staff delegates to the MEC the authority to adopt associated detail elaborating on automatic suspension, limitations and voluntary relinquishment of Privileges. Such associated detail is located in the Corrective Action & Fair Hearing Manual.

10.3 Fair Hearing and Appeal.

The following steps describe the process for fair hearing and appeal. The Medical Staff delegates to the MEC the authority to adopt associated detail elaborating on the fair hearing and appeal process. Such associated detail is located in the Corrective Action & Fair Hearing Manual.

a. Grounds for a Hearing

A recommendation by the MEC for adverse actions or their imposition, if based on a determination of professional competency or professional conduct, shall constitute grounds for a hearing. The Practitioner, with respect to whom an adverse action shall have been recommended, shall promptly be given notice thereof by the Chief of Staff. The Practitioner shall have thirty (30) days following the date of receipt of such notice within which to request a hearing by means of written notice delivered either in person or by certified or registered mail to the Hospital CEO and the Chief of Staff.

b. Notice of Hearing

Upon receipt of a timely request for a hearing by a Practitioner, the Hospital CEO shall inform the Chief of Staff, MEC and Governing Board. Within thirty (30) days after receipt of such request the CEO shall schedule and arrange for a hearing and provide notice to the Practitioner. The hearing date shall be not less than thirty (30) days nor more than sixty (60) days from the date of receipt of the request for a hearing, unless the parties mutually agree to an earlier days. If the date is already set, the parties may mutually agree to any change in the hearing date except that neither party may change the date more than once.

c. Appointment of Hearing Panel, Presiding Officer, Hearing Officer

1. The Chief of Staff, after consultation with the Hospital CEO shall submit to the Peer Review Committee nominations for no fewer than three (3) proposed Hearing Panel Members, one alternate Panel Member and for a Presiding Officer or a Hearing Officer. The Peer Review Committee shall consider such nominations and the nominations submitted by the chiefs of staff of other Health System hospitals for members of the Hearing Panel and for the Presiding Officer or Hearing Officer. From such nominations, the Peer Review Committee shall appoint a Hearing Panel consisting of no fewer than three (3) Panel Members, one (1) alternate Panel Member and a Presiding Officer or a Hearing Officer. The Presiding Officer will not have voting privileges on the panel.

2. Voting members of the Hearing Panel shall be licensed physicians who are Medical Staff members at a hospital in the Health System and who shall not have previously participated in the deliberations involving the matter. However, knowledge of the matter involved shall not preclude a person from serving as a member of the Hearing Panel. No member of the Hearing Panel may be a direct competitor of the Practitioner under review.

3. The Peer Review Committee may appoint a single Hearing Officer in lieu of a Hearing Panel where the issue triggering the hearing involves alleged unprofessional conduct rather than professional competency.

The Medical Staff delegates to the MEC the authority to adopt associated detail elaborating on the composition and responsibilities of the members of the Hearing Panel, Presiding Officer and Hearing Officer . Such associated detail is located in the Corrective Action & Fair Hearing Manual.

d. Hearing Procedures

1. The personal presence of the Practitioner who requested the hearing shall be required.

2. The Presiding Officer has the discretion to limit the role or legal counsel for either side during the hearing. However, this limitation does not deprive the Practitioner or Hospital of the right to utilize legal counsel in preparation for the hearing and such counsel may be present at the hearing, advise his client, and participate in resolving procedural matters.

3. The Presiding Officer shall ensure that all participants in the hearing have a reasonable opportunity to be heard and to present appropriate oral and documentary evidence subject to reasonable limits on the number of witnesses and duration of direct and cross examination, applicable to both sides, as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the

hearing process. The Presiding Officer shall be entitled to determine the order of procedure during the hearing and shall have the authority to set reasonable time limits on the duration of the hearing, testimony of witnesses, or arguments by parties.

4. During the hearing, each party shall have the right to:

   * Give opening and closing statements
   * Call and examine witnesses
   * Introduce exhibits
   * Cross-examine any witness on any matter relevant to the issues
   * Impeach any witness
   * Rebut any evidence

5. The body whose action or decision prompted the hearing (either the MEC or the Board) shall come forward initially with evidence in support of its action or decision. Thereafter, the burden shall shift to the Physician who requested the hearing to come forward with evidence in his support. If the physician who requested the hearing does not testify on his own behalf, such Physician may be called and examined as if under cross-examination. The Physician may also be called by the MEC in the presentation of its case. In all cases in which a hearing is conducted, after all evidence has been submitted by both parties, the Hearing Panel shall rule against the Physician who requested the hearing unless it finds that such person has proved, by clear and convincing evidence, that the factual allegations against the Physician are untrue in total or substantial part, or unless it concludes, based on its findings of fact that the action of the entity whose decision prompted the hearing was arbitrary or unreasonable.

6. Within thirty (30) days after the conclusion of the hearing, the Hearing Panel shall make a detailed written report signed by each committee member, which sets forth separately each charge against the Practitioner, a summary of the evidence that supports or rebuts such charges, its findings on each fact at issue, and recommendations based on such findings with respect to the matter. This report, together with the hearing record and all other documentation considered by it, will then be forwarded to the Peer Review Committee. The Health System Peer Review Committee shall forward this report, along with all other documentation considered by the Hearing Panel, to the body whose decision prompted the hearing and to the MEC of each other Health System hospital at which Practitioner maintains Medical Staff privileges.

7. Within fifteen (15) days after receipt of the report of the Hearing Panel, the MEC, shall consider the same and affirm, modify or reverse its previous recommendation, decision or proposed decision in the matter. The MEC shall indicate its action in writing, and shall transmit a copy of its written recommendation together with the hearing record, the report of the Hearing Panel,

and all other relevant documentation, to the Governing Board. The Practitioner requesting the hearing shall be provided the Hearing Panel's recommendation by special notice and the decision of the MEC to accept and affirm the Hearing Panel's recommendation, modify or reverse its previous recommendation.

8. The notice of the action taken shall be provided to the Peer Committee, Chief of Staff, Hospital CEO, and by special notice to the affected Practitioner.

e. Appeal Procedures

1. Within ten (10) days after receipt of the notice given, if the action of the MEC continues to be adverse to the Practitioner, he may request in writing an appellate review by the Governing Board. Such request shall be delivered to the Hospital CEO/designee either in person or be certified or registered mail. The written request for an appeal shall also include a brief statement of the reasons for the appeal. The grounds for appeal shall be limited to the following:

    - There was a substantial failure to comply with this Article X and associated details in the Medical Staff Bylaws/Corrective Action & Fair Hearing Manual so as to deny basic fairness or reasonable due process;
    - The MEC's recommendations were made arbitrarily, capriciously, or with prejudice; or
    - The recommendation of the MEC and/or Hearing Panel was not supported by the hearing record

2. In the event of any appeal to the Governing Board, the Board shall, within thirty (30) days after the receipt of such notice of appeal, schedule and arrange for an appellate review. The Board shall provide the Practitioner special notice of the time, place and date of the appellate review. The date of the appellate review shall be not less than fourteen (14) days not more than sixty (60) days from the date of the receipt of the request for appellate review is made by a Practitioner who is under a suspension which is then in effect, the appellate review shall be held as soon as the arrangements may reasonably be made and not more than thirty (30) days from the date of receipt of the request for appellate review. The time for appellate review may be extended by the Governing Board of the Hospital for good cause.

3. Upon completion of an appellate review, the Governing Board or the Committee of the Board, may affirm, modify or reverse the action which is the subject of the appeal, or refer the matter back to the MEC for further review and recommendation.

4. If at any time after receipt of special notice of an adverse recommendation, action or result, the Practitioner fails to make a required request or appearance or otherwise fails to proceed with a fair hearing, he shall be deemed to have consented to such adverse recommendation, action, or result and to have

voluntarily waived all rights to which he might otherwise have been entitled under these Medical Staff Bylaws then in effect.

10.4 Corrective Action and Fair Hearing Manual.

The Medical Staff delegates to the MEC with the authority to adopt associated details elaborating on the corrective action and fair hearing process in this Article X. Such associated detail is located in the Corrective Action and Fair Hearing Manual which will be modified from time to time.

IN THE SUPREME COURT OF NEVADA

STEVEN SPILLERS, M.D.,

Petitioner and Defendant,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the HONORABLE MICHELLE LEAVITT, District Court Judge, Department XII,

Respondents,

AND

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiff and Real Party in Interest.

District Court Case Nos.: A-13-677611-C & A-13-677720-C

APPENDIX TO PETITIONER'S PETITION FOR WRIT OF MANDAMUS VOL. 1

FENNEMORE CRAIG, P.C.
John H. Mowbray (No. 1140)
Douglas M. Cohen (No. 1214)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
(702) 692-8000
Attorneys for Petitioner and Defendant Steven Spillers, M.D.

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS

CIVIL COVER SHEET

A-13-677611-C

XIV

Clark County, Nevada

Case No.
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian Attorney (name/address/phone): Robert E. Murdock, Esq., 520 South Fourth Street, Las Vegas, NV 89101, 702/384-5563	Defendant(s) (name/address/phone): GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D., REBECCA GILLILIAN, CNIM; NEUROMONITORING ASSOCIATES, INC., a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive Attorney (name/address/phone):

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

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence
- ☐ **Negligence – Auto**
- ☒ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

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

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

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CLERK OF THE COURT

Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
Las Vegas, NV 89101
(702) 384-5563
(702) 384-4570 – Fax

Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
520 South Fourth Street
Las Vegas, NV 89101
(702) 384-5563
(702) 383-5960 – Fax
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

A-13-677611-C

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiffs,

vs.

GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILIAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive,

Defendants.

CASE NO.
DEPT. NO. XIV

COMPLAINT

1. This action is instituted for all damages, costs of suit, pre-judgment interest and attorney fees pursuant to NRS 41A, *et seq.*, for the wrongful death of Mary Haase.

2. At all times mentioned herein, Decedent Mary Haase was a resident of the Clark County, State of Nevada.

3. Madden Duda is the minor heir of Mary Haase and is and was a resident of the County of Clark, State of Nevada. Jovan Duda is his natural father and guardian. Mary was Madden's mother.

4. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Defendant George Michael Elkanich, M.D. ("Elkanich") is a physician practicing in the County of Clark, State of Nevada. Dr. Elkanich practices surgery and is licensed to practice medicine in the State of Nevada. Plaintiff is informed and believes that Jocelyn Segovia, PA-C, is a Physician's Assistant who is employed by Elkanich and an agent of Valley Hospital.

5. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Defendant Feza Gunalp, M.D. ("Gunalp") is a physician practicing in the County of Clark, State of Nevada. Dr. Gunalp is licensed to practice medicine in the State of Nevada.

6. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Defendant Rebecca Gillilian, CNIM ("Gillilian") is a neuromonitoring person employed by Neuromonitoring Associates, Inc. Defendant Neuromonitoring Associates, Inc. ("NA") is a Nevada corporation licensed to do business and doing business in the County of Clark, State of Nevada. NA is liable for the acts of its employee performed in the course and scope of her employment which acts in this particular case were so done. Neither Gillilian nor NA fall within the auspices of NRS 41A, *et seq*. Upon information and belief, both Gillilian and NA were agents of Valley Hospital and/or other Defendants herein.

7. At all times herein mentioned, Defendant Valley Hospital Medical Center, Inc. ("Valley") was a Nevada corporation, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada. Valley Hospital is liable for the acts of its agents Segovia, Gillilian, and NA, any other agents concealed with liability.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Roe Corporations I through X are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon

alleges that each of the defendants designated herein as a Roe Corporation is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately thereby to Plaintiff as herein alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Roe Corporation defendants when same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such defendants in this action.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Does I through X are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein as a Doe is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately thereby to Plaintiff as herein alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Doe defendants when same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such defendants in this action.

10. That due to the concealment of records, documents and things by Defendants, and each of them, it is possible that other persons/entities have liability in this matter. Equitably and legally per NRS 41A.097, that such concealment should mandate the tolling of any and all statutes of limitation for these individuals/entities.

11. Defendants, and each of them, are jointly and severally liable for all damages. Defendants, and each of them, acted as the Agents of each other.

12. Jurisdiction is proper in this matter.

13. That Defendants, and each of them, had a duty to treat Mary Haase within the standard of care. That Defendants, and each of them, breached such duty which proximately caused the death of Mary Haase.

14. On March 5, 2012, Mary Haase had surgery performed by Elkanich at Valley Hospital. During the course of said surgery, Elkanich punctured and/or tore the aorta, among other anatomical parts. During the course of said surgery, Segovia was allowed to work on the

patient and did so negligently. Gunalp was providing anesthesia for the surgery and, despite noticing a drop in blood pressure, failed to advise Elkanich of same. Gillilian was providing neuromonitoring. Gillilian failed to notice the drop in pressure and/or failed to advise Gunalp or Elkanich regarding same. That as a result of one or more of these actions, or actions yet unknown, Mary Haase died.

15. Valley Hospital has failed to mandate or ensure that a discharge report or a report regarding the identification of facts regarding this matter. This is below the standard of care.

16. As a direct and proximate result of the actions of Defendants, and each of them, as herein alleged, Decedent was caused to suffer great pain and suffering.

17. As a further and direct and proximate result of the actions of Defendants, and each of them, as herein alleged, Plaintiff Madden Duda claims all damages allowed per NRS 41.085.

18. The conduct, actions and breaches by Defendants, and each of them, were intentional, willful, wanton, oppressive, malicious and with a conscious disregard to the rights of Plaintiff, and Plaintiff seeks exemplary and punitive damages in an amount in excess of $10,000.00.

19. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

20. That, pursuant to NRS 41A.071, Plaintiff has attached the Affidavit of Chadwick F. Smith, M.D. The Affidavit, as well as Dr. Smith's Curriculum Vitae, are attached hereto as Exhibit 1. In the Affidavit, Dr. Smith affirms that he based upon his review of the records, as well as his expertise, it is his opinion, to a reasonable degree of medical certainty, that Dr. Elkanich, Dr. Gunalp, and Rebecca Gillilian, CNIM, fell below the standard of care in their care and treatment of Mary Haase, all of which proximately led to the death of Mary Haase. In addition, Dr. Smith affirms that Valley Hospital fell below the standard of care with regard to a failure to ensure that a discharge Report and others, were done. The Affidavit is specifically incorporated herein.

21. That, pursuant to NRS 41A.071, Plaintiff has attached the Affidavit of Donald S. Corenman, MD, DC. The Affidavit, as well as his Curriculum Vitae, are attached hereto as Exhibit 2. In the Affidavit, Dr. Corenman affirms that based upon his review of the records, as well as his

expertise, it his opinion to a reasonable degree of medical certainty, that Dr. Elkanich, Dr. Gunalp, and Jocelyn Segovia, PA-C, fell below the standard of care in their care and treatment of Mary Haase, all of which proximately led to the death of Mary Haase. The Affidavit is specifically incorporated herein.

22. That, pursuant to NRS 41A.071, Plaintiff has attached the Affidavit of Alan Kaye MD. The Affidavit, as well as his Curriculum Vitae, are attached hereto as Exhibit 3. In the Affidavit, Dr. Kaye affirms that based upon his review of the records, as well as his expertise, it his opinion to a reasonable degree of medical certainty, that, Dr. Gunalp fell below the standard of care in his care and treatment of Mary Haase, all of which proximately led to the death of Mary Haase. The Affidavit is specifically incorporated herein.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For all damages allowed per NRS 41.085 or otherwise, in a sum in excess of $10,000.00;

2. For punitive damages in an amount in excess of $10,000.00;

4. For attorney's fees and costs incurred and prejudgment interest; and

5. For such other and further relief as the Court deems just and proper.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

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CLERK OF THE COURT

Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
(702) 685-6111

Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
521 South Third Street
Las Vegas, NV 89101
(702) 685-6111
Attorneys for Plaintiff Madden Duda

DISTRICT COURT

CLARK COUNTY, NEVADA

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiffs,

vs.

GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada Corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; STEVEN SPILLERS, M.D.; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive,

Defendants.

CASE NO. A-13-677611-C
DEPT. NO. XXIX

SECOND AMENDED COMPLAINT

AUTUMN MATESI, et al.,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL CENTER, et al.,

Defendants.

Consolidated With:
CASE NO. A-13-677720-C

COMES NOW Plaintiff Madden Duda, a minor, by and through Jovan Duda, his Natural Father and Guardian, by and through his attorneys of record, Murdock & Associates, Chtd. and Eckley M. Keach, Chtd., and for his cause of action against Defendants, alleges as follows:

I.

INTRODUCTION AND PARTIES

1. This action is instituted for all damages, costs of suit, pre-judgment interest and attorney fees pursuant to NRS 41.085, et seq., for the wrongful death of Mary Haase.

2. At all times mentioned herein, Decedent Mary Haase was a resident of Clark County, State of Nevada.

3. Madden Duda is the minor heir of Mary Haase and is and was a resident of the County of Clark, State of Nevada. Jovan Duda is his natural father and guardian. Mary was Madden's mother.

4. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Defendant George Michael Elkanich, M.D. ("Elkanich") is a physician practicing in the County of Clark, State of Nevada. Dr. Elkanich practices surgery and is licensed to practice medicine in the State of Nevada.

5. Plaintiff is informed and believes that Jocelyn Segovia, PA-C ("Segovia") is a physician's assistant who is employed by Elkanich and an agent of Valley Hospital/UHS. She is a resident of Clark County, Nevada. She is not a physician licensed under Chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees

6. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Defendant Feza Gunalp, M.D. ("Gunalp") is a physician practicing in the County of Clark, State of Nevada. Dr. Gunalp is licensed to practice medicine in the State of Nevada. He is an agent of Valley Hospital and/or Dr. Elkanich.

7. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Defendant Rebecca Gillilan, CNIM ("Gillilan") is a neuromonitoring technician

employed by or an agent of Neuromonitoring Associates, Inc. and/or an agent of Valley Hospital/UHS and/or an agent of Elkanich. She is not a physician licensed under Chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees

8. Defendant Neuromonitoring Associates, Inc. ("NA") is a Nevada corporation licensed to do business and doing business in the County of Clark, State of Nevada. NA is liable, at common law under respondeat superior and/or under NRS 41.130, for the acts of its employees or agents performed in the course and scope of their employment or agency which acts in this particular case were so done. NA is an agent of Valley Hospital/UHS. NA is not a physician licensed under Chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees

9. At all times herein mentioned, Defendant Valley Hospital Medical Center, Inc. ("Valley") was a Nevada corporation, duly licensed in the State of Nevada, and conducting business in Las Vegas, Clark County, Nevada and owned and operated by Universal Health Services. Valley Hospital is liable, at common law under respondeat superior and/or under NRS 41.130, for the acts of its employees or agents performed in the course and scope of their employment or agency which acts in this particular case were so done.

10. Plaintiff is informed and believes, and thereupon alleges, that Defendant Steven Spillers, M.D. is and was a resident of Colorado, is licensed as a medical doctor in Nevada, and on or about March 5, 2012, was practicing internet medicine as the supervisor and reviewing physician relating to neuromonitoring Mary Haase. Dr. Spillers was an agent of NA, Gillilan, and Valley Hospital. He did not have privileges at Valley Hospital.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Roe Corporations I through X are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon

alleges that each of the defendants designated herein as a Roe Corporation is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately thereby to Plaintiff as herein alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Roe Corporation defendants when same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such defendants in this action.

12. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants Does I through X are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein as a Doe is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately thereby to Plaintiff as herein alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Doe defendants when same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such defendants in this action.

13. That due to the concealment of records, documents and things by Defendants, and each of them, it is possible that other persons/entities have liability in this matter. Equitably and legally per NRS 41A.097, that such concealment should mandate the tolling of any and all statutes of limitation for these individuals/entities.

14. Defendants, and each of them, are jointly and severally liable for all damages. Defendants, and each of them, acted as the agents of each other.

15. Jurisdiction is proper in this matter.

II.

FACTUAL ALLEGATIONS

16. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 15 herein and incorporates same by reference as though fully set forth herein.

17. In or around February of 2012, Mary Haase saw Dr. Elkanich for issues relating to back pain and leg pain.

18. Dr. Elkanich diagnosed Mary with bilateral lower extremity radiculopathy, lumbar disc protrusion, and stenosis.

19. Dr. Elkanich suggested that she have an L3-4 L4-5 bilateral microdiscectomy and microdecompression for the leg pain.

20. The surgery was scheduled for March 5, 2012.

21. The surgery was originally scheduled for North Vista Hospital, but Dr. Elkanich changed it to Valley Hospital. Mary Haase was not asked about same nor did she have any input regarding same.

22. Dr. Elkanich chose the anesthesiologist for the procedure, Dr. Gunalp. Mary Haase was not asked about same nor did she have any input regarding same.

23. Dr. Elkanich and/or Valley Hospital chose the neuromonitoring technologist, Rebecca Gillilan and the neuromonitoring company, Neuromonitoring Associates, for the procedure. Mary Haase was not asked about same nor did she have any input regarding same.

24. Dr. Elkanich chose the physician's assistant, Jocelyn Segovia, who would act as his assistant in the surgery. Mary Haase was not asked about same nor did she have any input regarding same. In an agreement with Valley Hospital, Dr. Elkanich agreed to supervise her at all times. Dr. Elkanich also agreed to "assume full responsibility for her actions in dealing with patients..."

25. Dr. Elkanich was not aware of, nor did he choose, the person monitoring or supervising the neuromonitoring technologist.

26. Valley Hospital had a contract with Neuromonitoring Associates whereby Neuromonitoring Associates would provide a PhD in Neurophysiology to monitor and/or closely supervise cases. In addition, the contract stated that "any interpretation of gathered data is the responsibility of the primary surgeon of each operative procedure for which data is gathered."

27. Valley Hospital never attempted to determine if Neuromonitoring Associates provided a PhD in Neurophysiology to monitor and/or closely supervise cases, and in particular, Mary Haase's surgery.

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28. In fact, Neuromonitoring Associates did not have a PhD in Neurophysiology to monitor and/or closely supervise the cases, and in particular, Mary Haase's surgery..

29. Instead, Neuromonitoring Associates brought in Dr. Steven Spillers to monitor and/or closely supervise the cases, including Mary Haase's surgery.

30. Dr. Spillers is not a privileged or credentialed physician at Valley Hospital. Valley Hospital did not know who Dr. Spillers, a physician treating its patients, was, until after the pendency of this action.

31. Dr. Spillers uses monitors in his home state of Colorado to allegedly watch the monitors. Sometimes he watches up to eight surgeries at a time. Approximately 50% of the time he monitors patients outside of his office, like at his home. Neuromonitoring Associates was aware that Dr. Spillers would monitor multiple cases at a time and never questioned same. Valley Hospital, since it never questioned Neuromonitoring Associates regarding this issue, did not know it was Dr. Spillers nor did they know how he allegedly monitored a case, if indeed he even did monitor a case.

32. Valley Hospital's contract with Neuromonitoring Associates also required Neuromonitoring Associates to abide by and provide services in accordance with JCAHO standards for hospitals.

33. The surgery took place on March 5, 2012 at Valley Hospital.

34. At some point in the procedure, Dr. Elkanich "scrubbed out" and decided to dictate his operative report even though the surgery was not done yet.

35. The operative report, which was supposed to be truthful and honest, states that the surgery went as planned and Mary was awakened from anesthesia and transferred to the recovery room.

36. However, the operative report was false and misleading.

37. During the surgery, Dr. Elkanich and/or Jocelyn Segovia tore, sliced and/or punctured the aorta.

38. There was substantial blood loss during the surgery. Dr. Elkanich stated this during the procedure but failed to include that in the report. He did so in an attempt to conceal his

malpractice. Segovia knew there was substantial blood loss and "a lot of bleeding intraoperatively during the decompression" but failed to correct the report or issue her own report. She did this in order to protect Dr. Elkanich.

39. As the surgery progressed, Mary's blood pressure began to drop. However, Dr. Gunalp paid insufficient attention to same. Ultimately, Dr. Gunalp noticed that there was a problem with Mary's blood pressure but failed to tell anyone how bad it was until it was too late.

40. The neuromonitoring could have picked up the vascular problem but did not because the intraoperative monitoring recordings at baseline and throughout the surgery were inadequate.

41. This failure should have been picked up by Ms. Gillilan, Dr. Spillers Ms. Segovia and/or Dr. Elkanich. Neither Dr. Spillers nor Dr. Elkanich even looked at same. Ms. Gillilan did not understand the data and thus could not interpret same. Ms. Gillilan never messaged or picked up the phone to speak with Dr. Spillers about the bleeding, the inadequate recordings or the SSEP changes. Dr. Elkanich never interpreted any data as he was required to do. Ms. Segivia knew there was neuromonitoring but when she saw the bleeding failed to inquire about the bleeding from the neuromonitoring tech. Dr. Spillers and/or Ms. Gillilan should have told Dr. Elkanich about the failures but did not.

42. When Dr. Gunalp ultimately noticed the precipitous drop in pressure and decided to tell someone, a fact he should have known well before when the was aorta was sliced, Dr. Elkanich had already scrubbed out of the procedure and was finishing his dictation.

43. Dr. Gunalp advised Dr. Elkanich that he had a problem with the blood pressure.

44. Dr. Elkanich stood up, laughed, and stated that "They should have cancelled this case" or words to that effect.

45. Dr. Gunalp stated that "This isn't time to joke around."

46. Dr. Elkanich then left the operating room, saw his next patient, went to the cafeteria, and then to the physician's lounge. Jocelyn Segovia was left alone and unsupervised to deal with this problem. She failed to do anything to help the situation.

47. Dr. Elkanich was paged several times to return, but failed to acknowledge same.

48. Ultimately, after a significant amount of time, which upon information and belief was over an hour later, Dr. Elkanich finally returned.

49. While Dr. Elkanich was gone from the operating room, Mary had awoken from the surgery, was conscious, and was screaming in pain. She screamed out "Stop. What are you doing? I'm in pain."

50. Then, Mary started screaming out loudly, "Stop."

51. While she was awake and conscious, Dr. Gunalp attempted to place a central line but could not.

52. Another physician heard the screaming and came in and aided Dr. Gunalp in finally placing the line, all while Mary was awake and conscious.

53. At no time did anyone in the OR call a code or hit the emergency button.

54. Ultimately, Mary was transferred to recovery despite her not being stable and dying.

55. At some point, Dr. Gunalp decided to intubate her.

56. He looked for medicine to temporarily paralyze her (in order to intubate her), but it was not in the Valley Hospital intubation cart.

57. Dr. Gunalp had to go to several separate operating rooms to ultimately find the drug, and ultimately intubated her.

58. Dr. Elkanich finally showed up in the recovery room.

59. He and Dr. Gunalp could not figure out what was happening. Dr. Gunalp suggested to Dr. Elkanich that maybe she was somehow bleeding from the surgery.

60. Dr. Elkanich stated affirmatively that such could not happen. At no time did anyone in the recovery room call for a vascular surgeon or vascular specialist despite the fact that Mary was obviously bleeding out. Before the surgery, Mary had a normal hematocrit and hemoglobin. Labs received in the recovery room showed that she had a hemoglobin of around 4.2. This was an alarming critical value making clear that Mary was bleeding substantially, but no one, neither Dr. Elkanich (who was sometimes in the recovery room and other times in the cafeteria), Ms. Segovia, Dr. Gunalp, Dr. Spillers, nor anyone from Valley Hospital, called in a vascular surgeon or vascular

specialist, or any other specialist.

61. During the surgery, Ms. Gillilan wrote in her notes that Dr. Elkanich was making statements about significant blood loss.

62. During the surgery, Ms. Gillilan never looked for vascular issues related to such blood loss on the neuromonitoring nor did she contact Dr. Spillers to advise about what was going on so that he could investigate.

63. After the surgery, and after she found out what happened to Mary, Ms. Gillilan told Dr. Spillers that Mary had lost a lot of blood during the surgery and that her SSEP's became variable at closing.

64. Within a short time after Dr. Elkanich finally returning to the recovery room, Mary Haase died.

65. As a result of her medical condition and hospitalization, and in particular her being under anesthesia at the time of Defendants' misconduct, as set forth herein, Mary Haase was a vulnerable person in that she had a physical or mental impairment that substantially limited one or more of her major life activities, and had a medical or psychological record of the impairment or was otherwise regarded as having the impairment, as set forth in NRS 41.1395.

66. As a patient under the care of Defendants, Defendants knew, or had reason to know Mary Haase was a vulnerable person at the time of their misconduct.

67. As a patient under the care of Defendants, Defendants had assumed legal responsibility or a contractual obligation for caring for Mary Haase, or had voluntarily assumed responsibility for Mary Haase's care, to provide services within the scope of the Defendants' responsibility or obligation, which were necessary to maintain Mary Haase's physical or mental health.

68. Defendants' actions, as described herein were a willful and unjustified infliction of pain, injury or mental anguish to Mary Haase, or a deprivation of services which were necessary to maintain the physical or mental health of Mary Haase.

69. Dr. Elkanich did not draft a discharge report or death report of what occurred. He did not draft a summation statement. He did not amend his false operative report. Upon

information and belief, Dr. Elkanich was instructed to not draft same via a Co-Defendant or an unnamed and concealed third party co-conspirator. Once Plaintiff identifies said person, Plaintiff will seek leave to amend this Complaint.

70. Mary's body was taken to the coroner's office.

71. Despite allegedly not knowing what happened, anesthesia strips, EKG strips, hard drive recordings and otherwise, were destroyed or not kept by Valley Hospital, Dr. Elkanich, Dr. Gunalp, Jocelyn Segovia and/or Rebecca Gillilan. Evidence related to the death of Mary Haase was intentionally destroyed.

72. The coroner's report has detailed findings showing that Mary's aorta (and other tissues) had an approximate half inch laceration in it in line with the L 4-5 disc.

73. Mary died due to exsanguination from the laceration of the aorta. In other words, she bled out and died.

74. During the course of said surgery, Dr. Elkanich, and/or others, punctured and/or tore the aorta, among other anatomical parts, and thereafter failed to properly and timely treat the puncture/tear using the reasonable care, skill or knowledge ordinarily used under similar circumstances, all of which ultimately led to the death of Mary Haase, and which conduct is below the standard of care.

75. Gunalp was providing anesthesia for the surgery and did so below the standard of care.

76. Valley Hospital provided some or all of the operating room staff, and/or contracted with others to provide operating room staff, whose actions fell below the standard of care.

77. Valley Hospital allowed non-privileged persons to treat Mary Haase during her surgical procedure, in violation of the laws and regulations of the State of Nevada, and those persons were negligent in the care and treatment they provided to Mary Haase.

78. Spillers was in charge of supervision of neuromonitoring who was supposed to be monitoring Mary Haase during the surgical procedure, and did so below the standard of care.

79. Gillilan was a neuromonitoring technician who was supposed to be monitoring Mary Haase during the surgical procedure, and did so below the standard of care.

80. Neuromonitoring Associates was the corporate entity that contracted with Valley Hospital to provide neuromonitoring services and personnel, including Gillilan and Spillers, during the surgical procedure for Mary Haase, which services and personnel fell below the standard of care.

81. That as a result of one or more of these actions, or actions yet unknown, Mary Haase died and Plaintiff sustained damages per NRS 41.085.

82. Plaintiff has attached the Affidavits and Curricula Vitae of Chadwick F. Smith, M.D., Donald S. Corenman, M.D., D.C., Alan Kaye, M.D., Stanley Skinner, M.D. and Timothy Hawkins per NRS 41A.071 and incorporates them herein as if fully rewritten. See Exhibits 1, 2, 3, 4 and 5.

III.

WRONGFUL DEATH FROM MEDICAL MALPRACTICE (ELKANICH)

83. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 78 herein and incorporates same by reference as though fully set forth herein.

84. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

85. Elkanich had a duty to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

86. As set forth hereinabove, Elkanich failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

87. As a direct and proximate result of the breach of duty of Defendant Elkanich, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

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88. As a further direct and proximate result of the breach of duty of Defendant Elkanich, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.33.

89. The actions and conduct of Defendant Elkanich, as set forth hereinabove, show Defendant Elkanich has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

90. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

91. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

IV.

WRONGFUL DEATH FROM NEGLIGENCE (ELKANICH)

92. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 91 herein and incorporates same by reference as though fully set forth herein.

93. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

94. During the surgery and in the interval between the severing of the aorta and the death of Mary Haase, Elkanich engaged in activities that were outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility and thus do not constitute professional negligence as that term is defined per NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

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95. As to this conduct and activity, Elkanich had a duty to Mary Haase, which duty was breached.

96. As a direct and proximate result of the breach of duty of Defendant Elkanich, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

97. As a further direct and proximate result of the breach of duty of Defendant Elkanich, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

98. The actions and conduct of Defendant Elkanich, as set forth hereinabove, show Defendant Elkanich has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

99. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

100. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

V.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT (ELKANICH)

101. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 100 herein and incorporates same by reference as though fully set forth herein.

102. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

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103. Some or all of the actions and conduct of Elkanich, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

104. This intentional misconduct by Elkanich does not constitute professional negligence as defined by NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

105. As a direct and proximate result of the intentional misconduct of Defendant Elkanich, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

106. As a further direct and proximate result of the intentional misconduct of Defendant Elkanich, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

107. The actions and conduct of Defendant Elkanich, as set forth hereinabove, show Defendant Elkanich has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

108. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

109. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

VI.

WRONGFUL DEATH FROM MEDICAL MALPRACTICE (GUNALP)

110. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 109 herein and incorporates same by reference as though fully set forth herein.

111. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

112. Gunalp had a duty to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

113. As set forth hereinabove, Gunalp failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

114. As a direct and proximate result of the breach of duty of Defendant Gunalp, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

115. As a further direct and proximate result of the breach of duty of Defendant Gunalp, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

116. The actions and conduct of Defendant Gunalp, as set forth hereinabove, show Defendant Gunalp has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

117. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

118. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

VII.

WRONGFUL DEATH FROM NEGLIGENCE (GUNALP)

119. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 118 herein and incorporates same by reference as though fully set forth herein.

120. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

121. During the surgery and in the interval between the severing of the aorta and the death of Mary Haase, Gunalp engaged in activities that were outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility and thus do not constitute professional negligence as that term is defined per NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

122. As to this conduct and activity, Gunalp had a duty to Mary Haase, which duty was breached.

123. As a direct and proximate result of the breach of duty of Defendant Gunalp, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

124. As a further direct and proximate result of the breach of duty of Defendant Gunalp, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

125. The actions and conduct of Defendant Gunalp, as set forth hereinabove, show Defendant Gunalp has been guilty of oppression, fraud or malice, express or implied, and the Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

126. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

127. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

VIII.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT (GUNALP)

128. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 127 herein and incorporates same by reference as though fully set forth herein.

129. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

130. Some or all of the actions and conduct of Gunalp, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

131. This intentional misconduct by Gunalp does not constitute professional negligence as defined by NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

132. As a direct and proximate result of the intentional misconduct of Defendant Gunalp, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

133. As a further direct and proximate result of the intentional misconduct of Defendant Gunalp, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

134. The actions and conduct of Defendant Gunalp, as set forth hereinabove, show Defendant Gunalp has been guilty of oppression, fraud or malice, express or implied, and the Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

135. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and

costs pursuant to NRS 41.1395.

136. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

IX.

WRONGFUL DEATH FROM MEDICAL MALPRACTICE

(VALLEY HOSPITAL)

137. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 138 herein and incorporates same by reference as though fully set forth herein.

138. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

139. Valley Hospital had a duty to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

140. As set forth hereinabove, Valley Hospital failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

141. As a direct and proximate result of the breach of duty of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

142. As a further direct and proximate result of the breach of duty of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

143. The actions and conduct of Defendant Valley Hospital, as set forth hereinabove, show Defendant Valley Hospital has been guilty of oppression, fraud or malice, express or implied, and the Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

144. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

145. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

X.

WRONGFUL DEATH FROM NEGLIGENCE (VALLEY HOSPITAL)

146. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 145 herein and incorporates same by reference as though fully set forth herein.

147. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

148. During the surgery and in the interval between the severing of the aorta and the death of Mary Haase, Valley Hospital engaged in activities that were outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility and thus do not constitute professional negligence as that term is defined per NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

149. As to this conduct and activity, Valley Hospital had a duty to Mary Haase, which duty was breached.

150. As a direct and proximate result of the breach of duty of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

151. As a further direct and proximate result of the breach of duty of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

152. The actions and conduct of Defendant Valley Hospital, as set forth hereinabove, show Defendant Valley Hospital has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

153. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

154. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XI.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT

(VALLEY HOSPITAL)

155. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 154 herein and incorporates same by reference as though fully set forth herein.

156. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

157. Some or all of the actions and conduct of Valley Hospital, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

158. This intentional misconduct by Valley Hospital does not constitute professional negligence as defined by NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

159. As a direct and proximate result of the intentional misconduct of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

160. As a further direct and proximate result of the intentional misconduct of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

161. The actions and conduct of Defendant Valley Hospital, as set forth hereinabove, show Defendant Valley Hospital has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

162. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

163. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XII.

WRONGFUL DEATH FROM VIOLATION OF NRS 449.0302, NAC 449.358 AND NAC 449.3622 (VALLEY HOSPITAL)

164. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 163 herein and incorporates same by reference as though fully set forth herein.

165. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

166. Valley Hospital is licensed under and subject to the provisions and requirements of NRS Chapter 449.

167. NRS 449.0302 governs the licensing and regulations of hospitals, including Valley Hospital, and specifically authorizes, instructs and requires the State Board of Health to adopt regulations for the operation of a hospital.

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168. Pursuant to the legislative mandate of NRS 449.0302, certain regulations governing the operation of a hospital were enacted in the Nevada Administrative Code, NAC Chapter 449, including NAC 449.358 and NAC 449.3622.

169. Valley Hospital had a duty to its patients, and to Mary Haase, to fully comply with all applicable rules and regulations under NRS Chapter 449 NAC Chapter 449, including NAC 449.358 and NAC 449.3622.

170. Valley Hospital breached its duty to Mary Haase by failing to comply with the requirements of NAC 449.358 and NAC 449.3622 by allowing Defendant Spillers to treat and be involved in the surgical care of Mary Haase.

171. This misconduct by Valley Hospital does not constitute professional negligence as defined by NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

172. As a direct and proximate result of the misconduct of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

173. As a further direct and proximate result of the misconduct of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

174. The actions and conduct of Defendant Valley Hospital, as set forth hereinabove, show Defendant Valley Hospital has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

175. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

176. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XIII.

WRONGFUL DEATH (VALLEY HOSPITAL)

177. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 176 herein and incorporates same by reference as though fully set forth herein.

178. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

179. As set forth hereinabove, and in particular in paragraphs 164 through 171 above, Valley Hospital had a duty to insure that only properly licensed and privileged physicians participated in surgical procedures in the hospital, which it breached.

180. At all times Valley Hospital held itself out as a hospital that complied with Nevada laws and regulations and represented to the public, directly and/or indirectly, that only properly credentialed physicians were participating in surgical procedures in the hospital.

181. This representation was made with a knowledge of its falsity or without sufficient foundation.

182. This representation was materially misleading and constituted a false misrepresentation.

183. This misconduct by Valley Hospital does not constitute professional negligence as defined by NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

184. As a direct and proximate result of the misconduct of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

185. As a further direct and proximate result of the misconduct of Defendant Valley Hospital, as set forth hereinabove, Plaintiff has suffered general and special damages in the past

and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

186. The actions and conduct of Defendant Valley Hospital, as set forth hereinabove, show Defendant Valley Hospital has been guilty of oppression, fraud or malice, express or implied, and the Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

187. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

188. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XIV.

WRONGFUL DEATH FROM MEDICAL MALPRACTICE (SPILLERS)

189. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 188 herein and incorporates same by reference as though fully set forth herein.

190. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

191. Spillers had a duty to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

192. As set forth hereinabove, Spillers failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in rendering services to Mary Haase.

193. As a direct and proximate result of the breach of duty of Defendant Spillers, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

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194. As a further direct and proximate result of the breach of duty of Defendant Spillers, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

195. The actions and conduct of Defendant Spillers, as set forth hereinabove, show Defendant Spillers has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

196. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

197. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XV.

WRONGFUL DEATH FROM NEGLIGENCE (SPILLERS)

198. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 197 herein and incorporates same by reference as though fully set forth herein.

199. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

200. During the surgery and in the interval between the severing of the aorta and the death of Mary Haase, Spillers engaged in activities that were outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility and thus do not constitute professional negligence as that term is defined per NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

201. As to this conduct and activity, Spillers had a duty to Mary Haase, which duty was breached.

202. As a direct and proximate result of the breach of duty of Defendant Spillers, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

203. As a further direct and proximate result of the breach of duty of Defendant Spillers, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

204. The actions and conduct of Defendant Spillers, as set forth hereinabove, show Defendant Spillers has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

205. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

206. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XVI.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT (SPILLERS)

207. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 206 herein and incorporates same by reference as though fully set forth herein.

208. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

209. Some or all of the actions and conduct of Spillers, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

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210. This intentional misconduct by Spillers does not constitute professional negligence as defined by NRS 41A.015, and the provisions of NRS Chapter 41A do not apply to this cause of action.

211. As a direct and proximate result of the intentional misconduct of Defendant Spillers, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

212. As a further direct and proximate result of the intentional misconduct of Defendant Spillers, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

213. The actions and conduct of Defendant Spillers, as set forth hereinabove, show Defendant Spillers has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

214. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

215. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XVII.

WRONGFUL DEATH FROM NEGLIGENCE (SEGOVIA)

216. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 215 herein and incorporates same by reference as though fully set forth herein.

217. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

218. Segovia is not a provider of healthcare as that term is used in NRS Chapter 41A and as such, the provisions and requirements of NRS Chapter 41A do not apply to Segovia.

219. As a physician's assistant who was employed by Elkanich and who participated in the surgical procedure on Mary Haase, Segovia had a duty to exercise reasonable care in the care and treatment of Mary Haase, which duty was breached as more fully set forth hereinabove.

220. As a direct and proximate result of the breach of duty of Defendant Segovia, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

221. As a further direct and proximate result of the breach of duty of Defendant Segovia, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

222. The actions and conduct of Defendant Segovia, as set forth hereinabove, show Defendant Segovia has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

223. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

224. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XVIII.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT (SEGOVIA)

225. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 224 herein and incorporates same by reference as though fully set forth herein.

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226. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

227. Some or all of the actions and conduct of Segovia, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

228. This intentional misconduct by Segovia does not fall under the provisions of NRS Chapter 41A and it does not apply to this cause of action.

229. As a direct and proximate result of the intentional misconduct of Defendant Segovia, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

230. As a further direct and proximate result of the intentional misconduct of Defendant Segovia, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

231. The actions and conduct of Defendant Segovia, as set forth hereinabove, show Defendant Segovia has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

232. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

233. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

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XIX.

WRONGFUL DEATH FROM NEGLIGENCE (GILLILAN)

234. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 233 herein and incorporates same by reference as though fully set forth herein.

235. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

236. Gillilan is not a provider of healthcare as that term is used in NRS Chapter 41A and as such, the provisions and requirements of NRS Chapter 41A do not apply to Gillilan.

237. Gillilan was a neuromonitoring technician who participated in the surgical procedure on Mary Haase, and who had a duty to exercise reasonable care in the care and treatment of Mary Haase, which duty was breached as more fully set forth hereinabove.

238. As a direct and proximate result of the breach of duty of Defendant Gillilan, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

239. As a further direct and proximate result of the breach of duty of Defendant Gillilan, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

240. The actions and conduct of Defendant Gillilan, as set forth hereinabove, show Defendant Gillilan has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

241. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

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242. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XX.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT (GILLILAN)

243. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 242 herein and incorporates same by reference as though fully set forth herein.

244. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

245. Some or all of the actions and conduct of Gillilan, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

246. This intentional misconduct by Gillilan does not fall under the provisions of NRS Chapter 41A and it does not apply to this cause of action.

247. As a direct and proximate result of the intentional misconduct of Defendant Gillilan, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

248. As a further direct and proximate result of the intentional misconduct of Defendant Gillilan, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

249. The actions and conduct of Defendant Gillilan, as set forth hereinabove, show Defendant Gillilan has been guilty of oppression, fraud or malice, express or implied, and the Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

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250. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

251. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XXI.

WRONGFUL DEATH FROM NEGLIGENCE

(NEUROMONITORING ASSOCIATES)

252. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 241 herein and incorporates same by reference as though fully set forth herein.

253. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

254. Neuromonitoring Associates is not a provider of healthcare as that term is used in NRS Chapter 41A and as such, the provisions and requirements of NRS Chapter 41A do not apply to Neuromonitoring Associates.

255. Neuromonitoring Associates was a neuromonitoring company which participated in the surgical procedure on Mary Haase through its employees and agents, and which had a duty to exercise reasonable care in the care and treatment of Mary Haase, which duty was breached as more fully set forth hereinabove.

256. As a direct and proximate result of the breach of duty of Defendant Neuromonitoring Associates, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

257. As a further direct and proximate result of the breach of duty of Defendant Neuromonitoring Associates, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

258. The actions and conduct of Defendant Neuromonitoring Associates, as set forth hereinabove show Defendant Neuromonitoring Associates has been guilty of oppression, fraud or malice, express or implied, and Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing Defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

259. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

260. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XXII.

WRONGFUL DEATH FROM INTENTIONAL MISCONDUCT

(NEUROMONITORING ASSOCIATES)

261. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 260 herein and incorporates same by reference as though fully set forth herein.

262. Pursuant to NRS 41.085, Plaintiff brings this cause of action against this Defendant for the wrongful death of Mary Haase and seeks all damages authorized by statute and available at law.

263. Some or all of the actions and conduct of Neuromonitoring Associates, as set forth hereinabove, were intentional, reckless, wanton, willful and with a conscious disregard of the rights and safety of Mary Haase.

264. This intentional misconduct by Neuromonitoring Associates does not fall under the provisions of NRS Chapter 41A and it does not apply to this cause of action.

265. As a direct and proximate result of the intentional misconduct of Defendant Neuromonitoring Associates, as set forth hereinabove, Plaintiff has suffered general and special damages in the past in an amount in excess of Ten Thousand Dollars ($10,000.00) and general and special damages in the future in an amount in excess of Ten Thousand Dollars ($10,000.00).

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266. As a further direct and proximate result of the intentional misconduct of Defendant Neuromonitoring Associates, as set forth hereinabove, Plaintiff has suffered general and special damages in the past and in the future in an amount in excess of Ten Thousand Dollars ($10,000.00) as allowed by NRS 41.085.

267. The actions and conduct of Defendant Neuromonitoring Associates, as set forth hereinabove, show Defendant Neuromonitoring has been guilty of oppression, fraud or malice, express or implied, and the Plaintiff, in addition to the compensatory damages, is entitled to recover damages for the sake of example and by way of punishing the defendant in an amount in excess of Ten Thousand Dollars ($10,000.00).

268. As a direct and proximate result of the actions, conduct and breaches of duty of Defendant, as set forth hereinabove, Plaintiff is entitled to double damages, attorney's fees and costs pursuant to NRS 41.1395.

269. It has become necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

XXIII.

DECLARATORY RELIEF

270. Plaintiff hereby realleges those allegations contained in paragraphs 1 through 269 herein and incorporates same by reference as though fully set forth herein.

271. That NRS 30.060 and NRS 30.070 allow an action to be brought by Plaintiff for declaratory relief.

272. That NRS 41A as a whole, and/or portions thereof, is unconstitutional as a matter of law and this Court should declare same.

273. That NRS 41A, as a whole or portions thereof, as applied to Plaintiff is unconstitutional and this Court should declare same.

274. That this Court should not apply any or all portions of NRS 41A to this Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

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1. For all damages allowed per NRS 41.085 or otherwise, in a sum in excess of $10,000.00;

2. For general damages in the past in an amount in excess of $10,000.00;

3. For general damages in the future in an amount in excess of $10,000.00;

4. For special damages in the past in an amount in excess of $10,000.00;

5. For special damages in the future in an amount in excess of $10,000.00;

6. For all damages allowed under NRS 41.1395;

7. For punitive damages in an amount in excess of $10,000.00;

8. A declaration that NRS 41A in whole and/or parts thereof is unconstitutional;

9. For attorney's fees and costs incurred and prejudgment interest; and

10. For such other and further relief as the Court deems just and proper.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiff Madden Duda

MPSJ
Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
(702) 685-6111

Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
521 South Third Street
Las Vegas, NV 89101
(702) 685-6111
Attorneys for Plaintiff Madden Duda

DISTRICT COURT
CLARK COUNTY, NEVADA

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian, Plaintiff, vs. GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; STEVEN SPILLERS, M.D.; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive, Defendants.	CASE NO. A-13-677611-C DEPT. NO. XII **MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO STEVEN SPILLERS, M.D. AND NRS 41A** **Date:** **Time:**
AUTUMN MATESI, et al., Plaintiffs, vs. VALLEY HOSPITAL MEDICAL CENTER, et al., Defendants.	*Consolidated With:* CASE NO. A-13-677720-C

COMES NOW Plaintiff Madden Duda, by and through Jovan Duda, his Natural Father and Guardian by and through their attorneys of record, Murdock & Associates, Chtd. and Eckley M. Keach, Chtd., and hereby files his Motion for Partial Summary Judgment as to Steven Spillers, M.D. and NRS 41A, as follows:

This Motion is made and based upon the following Points and Authorities, Declaration of Robert E. Murdock, all pleadings and papers on file herein, and any argument of counsel as may be heard by this Court.

DATED this 5th day of May, 2016.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff

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NOTICE OF MOTION

TO: ALL PARTIES HEREIN; and

TO: THEIR RESPECTIVE COUNSEL OF RECORD

PLEASE TAKE NOTICE that on the 6 day of June, 2016 at 8:30am a.m. in Department XII of the District Court of Clark County, Nevada, Plaintiff will bring the foregoing Motion for Partial Summary Judgment as to Steven Spillers, M.D. and NRS 41A before this Court for hearing.

DATED this 5th day of May, 2016.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff

POINTS AND AUTHORITIES

I. INTRODUCTION

Status is important in law. The reason is that it tells us how the law treats a person. For example, a 5 year old cannot hold the requisite intent to commit a crime and is incapable of negligence. In the case at bar, status tells us about the cap on damages and joint and several liability. And, that is why this Motion is being filed. This case involves a failed surgery at Valley Hospital. Dr. Steven Spillers was the supervisor of the neuromonitoring tech. The tech was in the operating room. Dr. Spillers was in Colorado monitoring up to eight surgeries at the same time.[1] Dr. Spillers is a licensed physician in Nevada. Important to this Motion, **Dr. Spillers did not have**

[1] Dr. Spillers claims he was monitoring three surgeries at the time of the surgery on Decedent. But, he had the capability of monitoring eight.

privileges to practice at Valley Hospital. But, Valley required him to have privileges via its Bylaws which required all practitioners of telemedicine to have privileges. Dr. Spillers violated a Bylaw of Valley Hospital by not having privileges at the hospital, despite treating a patient there via telemedicine. That violation—practicing telemedicine without having privileges—strips him of the benefit of the cap and of the abrogation of joint and several liability provided under NRS 41A. Though the jury will have to determine Dr. Spiller's negligence in this case, this Motion only deals with his status. This Court well knows that the cap and the abrogation of joint and several liability only applies to "providers of healthcare." Similarly, they only apply to providers who committed "professional negligence." **The Voters of Nevada excluded certain actions from the definition of "professional negligence" and, Dr. Spillers' actions fit within the exception**. Hence, Dr. Spillers does not have the protections of the cap or the abrogation of joint and several liability. His status is exactly the same as Ms. Gillilan and this Court will recall that it denied her the protections of NRS 41A. See Order from May 20, 2015.

NRCP 56(c) provides that summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. As this Court well knows, the "slightest doubt" issue regarding summary judgment is no longer the law in Nevada. Instead, the issue is whether a rational juror could come to a different conclusion based upon a genuine issue of material fact.

> "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party."

Wood v. Safeway, Inc., 121 Nev. 724, 731 (Nev. 2005). Simply showing "there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor" will no longer suffice:

> "The non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." The non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture."

Id., 121 Nev. at 732.

II. UNCONTESTED FACTS

1. Mary Haase was operated on at Valley Hospital on March 5, 2012 (VH00047-48).
2. Dr. Steven Spillers was the supervising physician of the Neuromonitoring Technologist (NAI0071).
3. Dr. Spillers monitored the case from Colorado Springs Colorado (Spillers Depo at 205-206).
4. Dr. Spillers was practicing telemedicine (Id. at 181).
5. Per Dr. Spillers' website, "His practice, headquartered in Colorado Springs, Colorado, reaches across the nation. He specializes in providing clinical neurophysiology services via secure remote telemedicine connection to hospitals nationwide." (http://www.coneuro.net/about/).
6. Mandated by its Bylaws, Valley Hospital required all practitioners of telemedicine at Valley hospital to have privileges (Valley Bylaw 3.3, Stockton Depo at 37-38).
7. Dr. Spillers did not have privileges at Valley hospital. (See Valley's Responses to Second Set of Req. For Prod at 1 (No documents exist showing that Spillers had privileges) and the Official Roster of Privileged Persons (ROST001-120).

8. The failure of a physician who treats a patient at Valley Hospital via telemedicine without having privileges at Valley hospital violates Valley Hospital Bylaws (Luh Depo at 72).

III. ARGUMENT

In 2008, the American Medical Association adopted Resolution 201 regarding intraoperative neuromonitoring:

> "...it is the policy of the American Medical Association that **supervision and interpretation of intraoperative neurophysiologic monitoring constitutes the practice of medicine**, which can be delegated to nonphysician personnel who are under the direct or online real time supervision of the operating surgeon or another physician trained in, or who has demonstrated competence, in neurophysiologic techniques and is available to interpret the studies and advise the surgeon during the surgical procedures."

See AMA Policy H-410.957. In other words, **Dr. Spillers practiced medicine on Mary Haase in March of 2012 at Valley Hospital.** The problem is that he did so without having any privileges at Valley Hospital—in violation of Valley Hospital's Bylaws. And, that failure ameliorates any protections that Dr. Spillers had via the malpractice cap and/or the abrogation of joint and several liability in NRS 41A.

This Court well knows the medical malpractice statute at play here. NRS 41A was placed into law by the voters with various exceptions, limitations and rules. Of primary import to this motion is the malpractice cap and the abrogation of joint and several liability. The Nevada Supreme Court has made clear that the statute needs to be read in a limited manner when the plain language of the statute is clear. See **Egan v. Chambers**, 129 Nev. Adv. Op. 25 (Apr. 25, 2013). In order to determine same, we look to the statute itself and its definitions. The relevant portions of NRS 41A are the following:

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

> **"NRS 41A.017 "Provider of health care" defined.** "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed

nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees."

"**NRS 41A.015 "Professional negligence" defined.** "**Professional negligence**" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. **The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility."**

"**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."

"**NRS 41A.045 Several liability of defendants for damages; abrogation of joint and several liability.**

1. In an action for injury or death against a provider of health care based upon **professional negligence**, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.
2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon **professional negligence**."

At the time of the surgery on Mary Haase, despite practicing medicine from Colorado, Dr. Spillers was licensed in Nevada and this satisfies NRS 41A.013. And, as a physician he is a "provider of healthcare" and this satisfies NRS 41A.017. So, *ordinarily*, he would get the benefit of NRS 41A.035 (the cap) and NRS 41A.045 (abrogation of joint and several). The problem for Dr. Spillers is that the inquiry goes a bit further. The voters excluded certain statuses from the benefits of NRS 41A and this is why Dr. Spillers has a problem.

First, NRS 41A **only** applies to actions involving professional negligence. Dr. Spillers does not meet the definition of "professional negligence" because he was not privileged at Valley Hospital despite treating a patient there:

> **"The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility."**

NRS 41A. 015 (emphasis added). Here, Dr. Spillers services violated a restriction imposed by Valley Hospital.

Valley Hospital's Bylaws require those performing telemedicine to be privileged. The Bylaws dated 2/16/12 state:

> "**Practitioners who wish to provide telemedicine services**, as defined in these bylaws, in prescribing, rendering a diagnosis, or otherwise providing clinical treatment to a hospital patient, without clinical supervision or direction from a medical staff member, **shall be required to apply for and be granted privileges for these services.**"

Bylaw 3.3 (attached hereto as Exhibit 5)[2]. In other words, one cannot practice telemedicine at Valley Hospital unless one has privileges at Valley Hospital. **Valley Hospital has imposed a restriction upon all practitioners of telemedicine—they must have privileges**.

Dr. Eddy Luh, the Chief of Surgery at Valley and a Member of the Medical Executive Committee, has testified that just because a person has a license, that doesn't mean he necessarily gets privileges. Luh Depo at 65. According to Dr. Luh, **the Bylaw regarding telemedicine means that "A person who wishes to provide telemedicine services needs to apply for and get privileges."** Luh Depo at 72. And, **Dr. Luh acknowledges that a doctor providing telemedicine services at Valley Hospital who is not privileged has violated those bylaws.** Id. Similarly. Kevin Stockton, the former CEO and Managing Director at Valley Hospital (and employee of UHS) has testified that **telemedicine doctors need to be privileged**. Stockton Depo at 37-38.

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[2] Per NAC 449.9801, the governing body of a hospital shall "(a)Adopt criteria for granting privileges to members of the medical staff based upon the size and complexity of the services provided by the center." It appears that by adopting Bylaw 3.3, Valley complied with this regulation.

Dr. Spillers has **conceded** and admitted that his practice is telemedicine: **"Well, I'm in telemedicine."** Spillers Depo at 181.[3] And, Valley Hospital has admitted that on March 5, 2012, he was not privileged[4] at Valley Hospital. See Valley's Responses to Second Set of Req. For Prod at 1 (No documents exist showing that Spillers had privileges) and the Official Roster of Privileged Persons (ROST001-120)[5] (revealing that Dr. Spillers's name is not on that Roster).

Since Dr. Spillers was required to be privileged by the health care facility and he was not, the exception stated in NRS 41A.015 comes into play. And, therefore, there is no "professional negligence" as that term is used and defined in NRS 41A. Dr. Spillers **loses** the status given to him as a Provider of Healthcare under NRS 41A. The reason is that Dr. Spillers does not meet the definition of "professional negligence" which is required under NRS 41A. 035 and NRS 41A.045. The Voters decided to define "professional negligence" ***with an exception***—that being "The term does not include … services for which any restriction has been imposed by the applicable … health care facility." NRS 41A.015. Valley Hospital placed a restriction on telemedicine providers such as Dr. Spillers—they must have privileges at the hospital. **Dr. Spillers did not**. Due to his

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[3] See also, http://www.ccneuro.net/about/, Dr. Spillers' website where he states "His practice, headquartered in Colorado Springs, Colorado, reaches across the nation. He specializes in providing clinical neurophysiology services via secure remote telemedicine connection to hospitals nationwide." Dr. Spillers further states: "The practice of medicine has always been relational. Personal interaction between the physician and the patient, nurses, and other physicians is an important part of the process. The remote nature of telemedicine can detract from the relational nature of traditional medicine. Although Dr. Spillers is not physically present, he is available to discuss monitoring strategy for IONM, and the results of all testing by phone with the physician." In addition, he states his mission is "To assist physicians, nurses, and hospitals in caring for at-risk neurological patients by providing rapid and accurate interpretation of neurophysiologic testing, enabling accurate diagnosis and successful treatment."

[4] Had Dr. Spillers requested privileges, it is highly doubtful he would have received them because, for a significant time prior to the death of Decedent, Dr. Spillers was under investigation for Medicare Fraud by the United States Attorney's office out of Denver. Subsequently, Dr. Spillers entered into an "Integrity Agreement" (http://oig.hhs.gov/fraud/cia/agreements/steven_spillers_md_06082012.pdf) wherein in lieu of prosecution, Dr. Spillers paid $747,013.20 to the United States. (https://www.justice.gov/archive/usao/co/news/2012/june/6-21-12.html).

[5] Plaintiff has not attached this due to its length. However, Plaintiff has attached ROST034 which is the page where Dr. Spillers name would be alphabetically if he had privileges.

failure to comply with this restriction imposed by Valley Hospital, his services cannot be protected as a being "professional negligence" within the confines of NRS 41A.

In **Tam v. Eighth Judicial Dist. Court**, 358 P.3d 234 (Nev. 2015), the Nevada Supreme Court rolled the term "medical malpractice" into the definition of "professional negligence" to correspond with the "intent" of the statute. **However, the Court did not (*and could not*) strip out the exception carved into the statute by the Voters**. The reason, of course, is that "Our goal in interpreting statutes is to effectuate the Legislature's intent. *Edgington v. Edgington*, 119 Nev. 577, 582-83, 80 P.3d 1282, 1286-87 (2003). To do so, we must "give [a statute's] terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory." **Manuela H. v. Eighth Judicial Dist. Court,** 365 P.3d 497, 501 (Nev. 2016). There is no doubt but that the exception of NRS 41A.015(2) means something. And, it means that if the physician falls within that exception, there was no professional negligence as such term is defined and used in NRS 41A. And, if there was no "professional negligence", then neither NRS 41A.035 or NRS 41A.045 applies since both statutes require "professional negligence" as part of their definitions. In order to say otherwise, the Court must remove Section Two of NRS 41A.015. That is not the Court's job—it is the Legislature's. And, the Legislature did act. The 2015 Legislature removed the exception. But, the action is prospective.

Though the Legislature amended NRS 41A.015 in this last session to remove the exception, the amendment cannot be applied retrospectively to cases filed prior to the 2015 Amendment because the statute does not specifically require retrospective application. In fact, the Amendment does not even address such. Retrospective versus prospective application was recently explained by the Nevada Supreme Court:

> "Substantive statutes are **presumed to only operate prospectively, unless it is clear that the drafters intended the statute to be applied retroactively**. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994); *PEBP*, 124 Nev. at 154, 179 P.3d at 553; *Cnty. of Clark v. Roosevelt Title Ins. Co.*, 80 Nev. 530, 535, 396 P.2d 844, 846 (1964). The presumption against retroactivity is typically explained by reference to fairness. *Landgraf*, 511 U.S. at 270. [As the Supreme Court has instructed, "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." Id. at 265. Moreover, "[i]n a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions." Id. at 265-66.

Sandpointe Apts., LLC v. Eighth Judicial Dist. Court of State, 313 P.3d 849, 853-854 (Nev. 2013). Since SB292 (the Legislation) did not specifically state that the application was retrospective, the presumption is that it is not. So, we start with that presumption.

Then,

> "[D]eciding when a statute operates 'retroactively' is not always a simple or mechanical task." Id. at 268. "Any test of retroactivity will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal changes with perfect philosophical clarity." Id. at 270. **Broadly speaking, courts "take a 'commonsense, functional' approach" in analyzing whether applying a new statute would constitute retroactive operation.** PEBP, 124 Nev. at 155, 179 P.3d at 553 (quoting Immigration & Naturalization Serv. v. St. Cyr, 533 U.S. 289, 321, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001)). **Central to this inquiry are "fundamental notions of 'fair notice, reasonable reliance, and settled expectations.'"** Id. at 155, 179 P.3d at 554 (quoting St. Cyr, 533 U.S. at 321). Ultimately, a conclusion regarding retroactivity "comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event." Landgraf, 511 U.S. at 270. "All laws have connections with the past," however. 2 Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 41:2, at 390 (7th ed. 2009). As such, a statute does not operate "retrospectively" merely because it "draws upon past facts," PEBP, 124 Nev. at 155, 179 P.3d at 553, "or upsets expectations based in prior law." Landgraf, 511 U.S. at 269. **Rather, "[a] statute has retroactive effect when it 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.'"** PEBP, 124 Nev. at 155, 179 P.3d at 553-54 (alteration in original) (quoting St. Cyr, 533 U.S. at 321) (quoting Landgraf, 511 U.S. at 269)."

Sandpointe Apts., LLC v. Eighth Judicial Dist. Court of State, 313 P.3d 849, 854 (Nev. 2013).

In addition, in **Tam**, Justice Hardesty footnoted the 2015 Legislative changes but did not rely upon those changes to support the Court's ultimate opinion. See **Tam v. Eighth Judicial Dist. Court**, 358 P.3d 234, at fn2, fn8 (Nev. 2015). When this incident involving Mary Haase occurred in March of 2012, **the exception was in place**. When the lawsuit was filed against Dr. Spillers, the **exception was in place**. Since that time, Dr. Spillers was aware that a violation of rules from a healthcare facility would void the cap and the abrogation of joint and several liability. Likewise, Plaintiff has litigated this case based upon the law at the time of filing. Accordingly, it would be incredibly unfair to change the law at the end of the case. Additionally, the removal of the exception by the Legislature makes clear the Legislature understood the import of the limiting language in NRS 41A.015 and took steps to remove this limitation in future cases. The failure of the Legislature to specifically state that SB 292 was retroactive, when they had all the time in the world to address retroactive application in the statute, considering the many edits and changes, clarifies the intent of the Legislature. The Amendment does nothing to change the rights of Dr. Spillers as they existed at the time of filing the lawsuit (and the incident). If another patient files a new lawsuit against him in Nevada, based on similar facts, he would now have the benefit of the cap and the abrogation of joint and several liability due to the Amendment.

But, to change the law in midstream would have the effect of allowing the plaintiff to litigate under one set of rules only to find that at the end of the lawsuit, the Legislature has changed the law. It would be as if children playing a game of kickball changed the rules at the end of the game. Plaintiff has relied on the exception throughout the case for discovery and for litigation strategy. Fundamental notions of fairness and due process require this Court to Order that the changes in NRS 41A.015 be applied prospectively and not retroactively.

Applying the presumption makes clear that the exception comes into play and Dr. Spillers does not have the protection of the cap or of the abrogation of joint and several liability.

IV. CONCLUSION

Accordingly, since there is no question of fact regarding (1) Dr. Spillers practicing telemedicine, (2) telemedicine providers at Valley Hospital being required to have privileges at Valley Hospital via its Bylaws, (3) Dr. Spillers not having such privileges, and (4) Dr. Spillers treating Mary Haase at Valley Hospital on March 5, 2012 via telemedicine without having privileges at Valley Hospital, the exception of NRS 41A.015(2) applies and Dr. Spillers loses his protected status of NRS 41A. Hence, **Dr. Spillers neither has the benefit of the medical malpractice cap nor does he have the benefit of the abrogation of joint and several liability**.

This Court should grant summary judgment on that issue.

DATED this 5th day of May, 2016.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff

DECLARATION OF ROBERT E. MURDOCK

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

ROBERT E. MURDOCK, declares:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Eckley M. Keach, am the attorney for Plaintiff in the captioned action.

2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.

3. Attached hereto as Exhibit 1 is a true and correct copy of Order Denying Defendant Rebecca Gillilan, CNIM's Motion to Apportion Liability Severally and to Cap Damages from 5/20/15.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Operative Report from Valley Hospital Medical Center for patient Mary Haase, bate stamped VH00047-VH00048.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Intraoperative Monitoring Report for patient Mary Haase, bate stamped NAI0071.

6. Attached hereto as Exhibit 4 is a true and correct copy of the relevant pages of Steven Spiller M.D.'s deposition from 10/3/13.

7. Attached hereto as Exhibit 5 is a true and correct copy of the relevant page of Valley Hospital's Bylaw 3.3, bate stamped MSB00026.

8. Attached hereto as Exhibit 6 is a true and correct copy of the relevant pages of Kevin Stockton's deposition from 8/22/2014.

9. Attached hereto as Exhibit 7 is a true and correct copy of the relevant pages of Valley Hospital's Responses to Second Set of Requests for Production of Documents from 9/17/13.

10. Attached hereto as Exhibit 8 is a true and correct copy of the relevant page of the Official Roster of Privileged Persons, bate stamped ROST034.

11. Attached hereto as Exhibit 9 is a true and correct copy of the relevant pages of Eddy Luh, M.D.'s deposition from 12/4/15.

12. Attached hereto as Exhibit 10 is a true and correct copy of AMA Policy H-410.957.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

ROBERT E. MURDOCK, ESQ.

CERTIFICATE OF SERVICE

The undersigned hereby declares she is an employee of Murdock & Associates, Chtd. and that on May 5, 2016, she served the foregoing Motion for Partial Summary Judgment as to Steven Spillers, M.D. and NRS 41A, upon the parties to this action via the court's Wiznet mandatory electronic service, addressed as follows:

S. Brent Vogel, Esq.
Alayne M. Opie, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118

Clark Seegmiller, Esq.
Seegmiller & Associates
10655 Park Run Dr., Suite 250
Las Vegas, NV 89144

Jill M. Chase, Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Blvd., Suite 570
Las Vegas, NV 89128

Nia Killebrew, Esq.
Richard Harris Law Firm
801 S. Forth Street
Las Vegas, NV 89101

John H. Cotton, Esq.
Katherine L. Turpen, Esq.
John H. Cotton & Associates, Ltd.
7900 West Sahara Ave., Suite 200
Las Vegas, NV 89117

James E. Murphy, Esq.
Laxalt & Nomura, Ltd.
6720 Via Austi Pkwy, Suite 430
Las Vegas, NV 89119

Casey W. Tyler, Esq.
Hall Prangle & Schoonveld, LLC
1160 North Town Center Dr., Suite 200
Las Vegas, NV 89144

Douglas M. Cohen, Esq.
Fennemore Craig Jones Vargas
300 South Fourth St., Suite 1400
Las Vegas, NV 89101

Troy R. Rackham, Esq.
Fennemore Craig
1700 Lincoln St., Suite 2900
Denver, CO 80203

/s/ Vera Minkova
An employee of Murdock & Associates, Chtd.

EXHIBIT "1"

EXHIBIT "1"

S. BRENT VOGEL
Nevada Bar No. 006858
brent.vogel@lewisbrisbois.com
ALAYNE M. OPIE
Nevada Bar No. 012623
alayne.opie@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: (702) 893-3383
Fax: (702) 893-3789
Attorneys for Defendants Rebecca Gillilan, CNIM

DISTRICT COURT

CLARK COUNTY, NEVADA

MADDEN DUDA., a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiff,

vs.

GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILIAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada Corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada Corporation; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive,

Defendant.

Case No. A-13-677611-C
Dept. No.: XXIX

ORDER DENYING DEFENDANT REBECCA GILLILAN, CNIM'S MOTION TO APPORTION LIABILITY SEVERALLY AND TO CAP DAMAGES

AUTUMN MATESI, individually and as an heir to the Estate of MARY ANN HAASE, and, ROBERT ANSARA as Special Administrator of the Estate of MARY ANN HAASE,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada Corporation, GEORGE MICHAEL ELKANICH, M.D., JOCELYN L SEGOVIA, PA-C, FEZA NEVIL GUNALP, MD, REBECCA GILLILAN, CNIM, NEUROMONITORING ASSOCIATES, INC., a Nevada Corporation, DOES I through XX, inclusive, and ROE CORPORATIONS I through XX, inclusive,

Defendants.

Case No. A-13-677720-C
Dept. No.: III

[Consolidated With A677611]

Defendant Rebecca Gillilan, CNIM's Motion to Apportion Liability Severally and to Cap Damages came on regularly for hearing on April 20, 2015 at the hour of 8:30 a.m., in Department 12, before the honorable Michelle Leavitt. Defendant Rebecca Gillilan, CNIM appeared by and through her attorney, Alayne M. Opie, Esq. of the law firm Lewis Brisbois Bisgaard & Smith LLP. Plaintiff Madden Duda appeared by and through his attorneys, Robert Murdock, Esq. of Murdock & Associates, Chtd. and Eckley M. Keach, Esq. of the Eckley M. Keach, Chtd. Plaintiffs Autumn Matesi and the Estate of Mary Ann Haase appeared by and through their attorney, Clark Seegmiller, Esq. of Seegmiller & Associates. Defendant Neuromonitoring Associates, Inc. appeared by and through its attorney, James Murphy, Esq. of Laxalt & Nomura, Ltd. Defendant Steven Spillers, M.D. appeared by and through his attorney, Doug Cohen, Esq. of Fennemore Craig. Defendant Valley Hospital appeared by and through its attorney, Casey Tyler, Esq. of the law firm Hall Prangle & Schooveld. Defendant Feza Gunalp, M.D. appeared by and through his attorney, Anastasia Noe, Esq. of the Law Offices of Arthur Tuverson. Defendants George Michael Elkanich, M.D. and Jocelyn Segovia, PA-C appeared by and through their attorney, Katherine Turpen, Esq. of the law firm of John H. Cotton.

The Court having read and considered all the pleadings and documents on file herein, including the joinder filed on behalf of Neuromonitoring Associates; having heard the arguments of counsel; having considered the matter and being fully advised in the premises; and, good cause appearing therefor:

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Rebecca Gillilan, CNIM's Motion to Apportion Liability Severally and to Cap Damages and all Joinders thereto are hereby DENIED.

DATED this 28th day of ~~April~~ May, 2015.

DISTRICT COURT JUDGE
MICHELLE LEAVITT

Respectfully Submitted By:

LEWIS BRISBOIS BISGAARD & SMITH LLP

S. BRENT VOGEL
Nevada Bar No. 006858
ALAYNE M. OPIE
Nevada Bar No. 012623
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant, Rebecca Gillilan, CNIM

Approved as to form and content:

By:
Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Duda

By:
John H. Cotton, Esq.
Katherine Turpen, Esq.
400 S. Fourth Street, 3rd Floor
Las Vegas, Nevada 89101
Attorneys for George Michael Elkanich, M.D. and Jocelyn Segovia, PA-C

By:
Anastasia Noe, Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Blvd., Suite 410
Las Vegas, Nevada 89128
Attorneys for Feza Gunalp, M.D.

By:
Kenneth M. Webster, Esq.
Casey Tyler, Esq.
Hall Prangle and Schoonveld, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, Nevada 89144
Attorneys for Valley Hospital Medical Center, LLC

...

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

A-677611
Duda v. Gillilan et al.
Order Re: Gillilan's Motion to Apportion Liability Severally and Cap Damages

By: _____
c/o Douglas Cohen, Esq.
FENNEMORE CRAIG
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
and
Troy Rackham, Esq.
FENNEMORE CRAIG
1700 Lincoln Street, Suite 2900
Denver, CO 80203
Counsel for Dr. Spillers

By: _____
Clark Seegmiller, Esq.
Seegmiller & Associates
10655 W. Park Run Drive, Suite 250
Las Vegas, Nevada 89144
Co-counsel for Plaintiffs Matesi

By: _____
James E. Murphy, Esq.
Laxalt & Nomura, Ltd.
6720 Via Austi Pkwy, Suite 430
Las Vegas, Nevada 89119
Attorneys for Neuromonitoring Associates, Inc.

By: _____
Eckley M. Keach, Esq.
ECKLEY M. KEACH, CHTD.
521 South Third Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Madden Duda

EXHIBIT "2"

EXHIBIT "2"

Valley Hospital Medical Center
620 Shadow Lane Las Vegas, Nevada 89106

PATIENT NAME HAASE, MARY
ATTENDING: GEORGE ELKANICH, MD
REFERRING PHYSICIAN:
ADMIT DATE: 03/05/2012MRN: 63494776
ACCT#: 111961538
ROOM:
DOB: 10/19/1970

DATE OF SURGERY: 03/05/2012

PREOPERATIVE DIAGNOSES:
1. L3-4, L4-5 lumbar disk protrusion, 722.1.
2. L3-4, L4-5 lumbar stenosis, 734.2
3. Lower extremity radiculopathy, 724.4.

POSTOPERATIVE DIAGNOSES:
1. L3-4, L4-5 lumbar disk protrusion, 722.1.
2. L3-4, L4-5 lumbar stenosis, 734.2
3. Lower extremity radiculopathy, 724.4.

PROCEDURES PERFORMED:
1. Right L3-4 hemilaminectomy and microdiskectomy, decompression of spinal canal, neural foramen, nerve roots; CPT 63030.
2. Left L3-4 hemilaminectomy and microdiskectomy, lumbar, with decompression of spinal canal, neural foramen, nerve roots; CPT 63030-50.
3. Right L4-5 hemilaminectomy, microdiskectomy, decompression of spinal canal, neural foramen, nerve roots L4-5 on the right; CPT 63035.
4. Left L4-51 hemilaminectomy, lumbar microdiskectomy, micro decompression of spinal canal, neural foramen, nerve roots; CPT 63035-50 times 1.
5. Use of intraoperative floor-based microscope, CPT 69990.
6. Use of intraoperative fluoroscopy greater than 1 hour, CPT 76001-26.

SURGEON: George Elkanich, MD

ASSISTANT: Jocelyn Segovia, PA-C

ANESTHESIOLOGIST: Feza Gunalp, MD

INDICATIONS: Ms. Haase is a pleasant 41-year-old female with history of right greater than left bilateral lower extremity radiculopathy. She does have some back pain that she can live with, but she is unable to live with the pain and failed nonoperative treatment and wished to proceed with surgery. Risks and benefits, intraoperative, perioperative course, as well as operative and nonoperative treatments were explained. The patient appeared to understand. She wished to proceed, and informed consent was signed. At no time were guarantees given or implied regarding outcome of surgery, and the fact that the patient may not respond to surgery. She may continue to have chronic pain, may require future surgery. The risks of surgery were explained to the patient and may include, be as bad as but not limited to, infection, bleeding or blood transfusion, hepatitis C, HIV, DVT, pulmonary embolism, pseudoarthrosis, misplacement of hardware, failure of hardware, nonunion, malunion, paresthesia, dysesthesias, foot drop, complete paralysis, dural tear, leakage of CSF, pseudomeningocele, postoperative seroma, hematoma, epidural fibrosis, meningitis, battered root syndrome, cauda equinus syndrome, iatrogenic instability, recurrent herniation, continued chronic pain, need for future surgery including revision decompression and fusion. We also discussed risks of blindness. She does have some back pain. She understands this is a leg pain procedure. At no time were guarantees given or implied in regard to outcomes of surgery.

PROCEDURE IN DETAIL: The patient was seen and evaluated in the preoperative holding area at Valley Hospital where risks and benefits were explained to the patient. She appeared to understand. She wished to proceed, and

informed consent was signed. She was given routine IV antibiotics and IV steroids, brought to the operating room. Following an adequate level of anesthesia by Dr. Gunalp, all lines were placed. Neuromonitoring leads placed by Becky Gilliam. Baselines were obtained. The patient was placed in prone position on a flat table with a Wilson frame, special cutout foam headrest, and orbital goggles to prevent pressure on the orbits. Arms were on thick foam pads at the side. Knees were bent over pillows, Reston foam for all pressure points. The lower lumbar spine was then prepped and draped in standard sterile fashion. An incision was made sharply with skin knife, electrocautery in the midline from L3-S1, sharply with a knife and electrocautery to subcutaneous tissue and the fascia and exposure of the lamina of L3, L4, and L5 bilaterally was performed. Fluoroscopic imaging was used to localize the levels, dissected these out to the level of the pars. Great care was taken not to disturb the facet joints. After fluoroscopic imaging confirmed bilateral hemilaminectomies, micro dissection, micro decompression of the spinal canal, neural foramina and nerve roots at L3-4 and L4-5 was performed. We began at L3-4 on the right and then L4-5 on the right, and the right side at L3-4 and L4-5 hemilaminectomy, microdiskectomy, microdecompression of spinal canal and neural foramen and nerve roots was performed via my normal technique using a bur, Kerrison punches, and then gently dissecting the nerve root dura medially, and then a diskectomy was performed with a vertical stab incision in the posterior disk. I used straight forward and back-biting pituitaries. Once that was confirmed, then we decompressed. I even decompressed the left-sided disk space underneath the annulus. I copiously irrigated the disk space, confirmed there were no residual loose fragments. I turned my attention and performed a hemilaminectomy with microdecompression on the left at L3-4 and L4-5. These were performed bilaterally right and left at L3-4 and L4-5. Great care was taken. It appeared to be appropriately decompressed from my diskectomy from the right, and therefore I elected not to disrupt the posterior disk and annulus on the left side at either level. Hemostasis was well maintained. A drain was placed deep and lateral. Wound was copiously irrigated with antibiotic-impregnated saline solution. The wound was closed in layers of the fascia, subcutaneous tissue and skin.

She was awakened by anesthesia. She was transferred to recovery room.

_____
GEORGE ELKANICH, MD
DID

Signed by ELKANICH MD, GEORGE M. on 02-Apr-2012
13:38:55 -0700

D: 10881 / T:6500111 /DT: 03/05/2012 15:41:45PDT / TT: 03/05/2012 22:23:09PDT / V: 111961538 / Job# 6051759 / Mod: 03/06/2012 01:23:09

CC:
OPERATIVE REPORT

EXHIBIT "3"

EXHIBIT "3"

INTRAOPERATIVE MONITORING REPORT

Patient: Haase, Mary		**ID#** MRN: 63494776	
DOB: 10-19-1970	**Sex:** F	**Diagnosis:** Radiculopathy	
Surgeon: G. Michael Ekanith, MD		**Anesthesia:** Feza Ganalp, MD	
Assistant: PA-Jocelyn		**Technician:** Rebecca Gillilan, CNIM	
In: 1345	**Out:** 1600	**Procedure:** L3-5 Microdiscectomy	
Incision: 1410	**Close:** 1550	**Procedure Date:** 3-5-2012	

Conditions of the Recording: (All studies under real-time physician supervision. Please see tech notes fordetails of stimulation and recording.).
Somatosensory evoked potentials (SSEP) were performed to monitor the sensory system by stimulating nerves in the upper and lower extremities. Recording electrodes were placed in standard locations on the lumbar and cervical spine, and scalp. Lumbar, cervical, subcortical and cortical responses were monitored. Baseline responses were recorded prior to the start of the procedure. Subsequent responses are compared to baseline.

Free running EMG was performed to monitor the integrity of the motor system. Recording electrodes were placed in muscles appropriate to the site of the procedure.

Description of the Recording: Under direct physician supervision, SSEP latencies were measured during the procedure. The latencies were compared to baseline values. SSEPs were stable until late in the procedure when the responses were noted to fluctuate as the BP declined. The surgeon was notified. No other significant variations were noted by the technician. Free-running EMG was performed and was characterized by brief bursts during the procedure but was unremarkable at conclusion.

Impression: This intraoperative monitoring study was unremarkable except for the late SSEPs as described above. This was attributed to a decline in blood pressure that occurred late in the procedure.
Neurologic Vulnerability (baseline excluded): 100 min.

STEVEN H. SPILLERS, MD
AMERICAN BOARD OF CLINICAL NEUROPHYSIOLOGY
LICENSES: CA:#G67359, CO: #41492, IL:#036091428, MT: #75, NE: #2434-1, NC: #2006-01875, VA: #0101241871, WA: #MD-46038, WI: #35285-020

EXHIBIT "4"

EXHIBIT "4"

9028ADS

DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. A-13-677611-C
DEPT. NO. XXIX

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiffs,

vs.

GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILIAN, CNIM; NEUROMONITORING ASSOCIATES, INC., A Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive,

Defendants.

DEPOSITION OF STEVEN H. SPILLERS, M.D.

October 3, 2013

Pursuant to Notice taken on behalf of the Plaintiff at 1700 Lincoln Street, Suite 2900, Denver, Colorado 80203, at 9:19 a.m., before Diane K. Scholl, Registered Professional Reporter and Notary Public within Colorado.

Valley Hospital --

A. Yes.

Q. -- on March 5, 2012?

A. Yes.

Q. Would it surprise you to learn that Valley Hospital has no -- has produced no documents in this matter at least showing that you are privileged in any way at Valley Hospital?

A. That doesn't surprise me.

Q. Why would it not surprise you?

A. There are a lot of hospitals that don't require telemedicine credentialing.

Q. Okay, but that's not what I asked you.

A. Well, I'm in telemedicine. My practice --

Q. You said you were credentialed.

A. No, I said --

MR. MURPHY: Argumentative.

A. -- I couldn't remember for certain whether I was. There are a number of hospitals who don't require someone in my role, being telemedicine, to be credentialed the way a person who walks in and sees patients and so on

MR. RACKHAM: Object to the form. Misstates prior testimony.

A. No, that's not -- that's not true.

Q. (BY MR. LAIRD) Okay. You said earlier that you have no specific recollection of monitoring Mary Haase's surgery, true?

A. That's correct.

Q. So if you have no specific recollection, how can you say one way or the other whether you were in your office or elsewhere when you're out of the office 50 percent of the time monitoring cases?

A. Well, if I remember correctly, her case was in the afternoon, and it would not -- that's not the time -- or in the middle of the day, I should say. That's the time when I'm typically at my office.

The cases that I would watch at other times would be cases that would -- that started later or that had started extreme -- extremely early.

Q. So other than your -- you mentioned your car. You mentioned your house. Where else would you monitor this 50 percent of the time that you're not in your office monitoring cases?

What other locations?

A. Those are -- those are the primary locations that I can think of, is if I have to pull off the road, or else I'm at home or at the office.

Q. How about the mall?

A. No.

MR. RACKHAM: Object to the form.

Q. (BY MR. LAIRD) Barnes & Noble bookstore?

MR. RACKHAM: Object to the form.

A. No.

Q. (BY MR. LAIRD) How about on vacation?

A. No.

Q. How about from cities other than Denver? Or, excuse me, Colorado Springs?

A. Not that I can recall, no.

MR. LAIRD: All right. That's all I have. Thank you.

MR. MURDOCK: Want to go down the row?

MR. SAVAGE: This is John Savage. I have no questions.

MR. MURDOCK: Why don't we just go

C E R T I F I C A T I O N

I, Diane K. Scholl, Registered Professional Reporter, appointed to take the deposition of

STEVEN H. SPILLERS, M.D.,

certify that before the deposition the deponent was duly sworn to testify to the truth; that the deposition was taken by me on October 3, 2013; then reduced to typewritten form, by means of computer-aided transcription; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not related to any party herein or their counsel and have no interest in the result of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on October 10, 2013.

Diane K. Scholl

Diane K. Scholl
Registered Professional Reporter

EXHIBIT "5"

EXHIBIT "5"

h. Applicants may appeal adverse recommendations by the MEC and adverse decisions made by the Board in accordance with provisions in these Bylaws and the associated details in the Medical Staff Corrective Action and Fair Hearing Manual.

3.3 Telemedicine Privileges

Practitioners who wish to provide telemedicine services, as defined in these Bylaws, in prescribing, rendering a diagnosis, or otherwise providing clinical treatment to a Hospital patient, without clinical supervision or direction from a Medical Staff Member, shall be required to apply for and be granted Privileges for these services as provided in the Medical Staff Bylaws and Associated Manuals. The Medical Staff shall define in the Rules and Regulations or Medical Staff policy which clinical services are appropriately delivered through a telemedicine medium, according to commonly accepted quality standards. Consideration of appropriate utilization of telemedicine equipment by the telemedicine practitioner shall be encompassed in clinical privileging decisions.

3.4 Temporary Privileges

As further detailed in the Medical Staff Credentials Manual, temporary privileges may be granted to a Practitioner to provide for an important care need for a limited time, not to exceed one hundred twenty (120) days.

3.5 Disaster Privileges

a. In case of a disaster in which the Health System Emergency Management Plan has been activated and the Hospital is unable to meet the immediate patient needs, the Chief Executive Officer or the CEO's designee may grant disaster privileges to Licensed Independent Practitioners (LIP) or Allied Healthcare Practitioners (AHCP). If the CEO is unable to grant disaster privileges or is unable to name a designee, one of the following individuals may grant disaster privileges: the Chief of staff, any elected officer of the Medical Staff, a department chairperson or incident commander. The grant of privileges under this subsection shall be on a case-by-case basis at the sole discretion of the individual authorized to grant such privileges in accordance with the needs of the Hospital, its patients and the qualifications of the LIP or AHCP. An initial grant of disaster privileges shall be reviewed by a person authorized to grant disaster privileges within 72 hours to determine whether the disaster privileges should be continued.

b. The verification process for the credentials and privileges of individuals who receive disaster privileges under this Section 3.5 shall be developed in advance fo a disaster situation and set forth in the Health System Medical Staff Disaster Privileges Policy.

EXHIBIT "6"

EXHIBIT "6"

DISTRICT COURT
CLARK COUNTY, NEVADA

MADDEN DUDA, a minor by and through Jovan Duda, his Natural Father and Guardian, Plaintiffs, VS. GEORGE MICHAEL ELKANICH, MD; FEZA GUNALP, MD; REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; STEVEN SPILLERS, MD; ROE CORPORATIONS I THROUGH X, inclusive, Defendants.	)	CASE NO. A-13-677611-C DEPT NO. XXIX
AUTUMN MATESI, et al., Plaintiffs, VS. VALLEY HOSPITAL MEDICAL CENTER, et al., Defendants.	)	CASE NO. A-13-677720-C

DEPOSITION OF KEVIN STOCKTON
August 22, 2014
9:00 o'clock a.m.
Tucson, Arizona

Transcript Prepared by Kathleen Gilmore
Certified Reporter No. 50740
Colville & Associates
1309 East Broadway Blvd.
Tucson, AZ 85719
(520) 884-9041

Q. Did anyone ever bring to -- anyone to your attention and say, hey, is that person privileged here?

THE REPORTER: I'm sorry?

Q. It was a bad question. I'll restate the question. While you were CEO, did any issues ever come up where you got a phone call from someone saying, hey, is this person privileged here? Did that ever come up, that issue?

A. You're talking about at Valley Hospital in 2010?

Q. Yes.

A. No, not that I remember.

Q. Did you ever go look at the roster to say, hey, I wonder if this person is privileged here?

A. Which person?

Q. Any person. Any doctor or --

A. Any doctor? Yes, I looked at the roster to see if there were certain doctors credentialed at our hospital.

Q. Now, that would include telemedicine, correct?

MR. WEBSTER: Form.

A. Which would include telemedicine.

Q. Telemedicine doctors needed to be privileged

at the hospital, correct?

A. Yes.

MR. COHEN: Objection. Which type of doctors?

MR. WEBSTER: He's talking about MD's and DO's.

MR. MURDOCK: I don't care. MD's, DO's, telemedicine professionals.

MR. COHEN: My objection is to which subspecialty.

BY MR. MURDOCK:

Q. Okay. Telemedicine -- let me try and generalize this as much as I can. People treating patients at the hospital. Okay?

A. Okay.

Q. Required privileges, correct?

MR. WEBSTER: Form.

A. Correct.

Q. Whether that was telemedicine or actually being there in person, isn't that correct?

MR. WEBSTER: Form.

A. Yes. And we're going with the MD/DO line that you've been questioning all along, right?

Q. Okay.

A. Well, that's what you had said.

C E R T I F I C A T E

STATE OF ARIZONA)
COUNTY OF PIMA)

BE IT KNOWN that the foregoing deposition was taken before me, Kathleen Gilmore, Registered Professional Reporter for the State of Arizona, and by virtue thereof authorized to administer an oath; that the witness, KEVIN STOCKTON, before testifying was first duly sworn by me; that the questions propounded by counsel and the answers of the witness thereto were taken down by me in stenotype and thereafter transcribed by me; that a review of the transcript by the witness was requested; that the foregoing pages contain a full, true and accurate transcript of all proceedings and testimony had, all to the best of my skill and ability.

I FURTHER CERTIFY that I am not related to nor employed by any of the parties hereto and have no interest in the outcome thereof.

DATED at Tucson, Arizona this 9th day of September 2014.

Kathleen Gilmore, RPR
ARIZONA REPORTER NO. 50740

EXHIBIT "7"

EXHIBIT "7"

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE, STE. 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

RSPN
KENNETH M. WEBSTER, ESQ.
Nevada Bar No.: 7205
CASEY W. TYLER, ESQ.
Nevada Bar No.: 9706
HALL PRANGLE & SCHOONVELD, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
(702) 889-6400 – Office
(702) 384-6025 – Facsimile
Email: kwebster@hpslaw.com
Email: ctyler@hpslaw.com
Attorneys for Defendant
Valley Hospital Medical Center, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian, Plaintiffs, vs. GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D., REBECCA GILLILIAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada Corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive, Defendants.	CASE NO.: A677611 DEPT. NO.: XXIX **DEFENDANT VALLEY HOSPITAL'S RESPONSES TO PLAINTIFF MADDEN DUDA'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**
AUTUMN MATESI, et. Al. Plaintiffs, vs. VALLEY HOSPITAL MEDICAL CENTER, INC., et. Al., Defendants.	Consolidated with: CASE NO.: A677720 DEPT. NO.: III

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE, STE. 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DEFENDANT VALLEY HOSPITAL'S RESPONSES TO PLAINTIFF MADDEN DUDA'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

COMES NOW, Defendant, VALLEY HOSPITAL, by and through their attorneys of record, the law firm of Hall Prangle & Schoonveld, LLC, and hereby provides the following responses to Plaintiff Madden Duda's Second Set of Requests for the Production of Documents:

REQUEST NO. 1:

Any and all documents showing that Steven Spillers, M.D. held privileges at Valley Hospital Medical Center on March 5, 2012.

RESPONSE NO. 1:

OBJECTION. Such request, as drafted, is vague and ill defined in its request for "privileges", including, but not limited to, its assumption that Dr. Spillers would require any form of "privileges" at said facility for the services he is alleged to have provided. Notwithstanding said objection, after a thorough and diligent search none are known to exist at this time.

REQUEST NO. 2:

Any and all documents showing, or tending to show, that you were aware that Dr. Spillers was providing medical services to Mary Haase on March 5, 2012.

RESPONSE NO. 2:

OBJECTION. Such request, as drafted, is vague and ill defined in its use of the term "providing medical services". Notwithstanding said objection, after a thorough and diligent search none are known to exist at this time.

REQUEST NO. 3:

Any and all documents showing that you mandated that Rebecca Gillilan have a physician to review her work, review the neuromonitoring strips, or have remote monitoring.

EXHIBIT "8"

EXHIBIT "8"

Leo	Spaccavento	MD	Advanced Heart Care Associates	2470 E Flamingo Rd
Michael	Spagnuolo	DO	Desert Orthopaedic Center	2800 E Desert Inn Rd
Amy	Sparks	MD	HCP - Fremont Medical Center	10155 W Twain Ave
Alexander	Sparkuhl	MD	Urology Associates	700 Shadow Lane
Eugene	Speck	MD	Infectious Diseases Consultants	3006 South Maryland Parkway
Brian	Spencer	PAC	Brian Earl Spencer PA	11413 Perugino Drive
Nicola	Spirtos	MD	Women's Cancer Center of Nevada	3131 La Canada Street
Edward	Spoon	MD	Las Vegas OB/GYN	2010 Goldring Ave
Allan	Stahl	MD	Allan Stahl MD	653 N Town Center Drive
Alan	Stanley	MD	DMS-EMCARE	500 N Rainbow Blvd
Denice	Starley	DO	Denice Starley,D.O.,P.C.	7670 W Sahara Ave
Sean	Steele	MD	Network Hospitalists	840 South Rancho Boulevard
Angela	Stefan	MD	Nevada Health Care Centers	1700 Wheeler Park Dr
Emil	Stein	MD	Nevada Eye Care Professionals	2090 E Flamingo Rd
William	Steinkohl	MD	Las Vegas Urology	7200 Cathedral Rock Drive
Tatiana	Stephanoff	MD	Premier Pediatrics	5380 S Rainbow Blvd
Anthony	Stephens	MD	Southwest Medical Associates	PO Box 15645
Ritchie	Stevens	MD	Radiation Oncology Centers of Nevada	624 S Tonopah Dr
Paul	Stewart	MD	Pulmonary Associates	2000 Goldring Avenue
Vanessa	Stewart	NNP	Pediatrix Medical Group	653 Town Center Dr
Robert	Stone	DO	Apex Medical Center	1701 Bearden Drive
Mark	Stradling	DO	Nevada Eye & Ear	2598 Windmill Pkwy
Brian	Strauss	MD	Associated Pathologists Chartered	4230 Burnham Ave
Jonathan	Strauss	MD	Associated Pathologists Chartered	4230 Burnham Ave
Kord	Strebel	MD	Kord T. Strebel, MD	1950 Pinto Lane
Casey	Strobl	PAC	IPC	6857 W Charleston Blvd
Clement	Strumillo	DO	Clement Strumillo, DO	2685 S Rainbow Blvd
Bill	Subin	MD	Anesthesia Critical Care & Trauma Team	3153 E Warm Springs Rd
Victor	Sun	DO	DMS-EMCARE	500 N Rainbow Blvd
Darin	Swainston	MD	Martin & Swainston OB/GYN	2050 Mariner Way
Darren	Swenson	MD	IPC	6857 W Charleston Blvd
Neil	Swissman	MD	Summit Anesthesia Consultants	2931 Tenaya Way
Muhammad	Syed	MD	IPC	6857 W Charleston Blvd
Gerald	Sylvain	MD	Orthopaedic Specialists of Nevada	3233 W Charleston Blvd

EXHIBIT "9"

EXHIBIT "9"

DISTRICT COURT

CLARK COUNTY, NEVADA

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiffs,

vs.

GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL A MEDICAL CENTER, INC., a Nevada corporation; STEVEN SPILLERS, M.D.; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive,

Defendants.

CASE NO. A-13-677611-C

Consolidated with:

CASE NO. A-13-677720-C

DEPOSITION OF

EDDY LUH, MD

~~~~~~~~~~~~~~~~~~~~~~~~~~

AUTUMN MATESI, et al.,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL CENTER, et al.,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~

December 4, 2015

2:20 p.m.

521 S. Third Street

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR

MR. McBRIDE: You would be denied. I'm just saying.

THE WITNESS: There is a central CVO. I don't know what "CVO" stands for.

They look at all the papers, make sure everything was filled out correctly, and then it's forwarded to department chairs, the department of surgery chair, of which I review it, and make sure, yes, everything is in line and there's no glaring red flags.

At the same time I'm reviewing it, there is a credentialing person that reviews it on their side. And I believe with the Valley Health System it goes to the credentialing committee after I've reviewed it.

Then the credentialing committee votes affirmative or negative, and then that whole list of physicians for the month is presented to the NEC, who votes affirmative or negative, and then the Board of Governors ultimately approves it.

BY MR. MURDOCK:

Q. Just because you have a license doesn't mean you automatically get privileges, right?

A. Correct.

Q. Now, as chief of surgery, how do you know

We can read it together. It says, "Practitioners who wish to provide telemedicine services, as defined in these bylaws, in prescribing, rendering a diagnosis, or otherwise providing clinical treatment to a hospital patient, without clinical supervision or direction from a medical staff member, shall be required to apply for and be granted privileges for these services."

Do you see that?

A. Yes.

Q. What does that mean to you?

A. A person who wishes to provide telemedicine services needs to apply for and get privileges.

Q. If a person is doing work at Valley Hospital -- a doctor is providing telemedicine services at Valley Hospital and is not privileged, that's a violation of these bylaws, isn't it?

MR. COHEN: Objection. Calls for speculation.

THE WITNESS: I would believe so.

MR. MURDOCK: Thank you.

MR. SEEGMILLER: I'm sorry, I didn't hear that answer.

THE WITNESS: I would believe so.

MR. SEEGMILLER: Thank you.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Carol O'Malley, Nevada Certified Court Reporter 178, do hereby certify:

That I reported the taking of the deposition of EDDY LUH, MD on December 4, 2015 commencing at the hour of 2:20 p.m.;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcription of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time. Review of the transcript was requested.

I further certify that I am not a relative or employee of an attorney or counsel involved in said action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 6th day of December, 2015.

Carol O'Malley

Carol O'Malley, CCR No. 178

EXHIBIT "10"

EXHIBIT "10"

H-410.957 Intraoperative Neurophysiologic Monitoring

Next Policy | Previous Policy

H-410.957 Intraoperative Neurophysiologic Monitoring

Our AMA policy is that supervision and interpretation of intraoperative neurophysiologic monitoring constitutes the practice of medicine, which can be delegated to non-physician personnel who are under the direct or online real time supervision of the operating surgeon or another physician trained in, or who has demonstrated competence in, neurophysiologic techniques and is available to interpret the studies and advise the surgeon during the surgical procedures.(Res. 201, A-08)

RSPN
Douglas M. Cohen, Esq.
Nevada Bar No. 1214
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
E-Mail: dcohen@fclaw.com

Troy R. Rackham, Esq.
Admitted Pro Hac Vice
FENNEMORE CRAIG, P.C.
1700 Lincoln Street, Suite 2900
Denver, Colorado 80203
Telephone: (303) 291-3200
Facsimile: (303) 291-3201
E-Mail: trackham@fclaw.com

Attorneys for Defendant, STEVEN H. SPILLERS, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian, Plaintiffs, vs. GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.: REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC.; a Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; STEVEN SPILLERS, M.D.; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive, Defendants.	Case No.: A-13-677611-C Department No: XII **DEFENDANT STEVEN SPILLERS, M.D.'S RESPONSE TO PLAINTIFF DUDA'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO STEVEN SPILLERS, M.D. AND NRS 41A** **Hearing Date: June 27, 2016** **Hearing Time: 8:30 a.m.**
AUTUMN MATESI, et al., Plaintiffs, vs. VALLEY HOSPITAL MEDICAL CENTER, et al., Defendants.	*Consolidated With:* Case No.: A-13-677720-C

Defendant, STEVEN H. SPILLERS, M.D. ("Dr. Spillers"), through his counsel of record, Fennemore Craig, P.C., respectfully submits this response to Plaintiff Duda's Motion for Partial Summary Judgment ss to Steven Spillers, M.D. and NRS 41A ("*Motion*").

POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

As the Court is aware, NRS 41A.035 provides that "[i]n 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 action must not exceed $350,000." Additionally, NRS 41A.045 provides that "each defendant is liable to the plaintiff for economic and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant." The cap contained in NRS 41A.035 and the several, pro rata liability contained in NRS 41A.045 are fundamental parts of the tort reform the Nevada voters enacted in 2004 in response to the medical malpractice crisis.

In this medical malpractice case filed against three licensed Nevada doctors, including Dr. Spillers, a physician's assistant, Valley Hospital, and others, Plaintiff Duda alleges that the Defendant doctors and physician's assistant failed to adhere to the standards of practice in their respective specialties. Plaintiff claims that this conduct proximately caused Mary Haase's death from her March 5, 2012 surgery. In a straightforward application of NRS 41A.035's cap and NRS 41A.045's several, pro rata liability procedure, Plaintiff's ability to recover noneconomic damages is limited to $350,000, which then must be allocated among the healthcare defendants according to their respective fault. Thus, if the jury were to conclude that Dr. Spillers bore 1% of the fault, he would be responsible to pay $3,500 in noneconomic damages.

Plaintiff Duda does not like the limitations imposed by Nevada's voters in 2004, so he is asking this Court, through his *Motion*, to conclude that neither the cap on damages, nor the pro rata liability procedure, apply to Dr. Spillers. Plaintiff bases his transparent attempt to get around the cap on the fact that the cap and the pro rata liability procedure apply to claims of "professional negligence," which is defined in NRS 41A.015. Plaintiff reaches back to the former version of NRS

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41A.015, which was amended in 2015, and argues that it excepts from its definition conduct performed by a licensed Nevada physician if the physician performed the conduct without having privileges at the hospital where the procedure was performed. Plaintiff goes so far as to argue that, under the former definition of "professional negligence" in NRS 41A.015, neither the cap nor the pro rata liability procedure apply if a physician violated rules of a healthcare facility.

The Court should deny Plaintiff's *Motion* and soundly reject the proposition that professional negligence claims asserted against a Nevada licensed physician are not capped, and not subject to pro rata liability, merely because the physician did not have privileges at a hospital. The easiest way to deny Plaintiff's *Motion* and conclude that Chapter 41A's caps and pro-rata liability procedure apply is to conclude that the 2015 amendments to the definition of "professional negligence" in NRS 41A.015 apply to pending cases, including this case. That conclusion finds support in decades of Nevada Supreme Court precedent, which consistently holds that amendments that clarify existing law, or relate to existing remedies or procedures, are to be applied to pending cases. *See Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179-80 (2007); *T.R.G.E. Co. v. Durham,* 38 Nev. 311, 316, 149 P. 61, 62 (1915).

Even if the Court concluded that the 2015 clarifying amendments to the definition of "professional negligence" in NRS 41A.015 did not apply to this case, the Court still should soundly reject Plaintiff's *Motion*. The text, structure and purpose of Chapter 41A generally, and NRS 41A.015 specifically, show that the statutes were intended to **limit** liability for malpractice claims against Nevada doctors; not to expand liability without caps and without pro rata liability.

The definition of "professional negligence" contained in the former NRS 41A.015 provided that the "term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility." Plaintiff focuses his argument on the term "restriction has been imposed by the … health care facility" and argues that the omission of privileges is a "restriction" imposed by Valley Hospital. A careful analysis of the word "restriction," and how it is used in related Nevada statutes, the Nevada Administrative Code, by the Nevada Board of Medical Examiners (BME), and how it is used in the industry, shows that the

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word "restriction" means a limitation affirmatively imposed by a governing body in response to an event or other criteria. It does not mean an omission of privileges.

Even if the Court were unpersuaded by the text of the statute and the meaning of the term "restricted" as used in Nevada statutes, the Nevada Administrative Code, by the BME and in the industry, an evaluation of other cases that have considered this issue shows clearly that this case does not present a situation where the exception contained in the former version NRS 41A.015 applies. Indeed, several California cases have considered the identical language in California's version of medical malpractice reform, MICRA. Those cases have concluded that the language excepting from the definition of "professional negligence" services performed outside the scope of services for which the provider is licensed, or services performed while the provider was under a restriction imposed by the licensing agency or licensed hospital, was intended to address situations where a provider was acting intentionally against a BME-imposed restriction or clearly acting outside of his competence. *See Waters v. Bourhis*, 709 P.2d 469 (Cal. 1985); *Prince v. Sutter Health Central,* 161 Cal.App.4th 971 (Cal. Ct. App. 2008). In *Waters*, the California Supreme Court was confident that the same language at issue here was intended to apply to a situation "of a psychiatrist performing heart surgery," *Waters*, 709 P.2d at 477, not a situation where a doctor was performing the services for which he is licensed and board-certified, but simply doing so without privileges at the hospital because he did not know he needed privileges.

Finally, the evidence in this case is clear that even Valley Hospital did not know, or was not sure, whether Dr. Spillers (a Clinical Neurophysiologist performing Intraoperative Neuromonitoring (IONM) services remotely, by telemedicine) needed privileges to perform the services he was performing. The former CEO of Valley Hospital testified that he believed telemedicine privileges applied only to radiology services. Likewise, Dr. Luh, the Chief of Surgery at Valley Hospital, testified that he did not know if a person who does telemedicine in the OR at Valley Hospital is required to have privileges.

Under these circumstances, and based on the indisputable facts, it is clear that Chapter 41A's caps and pro rata liability procedure apply to Plaintiff Duda's claims against Dr. Spillers. Plaintiff Duda is alleging Dr. Spillers engaged in professional negligence. The fact that Dr. Spillers did not

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have privileges at Valley Hospital, when Valley Hospital did not know he needed them, does not alter the nature of the conduct alleged nor does it remove the claims from being professional negligence claims against Dr. Spillers. The Court should so hold.

II. RELEVANT UNDISPUTED FACTS

1. Steven Spillers, M.D. ("Dr. Spillers") is a medical doctor.

2. Dr. Spillers is licensed to practice medicine by the Nevada State Board of Medical Examiners – License Number 13697. *See Licensee Details – Dr. Spillers* (attached as **Exh. A**).

3. Dr. Spillers has been licensed to practice medicine by the Nevada State Board of Medical Examiners since September 10, 2010. *Id.* At the time of Ms. Haase's surgery, his medical license was active. *Id.*

4. The Nevada State Board of Medical Examiners identifies two scopes of practice for Dr. Spillers: (1) neurology; and (2) neurophysiology. *Id.*

5. Consistent with these scopes of practice, Dr. Spillers is a neurologist who is board certified in Clinical Neurophysiology. *See Spillers Depo.*, 11:9-20 (excerpts attached as **Exh. B**); *see also Spillers' CV* (attached as **Exh. C**).

6. Clinical neurophysiology of the central nervous system includes diagnostic testing such as Electroencephalography (EEG), Evoked Potentials (EP), Polysomnography (PSG), Epilepsy Monitoring, and Neurologic Intraoperative Monitoring (NIOM). *See CCNS Page* (attached as **Exh. D**).

7. Although the Nevada State Board of Medical Examiners has the ability to impose restrictions on a medical doctor's license to practice, it had not put any restrictions on Dr. Spillers' Nevada medical license. **Exh. A** (explaining "current … restrictions on license" as "none).

8. Dr. Spillers has privileges at many medical facilities and hospitals nationwide. *See Hospital Affiliations* (attached as **Exh. E**).

9. Dr. Spillers has never had any hospital deny, reduce, restrict or suspend privileges to practice Clinical Neurophysiology. *See Nevada BME File re: Dr. Spillers*, at NSBME-Spillers0003 - NSBME-Spillers0006 (attached as **Exh. F**)

10. Dr. Spillers has never had any state medical board deny, reduce, restrict or suspend

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his license to practice medicine. *Id.*

11. In February 2012, Dr. Elkanich scheduled Mary Haase for spine surgery (a bilateral microdecompression microdiscectomy at L3-4 and L4-5), which was to occur on March 5, 2012 at Valley Hospital. *See Elkanich Recs.* (excerpts attached as **Exh. G**).

12. On March 5, 2012, Dr. Elkanich, assisted by Jocelyn Segovia, P.A. performed the spine surgery on Mary Haase at Valley Hospital. *See Pltf's Exh. 2* (operative report).

13. Intraoperative Neuromonitoring ("IONM") was ordered for the procedure. *Id.*

14. Valley Hospital had a contract with Neuromonitoring Associates ("NMA") to provide intraoperative neuromonitoring services at Valley Hospital in 2012. *See Contract Labor Agreement* (attached as **Exh. H**).

15. NMA's contract with Valley Hospital required NMA to provide intra-operative monitoring services for Valley Hospital. *See* **Exh. H**, ¶ 4(a).

16. In the contract, Valley Hospital did not require the IONM technologist or supervisor to have privileges at Valley Hospital. **Exh. G**.

17. NMA had a contract with Rebecca Gillilan of Neurotrack, a Certified Neurophysiological Intraoperative Monitoring Technician ("CNIM"), to be a technologist who would provide monitoring on NMA cases. *See Gillilan/ NMA Contract* (attached as **Exh. I**).

18. Further, NMA had contracted with Dr. Spillers, as an independent contractor, to be the reading physician and remotely review cases to interpret the IONM waveforms, consistent with the standards used by Clinical Neurophysiologists. *See Leukenga Depo.*, at 32:10 – 35:11; 73:1-21 (excerpts attached as **Exh. J**).

19. NMA did not require Dr. Spillers to get privileges at Valley Hospital (or any other hospital with which NMA had a contract for IONM services). *Id.*

20. Valley Hospital had never asked NMA or Mr. Leukenga who the supervising physician for the surgeries on which NMA was providing neuromonitoring. **Exh. J**, at 96-97.

21. Dr. Spillers was the reading physician for Mary Haase's March 5, 2012 surgery. *See Pltf's Exh, 3* (NAI0071).

22. Dr. Spillers prepared a report of his impressions of the IONM for Ms. Haase's

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March 5, 2012 surgery. *Id.*

23. Dr. Spillers was practicing IONM by telemedicine at the time. **Exh. B.**, at 181:16-25. At the time, there were a number of hospitals that did not require privileges for someone practicing IONM by telemedicine. *Id.*

24. Article III of Valley Hospital's Medical Staff Bylaws addressed determination of privileges at Valley Hospital. *See Medical Staff Bylaws*, at 20 (attached as **Exh. K**).

25. Valley Hospital's Medical Staff Bylaws delineated several types of privileges, such as general clinical privileges, telemedicine privileges, temporary privileges, and disaster privileges. *Id.*, at 20-22.

26. Regarding telemedicine privileges, the hospital's Medical Staff Bylaws provided:

> 3.3 Telemedicine Privileges
>
> Practitioners who wish to provide telemedicine services, as defined in these Bylaws, in prescribing, rendering a diagnosis, or otherwise providing clinical treatment to a Hospital patient, without clinical supervision or direction from a Medical Staff Member, shall be required to apply for and be granted Privileges for these services as provided in the Medical Staff Bylaws and Associated Manuals. The Medical Staff shall define in the Rules and Regulations or Medical Staff policy which clinical services are appropriately delivered through a telemedicine medium, according to commonly accepted quality standards. Consideration of appropriate utilization of telemedicine equipment by the telemedicine practitioner shall be encompassed in clinical privileging decisions. (*Id.*)

27. Although the Bylaws provided that the Medical Staff would "define in the Rules and Regulations or Medical Staff policy which clinical services are appropriately delivered through a telemedicine medium," the applicable Rules and Regulations of the Medical Staff did not address telemedicine at all; much less did it define which telemedicine specialties needed to credentialed and which did not. *See Rules and Regulations of the Medical Staff of Valley Hospital* (attached as **Exh. L**).

28. Kevin Stockton was the CEO of Valley Hospital who signed the IONM contract with NMA, under which the IONM services were provided for the March 5, 2012 surgery Ms. Haase underwent. *Stockton Depo.*, at 40:16 – 41:19 (excerpts attached as **Exh. M**).

29. With respect to telemedicine privileges delineated in Section 3.3 of the Medical

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Staff Bylaws, Mr. Stockton testified (as CEO of Valley Hospital at the time):

> Q. So let's look at Section 3.3. It talks about telemedicine privileges. Do you see that?
> A. I do.
> Q. What is telemedicine?
> [INTERVENING OBJECTION]
> A. **What I recall at Valley, telemedicine applied to radiology services**.
> Q. Anything else?
> A. Not that I remember.
> Q. Do you know where you got that thought that telemedicine only applied to radiology?
> A. I only recall it with radiology services.

Exh. M, at 76:14-22.

30. The *Rules and Regulations of the Medical Staff of Valley Hospital* provides criteria for eligibility and qualification for membership to the medical staff. **Exh. L**, at 6, § 2.1. Among those criteria are holding an "unrestricted license to practice in Nevada," having an M.D. or other doctorate degree, and being board certified. *Id.* Dr. Spillers satisfied these criteria because he held an unrestricted license to practice in Nevada, has a medical degree, and is board certified in Clinical Neurophysiology. **Exh. C.**

31. Further, the Medical Staff Bylaws provides for ways that Valley Hospital could limit or restrict a physician's privileges. **Exh. K**, at 14, § 2.4.6.

32. Valley Hospital did not act under that section to restrict Dr. Spillers in any way.

33. Additionally, the *Rules and Regulations of the Medical Staff of Valley Hospital* provided that the Medical Executive Committee at Valley Hospital could "restrict" a physician's privileges for a variety of reasons. *See* **Exh. L**, at 12, § C(14) (restriction for failure to complete medical record in timely fashion); *Id.*, at 27, § O(4) (hospital must report a physician whose privileges have been reduced, restricted, suspended or revoked).

34. Valley Hospital never reported Dr. Spillers as having restricted privileges.

III. CLAIMS AGAINST DR. SPILLERS

This proceeding consolidates two cases. In the first case, Case Number A-13-677611-C, the Plaintiff is Madden Duda, a minor, who is bringing the case by and through Jovan Duda, his Natural Father and Guardian. Plaintiff Duda filed a Second Amended Complaint against all Defendants, including Dr. Spillers, in June 2014. Duda's Second Amended Complaint alleges

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medical malpractice claims against Dr. Spillers.

The second case is Case Number A-13-677720-C, filed by Plaintiff Autumn Matesi. Plaintiff Matesi never filed a Second Amended Complaint against Spillers. Plaintiff Matesi does not have any claims against Spillers. The time for filing such claims – and the deadline for adding claims or parties – has expired. *See Order on Discovery Commissioner's Report and Recommendations* (9/30/2015) (setting 4/29/2016 as deadline to amend pleadings).

IV. LEGAL ARGUMENT

A. Standards for Summary Judgment.

"Summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In *Sustainable Growth Initiative Comm. v. Jumpers, LLC*, 122 Nev. 53, 61, 128 P.3d 452, 458 (2006), the Court explained:

> Although evidence presented in support of a motion for summary judgment must be construed in the light most favorable to the nonmoving party, that party must set forth facts demonstrating the existence of a genuine issue in order to withstand a disfavorable summary judgment. A factual dispute is genuine when the evidence is such that a rational jury could return a verdict in the nonmoving party's favor.

Id. Plaintiff *Motion* presents an issue of statutory interpretation, which is a pure question of law. *See Wingco v. Gov't Emps. Ins. Co.*, 130 Nev. Adv. Op. 20, 321 P.3d 855, 856 (2014) (citing *Las Vegas Metro. Police Dep't v. Yeghiazarian,* 129 Nev. Adv. Op. 81, 312 P.3d 503, 508-09 (2013)).

B. Nevada's Caps on Professional Negligence Claims Against Health Care Providers.

As the Court knows, in 2004 "Nevada voters passed the ballot initiative that became NRS 41A.035, a medical malpractice award limit or cap sometimes referred to as Nevada's 'tort reform' statute." *Abney v. Univ. Med. Ctr. of S. Nevada*, No. 2:09CV02418RLHPAL, 2010 WL 1439106, at *4-6 (D. Nev. Apr. 8, 2010). NRS 41A.035 provides:

> 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

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> exceed $350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based.

Id. The term "a provider of health care" unequivocally includes a "a physician as defined by NRS 630.014." *Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 80, 358 P.3d 234, 241 (2015). It is undisputed that Dr. Spillers is a physician, as defined by NRS 630.014. **Exh. A**; *see also Motion*, at 7 ("...Dr. Spillers was licensed in Nevada and this satisfies NRS 41A.013."). Further, it is undisputed that this is "...an action for injury or death...," under NRS 41A.035.

The narrow issue before the Court is whether Plaintiff Duda's claims against Dr. Spillers "are based on professional negligence...." *Id.* At the time Plaintiff Duda filed this suit, NRS 41A.015 (2014) provided:

> "Professional negligence" means a negligent act or omission to act by a provider of health care in rendering of professional services which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

Id. The current version of 41A.015, however, provides simply:

> "Professional negligence" means the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.

NRS 41A.015 (effective June 9, 2015).

Plaintiff alleges that Dr. Spillers committed negligent acts or omissions that caused, or contributed to, Ms. Haase's death. *See Duda Amended Complaint*, ¶¶ 191-193. The limitations on liability – including the $350,000 cap on noneconomic damages (NRS 41A.015) and the requirement for several pro rata liability (NRS 41A.045) – therefore generally would apply.

To avoid the operation of the cap and pro rata several liability, Plaintiff Duda argues that the current definition of "professional negligence," which does not include any exception, does not apply because the 2015 amendments were intended to be prospective only. Plaintiff then relies on the exception to the former definition of professional negligence and argues that the term did not include services performed by a licensed medical doctor when such a doctor did not have

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credentials at a hospital. *Motion*, at 7-10. Plaintiff errs in both arguments.

C. The Nevada Legislature's Amendment to the Term "Professional Negligence" in 2015 Clarifies the Definition of Professional Negligence, Does Not Abrogate Vested Rights, and Therefore Applies to this Case.

As Plaintiff implicitly concedes by arguing against the "retroactive" application of the 2015 amendments to NRS 41A.015 (*Motion*, at 10), if the 2015 amendments apply, Plaintiff's argument fails. It fails because, after the 2015 amendments, the definition of "professional negligence" no longer contains the second sentence that excludes from the definition of professional negligence "services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility." As explained below, however, Plaintiff's argument that the 2015 amendments to NRS 41A.015 are only "prospective" and do not apply here fails.

Plaintiff first errs by failing to address the context in which the Nevada legislature enacted the 2015 amendments to NRS 41A.015. The 2015 amendments were part of SB 292, which the legislature passed and the Governor approved on June 9, 2015. The Legislature Counsel's digest explains that NRS 41A.015 was amended to remove "references in existing law to medical malpractice and dental malpractice and replace those references with references to professional negligence." *2015 Nevada Laws Ch. 439 (S.B. 292)*, at Leg. Counsel Digest (attached hereto as **Exh. N**). The relevant portion of SB 292 also revised "the definition of professional negligence to incorporate provisions of the previously used definition of medical malpractice." *Id.*

Simply, the amendments were made to NRS 41A.015 to conform its definition of "professional negligence" with the previous definition and remove potentially redundant terms such as "medical malpractice" or "dental malpractice." *Id.* These amendments were important in order to avoid potential confusion associated with use of the different terms. *See Tam*, 358 P.3d at 241 (explaining that it was "unclear from our reading of the statutes [what] is the relationship between professional negligence and medical malpractice," further commenting that "[a]lthough not identical, the definitions for both professional negligence and medical malpractice are similar and ultimately include negligence by a physician.") (citations omitted).

This context is important in determining whether the 2015 amendments to the definition of

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"professional malpractice" apply to an ongoing case that has not ripened into a judgment, such as this one. In *Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179-80 (2007), the Nevada Supreme Court explained:

> With respect to the application of newly enacted statutes, we generally presume that they apply prospectively unless the Legislature clearly indicates that they should apply retroactively or the Legislature's intent cannot otherwise be met. **This general rule does not apply to statutes that do not change substantive rights and instead relate solely to remedies and procedure, however; in these instances, a statute will be applied to any cases pending when it is enacted.**

Id. (emphasis supplied). In *Valdez,* the Court considered whether amendments to the worker's compensation law that amended the manner in which an injured worker may choose a physician did not change the substantive rights of a party to benefits, or to bring a case, but only to the mechanisms used in the case. *Id.* Thus, the Court held that the legislature's amendment applied to any cases that were pending when the amendments were enacted. *Id.*

Here, likewise, the amendments to NRS 41A.015 do not change the substantive rights of a plaintiff to bring a medical malpractice case. Like *Valdez*, the amendments "do not change substantive rights and instead relate solely to remedies and procedure." Specifically, they eliminate the potential confusion associated with the use of overlapping terms such as "professional negligence" and "medical malpractice," as the *Tam* Court discussed. *Tam,* 358 P.3d at 241. Indeed, the Legislature Counsel's clearly explains that the amendments to NRS 41A.015 were made to remove "references in existing law to medical malpractice and dental malpractice and replace those references with references to professional negligence." **Exh. N**, at 1.

In his *Motion*, Plaintiff Duda relies on *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 313 P.3d 849, 853-54 (2013) and argues that the amendments are not "retroactive," by which he means that the Court should not apply them to this case. Plaintiff errs for several reasons.

First, *Sandpointe Apts.*, 313 P.3d at 853 notes the general rule that "[s]ubstantive statutes are presumed to only operate prospectively, unless it is clear that the drafters intended the statute to be applied retroactively." *Id.* (citations omitted). The Court also notes:

> "[D]eciding when a statute operates 'retroactively' is not always a simple or mechanical task." *Id.* at 268, 114 S.Ct. 1483. "Any test of retroactivity will leave room for disagreement in hard cases, and is unlikely to classify the enormous

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> variety of legal changes with perfect philosophical clarity." *Id.* at 270. Broadly speaking, courts "take a 'commonsense, functional' approach" in analyzing whether applying a new statute would constitute retroactive operation. *PEBP,* 124 Nev. at 155, 179 P.3d at 553 (quoting *Immigration & Naturalization Serv. v. St. Cyr,* 533 U.S. 289, 321, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001)). Central to this inquiry are "fundamental notions of 'fair notice, reasonable reliance, and settled expectations.' " *Id.* at 155, 179 P.3d at 554 (quoting *St. Cyr,* 533 U.S. at 321, 121 S.Ct. 2271). Ultimately, a conclusion regarding retroactivity "comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event." *Landgraf,* 511 U.S. at 270, 114 S.Ct. 1483.

Id. There, the Court was considering whether Assembly Bill 273, which "limits the amount of a deficiency judgment that can be recovered by persons who acquired the right to obtain the judgment from someone else who held that right," applied retroactively. *Id.*, at 852. The Court concluded that this newly adopted statute, "NRS 40.459(1)(c) attaches a new disability to a successor lienholder's ability to obtain a deficiency judgment." *Id.* Thus, the new statute was "not simply a clarification of existing law, but is rather a new limitation on the amount that may be recovered in a deficiency judgment." *Id.* Because the right to a deficiency judgment was a vested right, and the legislature did not clearly manifest an intent to apply the law retroactively, the Court held it should not be applied retroactively. *Id.*, at 856-58.

Here, unlike *Sandpointe Apts.*, the amendments to NRS 41A.015 were simply clarifications of existing law. The Legislature Counsel's Digest explains this clarifying purpose. **Exh. N**, at 1. Further, the legislative history shows clearly that the purpose of the amendments to NRS 41A.015 was to "clarify and clear up the definition of professional negligence." *Minutes (5-26-15)*, at 29 (attached as **Exh. O**). Thus, although the legislation considered in *Sandpointe Apts.* was substantive and affected vested rights, the amendments to NRS 41A.015 were merely clarifying and did not affect vested rights.

Second, Plaintiff Duda errs when he attempts to apply the presumption against retroactive application of an amended statute. In *Madera v. State Indus. Ins. Sys.*, 114 Nev. 253, 257-58 (1998), the Court explained that although statutory amendments are presumed to only have prospective application, that "presumption does not obtain when the new statute affects only remedies." *Id.* The Court cited *T.R.G.E. Co. v. Durham,* 38 Nev. 311, 316, 149 P. 61, 62 (1915)

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and noted that in that case, the Court "held that 'the general rule against retrospective construction of a statute **does not apply to statutes relating merely to remedies and modes of procedure.**" *Id.* The Court also quoted *Friel v. Cessna Aircraft Co.,* 751 F.2d 1037, 1039 (9th Cir. 1985) for the proposition that "when a statute is addressed to remedies or procedures and does not otherwise alter substantive rights, it will be applied to pending cases." The *Madera* Court explained "Nevada's approach mirrors the general rule." *Madera*, 114 Nev. at 258.

Thus, rather than applying the general presumption against retroactive application of an amended statute, the Court must evaluate whether the statute is addressed to remedies or procedures, rather than vested rights. Here, the text of the amendments to NRS 41A.015 show that it is addressed to remedies or procedures; rather than substantive and vested rights. The Legislature's Counsel's digest and the legislative history confirm this. Thus, the general rule is that the amendments "will be applied to pending cases," including this one. *Madera*, 114 Nev. at 258 (quoting *Friel,* 751 F.2d at 1039).

Third, Plaintiff Duda errs when he that it would be "incredibly unfair to change the law at the end of the case," and suggests that he has a vested right to the term "professional negligence" as contained in the former NRS 41A.015. *Motion*, at 11. The amendments to NRS 41A.015 do not "abridge vested rights," *Madera*, 114 Nev. at 258, because there is no judgment. In *Sandpointe Apts.*, the Court examined what is necessary for a right to be vested. 313 P.3d at 856. The Court explained that "the sale of the secured property is the event that vests the right to deficiency. Following the trustee's sale, the amount of a deficiency is crystallized because that is the subject date for determining both the fair market value and trustee's sale price of the property securing the loan." *Id.* (citations omitted).

This case involves medical malpractice. Plaintiff has no vested rights in his medical malpractice claim until the claim is liquidated to a judgment. *See Ileto v. Glock, Inc.*, 565 F.3d 1126, 1141 (9th Cir. 2009); *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1086 (9th Cir. 2001) ("We have squarely held that although a cause of action is a "species of property, a party's property right in any cause of action does not vest until a final *unreviewable* judgment is obtained.") (quoting *Grimesy v. Huff,* 876 F.2d 738, 743–44 (9th Cir. 1989); *see also Fields v. Legacy Health Sys.,* 413

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F.3d 943, 956 (9th Cir. 2005) ("Causes of action are a species of property protected by the Fourteenth Amendment's Due Process Clause. However, a party's property right in any cause of action does not vest until a final unreviewable judgment is obtained.") (citation, internal quotation marks, and emphasis omitted)). Accordingly, unlike *Sandpointe Apts.*, this case does not involve vested rights and there is no "unfairness" in applying the clarifying amendments to this case.

Additionally, Plaintiff argues that since March 2012, "Dr. Spillers was aware that a violation of rules from a healthcare facility would void the cap and the abrogation of joint and several liability," *Motion*, at 11, suggesting that there are settled expectations between the litigants here. Plaintiff's argument is so broad that it loses all meaning. Nothing even in the former NRS 41A.015 suggests that any violation of a rule from a healthcare facility would void the cap or eliminate pro rata liability. Moreover, the suggestion that Plaintiff had some vested right or expectation that the cap would not apply to Dr. Spillers, a licensed Nevada medical doctor, is baseless because it assumes: (1) Plaintiff's interpretation of the retroactivity versus prospectivity analysis is right; (2) that even the former NRS 41A.015 did not include conduct performed by a licensed physician, who was not affirmatively restricted by the medical board or a facility, within the definition of professional negligence; and (3) that Plaintiff has a vested right before a judgment. All three of these assumptions are false, as explained in this *Response*.

Finally, Plaintiff's assumption that "Dr. Spillers was aware that a violation of rules from a healthcare facility would void the cap and the abrogation of joint and several liability," *Motion*, at 11, is not based on any information contained in the record. Dr. Spillers had no such awareness. Nor could he have given that this issue is unsettled and counsel's novel arguments would have been impossible to predict.

Simply, Plaintiff did not have a vested right to having the definition contained in the pre-2015 NRS 41A.015 apply to this case, rather than the amended NRS 41A.015. The 2015 amendments simply clarified the definition of professional negligence. They did not change substantive rights but relate only to definitions and procedures to be used. Thus, under *Valdez*, 123 Nev. at 179-80, *Madera*, 114 Nev. at 258, *T.R.G.E. Co.*, 38 Nev. at 316, and *Friel*, the 2015 amendment to NRS 41A.015 must be applied to all pending cases, including this one.

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Once the Court concludes that the 2015 amendments to NRS 41A.015 apply to this case, the Court must deny Plaintiff's *Motion*. The Court should hold, instead, that Chapter 41A's caps and pro rata liability apply to Plaintiff's claims against Dr. Spillers, which are claims against a Nevada licensed physician alleging the "failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care." NRS 41A.015.

D. The Scope of Services and Restriction Exception to the Definition of "Professional Negligence" Contained in NRS 41A.015 Before the 2015 Amendments Does Not Apply to the Alleged Conduct of Dr. Spillers.

Assuming for the sake of argument that the Court concludes the 2015 amendments to NRS 41A.015 do not apply to this case, the Court still should rule as a matter of law that the professional negligence claims against Dr. Spillers are subject to the noneconomic damages cap and pro rata liability procedure because the text, structure and purpose of the former NRS 41A.015 show that it was not intended to expose a telemedicine physician with an unrestricted medical license to unlimited joint and several liability merely because the telemedicine physician did not have privileges at the hospital, particularly when the CEO of the hospital believed telemedicine privileges only applied to radiologists, not clinical neurophysiologists.

1. Statutory Interpretation.

Whether NRS 41A.015's definition of "professional negligence" before the 2015 amendments excluded the alleged negligence of a licensed medical doctor who did not have privileges at a hospital, but otherwise had an unrestricted medical license and who had never been restricted by the hospital from practicing telemedicine, is a question of statutory interpretation. Statutory interpretation is a question of law. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 352 P.3d 1133, 1136 (Nev. 2015). The canons of statutory interpretation are well-established.

When a statute is clear and unambiguous, the court gives effect to the plain and ordinary meaning of each word, phrase, and provision. *See Haney v. State,* 124 Nev. 408, 411–12, 185 P.3d 350, 353 (2008). In interpreting a statute, the court also must avoid rendering any words or phrases superfluous or nugatory, *Cassinelli v. State*, 357 P.3d 349, 354 (Nev. App. 2015), and must avoid interpreting a statute in a way that would "render any part of [the] statute

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meaningless." *C. Nicholas Pereos, Ltd.*, 352 P.3d at 1136.

"[P]hrases may not be read in isolation to defeat the purpose behind the statute," *State Dep't of Taxation v. Masco Builder*, 312 P.3d 475, 478 (Nev. 2013). Further, the court "'will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.'" *Berkson v. LePome*, 245 P.3d 560, 564 (Nev. 2010) (quoting *Harris Assocs. v. Clark County Sch. Dist.*, 81 P.3d 532, 534 (Nev. 2003)). This court has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. *Hardy Companies, Inc. v. SNMARK, LLC*, 245 P.3d 1149, 1153 (Nev. 2010)

Only if the statute is ambiguous will the court look beyond the statute's language to legislative history or other sources to determine the intent of the statute. *Attaguile v. State,* 122 Nev. 504, 507, 134 P.3d 715, 717 (2006). Ambiguity arises where the statute's "language lends itself to two or more reasonable interpretations." *State v. Catanio,* 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). "[I]f the statutory language ... fails to address the issue, th[e] court construes the statute according to that which 'reason and public policy would indicate the legislature intended.'" *Hardy Companies, Inc. v. SNMARK, LLC*, 245 P.3d 1149, 1153 (Nev. 2010) (quoting *A.F. Constr. Co.,* 118 Nev. at 703, 56 P.3d at 890)).

Here, at the time Plaintiff Duda filed this suit, NRS § 41A.015 (2014) provided:

> "Professional negligence" means a negligent act or omission to act by a provider of health care in rendering of professional services which act or omission is the proximate cause of a personal injury or wrongful death. **The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.**

Id. (emphasis added). Plaintiff Duda clings to the bolded language to suggest that it excepts the conduct alleged against Dr. Spillers from the term "professional negligence." Plaintiff Duda argues "Valley Hospital placed a restriction on telemedicine providers such as Dr. Spillers – they must have privileges at the hospital." *Motion*, at 9 (emphasis removed). Therefore, according to Plaintiff Duda, the caps and pro rata several liability in contained in NRS 41A.035 do not apply.

The Court should reject Duda's arguments because Duda misreads the statute and misapplies the canons of statutory construction discussed above.

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2. The Term "Any Restriction Has Been Imposed" Requires Affirmative Action by the Board of Medical Examiners or Health Care Facility.

Plaintiff Duda relies on the language contained in the exception to professional negligence, providing that professional negligence does not include "services for which any restriction has been imposed by the applicable regulatory board or health care facility." NRS 41A.015.[1] Plaintiff Duda argues that the lack of privileges at a hospital amounts to a "restriction" that has been imposed by the health care facility. Plaintiff errs.

The term "restriction" is a limitation affirmatively placed on someone's license or ability to practice. *E.g., Black's Law Dictionary*, at 1429 (9th ed. 1990) (defining "restriction" as a "limitation (esp. in a deed) placed on the use or enjoyment of property"); *see also Oxford English Dictionary*, at 1124 (defining restriction as to "[l]imit someone to only doing or having (a particular thing) or staying in (a particular place)"). It requires active conduct; not mere omission.

This definition is consistent with the way the Nevada legislature has defined the term "restricted license" as a medical license "for a specified period if the Board determines the applicant needs supervision or restriction." NRS 620.261(1)(c). It also is consistent with the way the Nevada legislature has used the term "restricted license" in NRS 630.263(4), which allows the Board to issue to a "restricted license" to various medical specialties in various geographic areas. Further, the definition of "restriction" as a limitation affirmatively imposed on a physician is consistent with the way the legislature used the term in NRS 630.264 (allowing a restricted license to practice medicine in medically underserved area of a county that petitions the board), NRS 630.2645 (allowing restricted license for graduate of foreign medical school to teach, research, or practice medicine), and NRS 630.265 (allowing limited license to practice medicine as a resident physician). The Board of Medical examiners uses the word "restriction" consistent with these

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[1] Plaintiff Duda does not maintain, nor could he, that Dr. Spillers was acting "outside the scope of services for which the provider of health care is licensed," as the first part of the exception to the definition of professional negligence provides. Dr. Spillers is licensed to practice medicine in Nevada with a scope of services listed as (1) neurology; and (2) neurophysiology. *Exh. 1.* As a physician reading and interpreting the IONM data from Ms. Haase's case, Dr. Spillers was engaged in the practice of neurophysiology.

meanings. *E.g.,* NAC 630.050 (2015) (using the word "restrictions" in the title to denote situations where the Nevada Medical Board has denied an application for a medical license); NAC 630.145 (2015) (using the word "restricted license" to designate a limited license given for a medical underserved area).

Further, in its form application for licensure, the Nevada State Board of Medical Examiners uses the term "restricted" in the same manner described above, asking applicants if their medical license has ever been "revoked, suspended, limited, or **restricted** in any state, country or U.S. territory." *See* **Exh. F**, at NSBME-Spillers 0005 (emphasis added). In Dr. Spillers' case, the answer to this question was "no" because no state, country or U.S. territory has ever restricted his medical license. *Id.*

Similarly, Valley Hospital uses the terms "restriction" or "limitation" in their Medical Staff Bylaws in several places. *See* **Exh. K**, at 6, § 2.1(j) (physician must have "a current unrestricted license to practice in Nevada"); *Id.*, at 14, § 2.4.6 ("The prerogatives of Medical Staff membership set forth in these Bylaws are general in nature and may be subject to limitation or restriction by special conditions attached to an individual's appointment...."); *Id.*, at 56, §10.2(a) (allowing a temporary limitation or suspension of privileges); *Id.*, at 56, § 10.2(b) (allowing automatic limitations or suspension of privileges); *Id.*, at 57, § 10.3(a) (allowing for a hearing when the medical executive committee makes a recommendation for the imposition of restrictions or suspension of a medical staff member's privileges); *see also Id.*, at 1 (defining an adverse decision as a "professional review action ... in which the Board of Medical Executive Committee denies, terminates, limits, suspends or modifies a grant of Privileges...."). When Valley Hospital uses the term "restriction," it uses it similar to the meaning above – a restriction on a physician's ability to practice that is affirmatively imposed by the hospital in response to some event.

Additionally, in the medical staff services industry, the term "restriction" means "a limitation placed on a physician by the hospital Governing Board based on recommendation of the Medical Staff either to limit the scope of a physician's services to particular procedures ... or to a limitation placed on a physician as a consequence of a peer review action taken by the Medical Staff pursuant to bylaws...." *Affidavit of Kathleen Matzka, CPMSM, CPCS*, ¶ 15 (attached as

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Exh. P). This industry-based understanding of the term is consistent with the way that the Nevada legislature uses the term "restriction" and the way that the Nevada Board of Medical Examiners uses the term.

Here, harmonizing each of these interpretations of the term "restriction," Dr. Spillers was not engaged in "services for which any restriction has been imposed by the applicable regulatory board or health care facility." NRS 41A.015. Dr. Spillers had an unrestricted medical license in March 5, 2012, the date of Ms. Haase's surgery. Valley Hospital had not affirmatively acted to restrict Dr. Spillers' scope of practice or his services. Rather, Dr. Spillers was engaged in supervising IONM, which is a form of telemedicine. Kevin Stockton, the CEO of Valley Hospital, believed that the telemedicine privileges contained in Valley Hospital's bylaws only applied to radiology services. *See* **Exh. M**, at 76:14-22. Thus, even Valley Hospital apparently did not believe that Dr. Spillers required telemedicine privileges at the time. Certainly Valley Hospital had not affirmatively acted to impose a restriction on the services that Dr. Spillers could provide. Accordingly, the Court should reject Plaintiff Duda's argument that his claims against Dr. Spillers are not professional negligence claims because of the exception contained in the former NRS 41A.015.

3. Imposing a Cap on a Physician's Provision of Medical Services When the Hospital Did Not Actively Restrict a Physician's Privileges Is Consistent with the Intent of NRS 41A.035.

Additionally, the Court should conclude that the intent of NRS 41A.015 and NRS 41A.035 was to ensure that a licensed Nevada medical doctor would benefit from the cap, and from several pro rata liability, when they are sued from conduct arising out of the provision of medical services unless the doctor's conduct was intentional or reckless.

In *Abney v. Univ. Med. Ctr. of S. Nevada*, --- F.Supp.2d ---, 2010 WL 1439106, at *4-6 (D. Nev. Apr. 8, 2010), Chief Judge Hunt for the federal court explained that the "Nevada voters passed the ballot initiative that became NRS 41A.035" as an effort for tort reform. NRS 41A.035 is similar to the tort reform on medical malpractice cases passed in "many states," which have been adopted "in order to reduce medical malpractice insurance premiums, stabilize the availability of malpractice insurance, retain doctors, and insure the ongoing availability of quality medical care within the state." *Id.* "The type of damage cap and corresponding award limit varies

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from state to state: non-economic damages (such as Nevada), *see, e.g.,* Mo. Ann. Stat. § 538.210 (West 2009), Wis. Stat. Ann. § 893.55 (West 2006); general and punitive damages, *see, e.g.,* Fla. Stat. Ann. §§ 766.118, 768 .73 (West 2009); and all damages except for medical care and related expenses, *see, e.g.,* Va.Code Ann. §§ 8.01-38.01, 8.01-581.15 (West 2009)."

Here, however, there is nothing in the history of the passing of NRS 41A.035 to suggest that the voters intended to carve out of the damages cap the provision of telemedicine services done by a physician with an unrestricted license to practice medicine simply because that physician did not have credentials at a particular hospital. The suggestion that the voters intended such a specific exception is refuted by the text of the former NRS 41A.015, which includes the "restricted" language rather than language saying that the term "professional negligence" does not include conduct done by a physician who does not have privileges at a hospital. Plaintiff Duda provides no factual or legal basis to support his assumption that the Nevada voters intended such a specific exception. Nor would such an exception be consistent with the overall purpose of the tort reform, which is to **limit liability** generally, rather than expand it based on hypertechnical interpretations of a legal term with which most Nevada voters are probably unfamiliar.

In *Abney*, the court recognized that Nevada's caps for professional negligence claims against health care providers is similar to, and based on, California's 1975 Medical Injury Compensation Reform Act ("MICRA"), Cal. Civ. Code § 3333.2 (West 2009). In *Goldenberg v. Woodard*, 2014 WL 2882560, at *2 (Nev. June 20, 2014), the Nevada Supreme Court explained that Nevada's cap on personal injury or wrongful death damages arising from professional negligence in the health care context "is closely aligned with MICRA." *Id.* California's cap "defines professional negligence in nearly identical language as NRS 41A.015, which defines professional negligence as 'a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death.'" *Id.* (quoting Cal.Civ.Proc.Code § 364(f)(2) (West 2009) and citing *State ex ret Harvey v. Second Judicial Dist. Court,* 117 Nev. 754, 763, 32 P.3d 1263, 1269 (2001) for the proposition that a statute derived from a sister state is presumably adopted with the construction given it by the sister state's courts).

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The language the Nevada Supreme Court used in *Goldenberg*, *supra,* is instructive. There, the Court held that a fraud claim asserted against a physician did not fall within "Chapter 41A's definition of professional negligence" because a fraud claim is an intentional tort claim that is "qualitatively different" than a negligence claim. The *Goldenberg* Court used the test employed by California courts and explained that when a claim is based on intentional conduct of a physician, such as fraud, it is qualitatively different and would not qualify as professional negligence. *Id.* (citing *Unruh-Haxton v. Regents of Univ. of Cal.*, 162 Cal.App.4th 343, 76 Cal.Rptr.3d 146, 155 (Ct. App. 2008); *Perry v. Shaw*, 88 Cal.App.4th 658, 106 Cal.Rptr.2d 70, 77-78 (Ct. App. 2001); and *Baker v. Sadick*, 208 Cal.Rptr.676, 680-81 (Ct.App. 1984)).

In explaining why it concluded the fraud claims asserted against the physician in *Goldenberg* were not within Chapter 41A's definition of professional negligence, the Court gave guidance on what "restriction" means:

> Whether a cause of action brought against a health care provider under an intentional tort theory is "qualitatively different" than a claim for professional negligence subject to NRS Chapter 41A's limitations should be evaluated on a case-by-case basis. *See Smith v. Ben Bennett, Inc.*, 133 Cal.App.4th 1507, 35 Cal.Rptr.3d 612, 615 (Ct.App.2005) (noting that whether professional negligence statutes are applicable to claims grounded on other legal theories must be examined on a case-by-case basis). Here, Ms. Woodard's professional negligence claim was based on allegations that Dr. Goldenberg's performance of her colonoscopy fell below the standard of care. In contrast, her fraud claim arose from Dr. Goldenberg's representation that he could perform the procedure, despite his knowledge that he had never performed a colonoscopy, that two hospitals had denied him privileges to perform colonoscopies based on his lack of experience, that he had not met the minimum requirements to be evaluated for competence in the procedure under the American Society of Gastrointestinal Endoscopists' guidelines, and that his privileges at LTSC were conditioned on his supervision during the procedure by a doctor experienced in performing colonoscopies. See *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (setting forth the elements for a fraudulent misrepresentation claim). Thus, this court concludes that Dr. Goldenberg's misrepresentation was an "intentional act of egregious abuse," which exceeds the scope of mere negligence allegations related to his falling below the standard of care. *Unruh–Haxton*, 76 Cal.Rptr.3d at 157.

Goldenberg, *supra,* at *3. Dr. Goldenberg was under a "restriction" because: (1) he was **denied** privileges by the hospital to perform colonoscopies (e.g., the facility took an affirmative act to prevent the physician's conduct); (2) he did not meet the minimum requirements for competence

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used by the specialty board (there, the American Society of Gastrointestinal Endoscopists); and (3) "his privileges at LTSC were conditioned on his supervision during the procedure by a doctor experienced in performing colonoscopies." *Id.*

Here, in contrast, Dr. Spillers was not under any kind of "restriction" as that term was understood by the *Goldenberg* Court. Dr. Spillers had an unrestricted medical license from the State of Nevada. Dr. Spillers is board certified in Clinical Neurophysiology with clear competence to perform IONM supervision. Dr. Spillers was never denied privileges after applying. And Dr. Spillers was not under any restrictions by the hospital that required him to only perform services only under certain conditions or with supervision. Finally, Dr. Spillers did not tell Plaintiff (or anyone else) that he could perform IONM supervision when he was affirmatively restricted from doing so. Accordingly, although the fraud claim in *Goldenberg* did not fall within Chapter 41A's definition of "professional negligence," the claims against Dr. Spillers here do.

Dr. Spillers did not engage in intentional conduct merely because he did not have privileges at Valley Hospital. To the contrary, even construing the evidence in a light most favorable to Plaintiff, the failure to have privileges at Valley Hospital was at most the result of a lack of knowledge as to whether they were required. This lack of knowledge existed even with Valley Hospital's own CEO, who admitted that he did not believe telemedicine privileges were required for IONM physicians; only for radiologists. *See* **Exh. M**, at 76:14-22. Likewise, Dr. Luh, who is the Chief of Surgery at Valley Hospital, did not "know if telemedicine is used at all in the OR suites at Valley Hospital." *Luh Depo.*, at 68:1-6 (excerpts attached as **Exh. Q**). Dr. Luh also testified that, as the Chief of Surgery at Valley Hospital, he did not know if "[a] person who does telemedicine in the OR at Valley Hospital [is] required to have privileges." *Id.*, at 71:16-22.

Consistent with the test used by the *Goldenberg* Court, there is no evidence or legal basis to conclude that Dr. Spillers was engaged in intentional conduct by providing IONM supervision services without knowing whether Valley Hospital required telemedicine privileges to do so. Thus, there is no basis to conclude that Dr. Spillers does not fall within the definition of professional negligence in Chapter 41A.

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4. Plaintiff Duda's Interpretation of the Exception to the Definition of Professional Negligence Is Absurd.

As demonstrated above, the kind of "restriction" contemplated in the exception provision of NRS 41A.015 applies only to intentional or willful conduct. *Goldenberg*, *supra*. Yet, without reconciling *Goldenberg,* Plaintiff Duda argues that the exception contained in NRS 41A.015 would apply to any conduct performed by a physician at a healthcare facility if the physician does not have privileges at that facility because such conduct would technically violate the hospital's bylaws. The Court should reject Plaintiff Duda's interpretation.

If the exception provision of NRS 41A.015 was truly as broad as Plaintiff suggests, it would lead to a cascade of exceptions that would engulf the rule. For example, like here, a plaintiff could simply get outside of NRS 41A.035's damage cap by alleging that a medical provider violated a hospital policy, procedure or bylaw, regardless of whether or not the medical provider was even aware of such violation. By definition, conduct could not be intentional – using the *Goldenberg* test – if the conduct was not even knowing.

Further, a plaintiff could simply get outside of NRS 41A.035's damage cap by alleging that a medical provider violated a hospital policy, procedure or bylaw, regardless of how minor the hospital policy, procedure, or bylaw was. For example, the hospital may have a policy requiring a surgeon to enter the operating room through a particular doorway. If a surgeon enters through a different doorway, that would violate a policy. Under Plaintiff's interpretation, such conduct would be outside of Chapter 41A's definition of "professional negligence." As such, Plaintiffs' proposed construction of NRS 41A.015 is absurd and untenable. The Court should reject his interpretation. *See City Plan Dev. v. State, Labor Comm'r,* 121 Nev. 419, 435, 117 P.3d 182, 192 (2005) ("[Courts] will seek to avoid an interpretation that leads to an absurd result.").

5. Plaintiff Duda's Interpretation of the Exception to the Definition of Professional Negligence Is Inconsistent with Persuasive Authority.

Additionally, the Court should reject Plaintiff's proposed construction of NRS 41A.015 because it is inapposite with persuasive case law.

In *Waters v. Bourhis*, 709 P.2d 469 (Cal. 1985), which the *Abney* court cited to with

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approval, the California Supreme Court addressed a similar issue regarding the definition of "professional negligence" in the context of California's MICRA (Business and Professions Code Section 6140[2]), which is nearly identical to NRS 41A.015. It was also adopted as part of a comprehensive tort reform act and was the foundation on which Nevada's tort reform is based.

In *Waters*, the defendant, a lawyer, had represented the plaintiff in an earlier action against a psychiatrist in which there had been claims alleging negligence, breach of a duty of good faith, and intentional or reckless infliction of emotional distress, all based on allegations of sexual misconduct by the psychiatrist. *Id.*, at 472. In the legal malpractice action, the plaintiff claimed the contingency fee obtained by the defendant in settlement of the earlier action exceeded the maximum fee permitted by section 6146. *Id.* at 473. The lawyer claimed the client's recovery in the earlier suit was based on intentional misconduct engaged in for personal (not professional) motives, and that his fee was not limited by section 6146 because such an action does not fall within the category of "professional negligence" actions to which MICRA was intended to apply. *Id.* In attempting to justify the fee, the attorney defendant argued that he was entitled to the higher fee because sexual misconduct had "long been a basis for disciplinary action by the state licensing agency," and as such was a "restriction" within the meaning of the definition of "professional negligence" found in section 6146. *Id.* at 477.

The California Supreme Court disagreed and held that such contention "misconceives the purpose and scope of the proviso," stating that the language regarding "restrictions" by the licensing agency was "obviously [] not intended to exclude an action from section 6146 – or the rest of MICRA – simply because a health care provider acts contrary to professional standards or

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[2] Cal. Bus, & Prof. Code 6146 provides: "'Professional negligence' means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital." This same definition is also found in number of other statutes enacted as part of MICRA. *See* Cal. Civ. Proc. Code § 340.5; Civ.Code, §§ 3333.1, subd. (c)(1) & 3333.2, subd. (c)(1); Code Civ. Proc., §§ 364, subd. (f)(1), 667.7, subd. (e)(3) & 1295, subd. (g)(1).) The definition has since been used in several other statutes, all pertaining to medical malpractice. (E.g., Civ.Code, §§ 43.9, subd. (d)(1) & 1714.8, subd. (b); Code Civ. Proc., § 425.13, subd. (b).)

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engages in one of the many specified instances of 'unprofessional conduct.' Instead, it was simply intended to render MICRA inapplicable when a provider operates in a capacity for which he is not licensed – for example, when a psychologist performs heart surgery." *Id.* The court concluded that the psychiatrist's conduct arose out of the course of the treatment he was licensed to provide and therefore the psychiatrist fit within the definition of professional negligence as well as the corresponding MICRA damage cap. *Id.*

Similarly, in *Prince v. Sutter Health Central,* 161 Cal.App.4th 971 (Cal. Ct. App. 2008), the plaintiff sued an unlicensed social worker. *Id.*, at 974. The social worker was registered with the Board of Behavioral Sciences as an associate clinical social worker, and was working towards licensure, but was not yet licensed. *Id.* The plaintiff sued the defendant social worker after the decedent, whom the social worker released from the mental facility, committed suicide. *Id.*, at 974-975. The plaintiff contended that MICRA's limitation on noneconomic damages did not apply to the defendant social worker because: (1) she was unlicensed; (2) had violated a statute requiring that she be supervised; and (3) had violated a requirement that she inform her clients that she was unlicensed and under supervision. *Id.*, at 977. The plaintiff claimed that the disclosure and supervision requirements acted as a "restriction imposed by a licensing agency," making the social worker's acts outside the definition of "professional negligence." *Id.*

The California Court of Appeals disagreed and held that the failure to disclose her status as unlicensed did not take the matter outside MICRA. *Id.*, at 977. The court found that the proviso did not apply because the social worker had performed the mental health evaluation as part of her professional obligations as a social worker. *Id.,* at 977. The court further held that the social worker's failure to obtain the proper individual supervision did not act as a "restriction precluding the application of the MICRA provisions." *Id.*, at 977-978.

Both *Waters* and *Prince* are instructive and this Court should follow them here. *See State ex ret Harvey v. Second Judicial Dist. Court*, 32 P.3d 1263, 1269 (Nev. 2001) (holding that a statute derived from a sister state is presumably adopted with the construction given it by the sister state's courts); *cf. Goldenberg*, *supra*, at *2 (acknowledging that "NRS Chapter 41A is closely aligned with MICRA, which defines professional negligence in nearly identical language as NRS

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41A.015."). Consistent with the reasoning in *Waters* and *Prince*, the Court should conclude that Chapter 41A's definition of professional negligence applies to the claims against Dr. Spillers, even though he did not have privileges at Valley Hospital, because he is being sued as a result of his provision of professional services (IONM supervising services) and there was no restriction imposed by a licensing agency preventing Dr. Spillers' actions. This is not a situation contemplated by the exception to the professional negligence definition – the situation of a psychiatrist performing heart surgery, or a podiatrist performing brain surgery. *See Waters v. Bourhis*, 709 P.2d at 477.

The allegations against Dr. Spillers arise out of the course of the treatment he was licensed to provide as a board certified clinical neurologist. He therefore fits the "professional negligence" definition of NRS 41A.015. Consequently, both NRS 41A.035's damages cap and NRS 41A.045's abrogation of joint and several liability must be applied in this case. *Waters*, 709 P.2d at 477; *Prince,* 161 Cal.App.4th at 977-978. Contrary to Plaintiffs' assertion otherwise, Dr. Spillers' failure to obtain hospital privileges at Valley Hospital to practice telemedicine (despite the fact that he was never told by the hospital about this requirement) does not constitute a "restriction" under NRS 41A.015. Indeed, as made clear in *Waters*, "such [a] contention 'misconceives the purpose and scope of [NRS 41A.015],' because "the language regarding 'restrictions' . . . was "obviously [] not intended to exclude an action . . . simply because a health care provider acts contrary to professional standards or engages in one of the many specified instances of 'unprofessional conduct.'" *Waters*, 709 P.2d at 477. To be sure, the proviso regarding "restriction" in NRS 41A.015 "was simply intended to render [NRS 41A.015] inapplicable when a provider operates in a capacity for which he is not licensed." *Id.* at 436. This, of course, is not the case here.

Plaintiff Duda does not cite to any case from Nevada or any other state supporting the view that caps do not apply to negligence claims against a physician, arising out of the physician's performance of his professional duties, simply because the physician does not have privileges at a hospital. In the face of *Waters*, 709 P.2d at 477 and *Prince,* 161 Cal.App.4th at 977-978, Plaintiff's failure to cite any contrary authority is fatal. The Court should deny Plaintiff's *Motion*

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and instead hold that the claims against Dr. Spillers are covered within Chapter 41A's definition of "professional negligence," even before the 2015 amendments, such that the damages caps and several pro rata liability apply.

V. CONCLUSION

The Court should deny Plaintiff's *Motion* and soundly reject the proposition that professional negligence claims asserted against a Nevada licensed physician are not capped, and not subject to pro rata liability, merely because the physician did not have credentials at a hospital. Instead, the Court should hold that the claims against Dr. Spillers are covered within Chapter 41A's definition of "professional negligence," even before the 2015 amendments, such that the damages caps and several pro rata liability apply.

DATED this 31st day of May, 2016.

FENNEMORE CRAIG, P.C.

By /s/ Douglas M. Cohen
DOUGLAS M. COHEN, ESQ.
Nevada Bar No. 1214
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
E-mail: dcohen@fclaw.com

Troy R. Rackham, Esq.
Admitted Pro Hac Vice
FENNEMORE CRAIG
1700 Lincoln Street, Suite 2900
Denver, Colorado 80203
Telephone: (303) 291-3200
Facsimile: (303) 291-3201
E-Mail: trackham@fclaw.com

Attorneys for Defendant,
STEVEN H. SPILLERS, M.D.

FENNEMORE CRAIG, P.C.
SUITE
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101

FENNEMORE CRAIG, P.C.
SUITE
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May, 2016, I served a copy of the foregoing DEFENDANT STEVEN SPILLERS, M.D.'S RESPONSE TO PLAINTIFF DUDA'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO STEVEN SPILLERS, M.D. AND NRS 41A upon the parties to this action via the Court's Wiznet electronic service system addressed as follows:

Robert E. Murdock, Esq.
Murdock & Associates, Chtd.
521 S. Third Street
Las Vegas, Nevada 89101
lasvegasjustice@aol.com
Attorneys for Plaintiff MADDEN DUDA

Eckley M. Keach, Esq.
Eckley M. Keach, Chtd.
521 S. Third Street
Las Vegas, Nevada 89101
emkeach@yahoo.com
Attorneys for Plaintiff MADDEN DUDA

Brent S. Vogel, Esq.
Amanda J. Brookhyser, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
brent.vogel@lewisbrisbois.com
amanda.brookhyser@lewisbrisbois.com
Attorneys for REBECCA GILLILAN, CNIM

John E. Hall, Jr., Esq.
Jo A. Jagor, Esq.
Hall Booth Smith, P.C.
191 Peachtree Street, N.E., Suite 2900
Atlanta, GA 30303
jhall@hallboothsmith.com
jjagor@hallboothsmith.com
Attorneys for REBECCA GILLILAN, CNIM

Jill M. Chase, Esq.
Law Offices of Arthur W. Tuverson
7201 West Lake Mead Blvd., Suite 570
Las Vegas, Nevada 89128
jchase@awtlawoffice.com
Attorneys for FEZA GUNALP, M.D.

John H. Cotton, Esq.
Katherine L. Turpen, Esq.
John H. Cotton & Associates, Ltd.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
jhcotton@jhcottonlaw.com
KTurpen@jhcottonlaw.com
Attorneys for GEORGE M. ELKANICH, M.D. and JOCELYN SEGOVIA, PA-C

James E. Murphy, Esq.
Laxalt & Nomura, Ltd.
6720 Via Austi Pkwy., Suite 430
Las Vegas, Nevada 89119
jmurphy@laxalt-nomura.com
Attorneys for NEUROMONITORING ASSOCIATES, INC.

Casey W. Tyler, Esq.
Hall Prangle & Schoonveld, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, Nevada 89144
ctyler@hpslaw.com
efile@hpslaw.com
Attorneys for VALLEY HOSPITAL MEDICAL CENTER

Clark Seegmiller, Esq.
Seegmiller & Associates
10655 Park Run Drive, Suite 250
Las Vegas, Nevada 89144
cseegmiller@seegmillerlaw.com
Attorneys for Plaintiffs MATESI and ESTATE OF MARY HAASE

Daniel Laird, Esq.
Richard Harris Law Firm
801 S. Fourth Street
Las Vegas, NV 89101
dlaird@richardharrislaw.com
Attorneys for Plaintiffs MATESI and ESTATE OF MARY HAASE

/s/ Cheryl Landis
An Employee of Fennemore Craig, P.C.

FENNEMORE CRAIG, P.C.
SUITE
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101

Exhibit "A"

Exhibit "A"

NEVADA STATE BOARD OF MEDICAL EXAMINERS

Search

Licensee Details

Person Information	
Name:	Steven Howard SPILLERS
Address:	1715 N Weber Ste 100 Colorado Springs CO 80907-7524
Phone:	7199556481

License Information			
License Type:	Medical Doctor		
License Number:	13697	Status:	Inactive
Issue Date:	9/10/2010	Expiration Date:	6/30/2017

Scope of Practice

Scope of Practice: Neurology
Scope of Practice: Neurophysiology

Education & Training

School:	Oral Roberts University / Tulsa , OK
Degree\Certificate:	Medical Doctor Degree
Date Enrolled:	
Date Graduated:	5/7/1988
Scope of Practice:	

School:	Harbor-UCLA / Torrance , CA
Degree\Certificate:	Internship
Date Enrolled:	6/24/1988
Date Graduated:	6/23/1989
Scope of Practice:	Rotating

School:	Harbor-UCLA / Torrance , CA
Degree\Certificate:	Residency
Date Enrolled:	7/1/1989
Date Graduated:	6/30/1992

DEFENDANT'S EXHIBIT A Case No. A-13-677664-C

Scope of Practice:	Neurology
School:	University of California / Los Angeles , CA
Degree\Certificate:	Fellowship
Date Enrolled:	7/1/1992
Date Graduated:	6/30/1994
Scope of Practice:	Neurophysiology

CURRENT EMPLOYMENT STATUS / CONDITIONS/RESTRICTIONS ON LICENSE AND MALPRACTICE INFORMATION
NONE

Board Actions
NONE

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred. Sometimes insurance companies settle a case without the knowledge and/or agreement of the physician. This database represents information from insurers to date. Please note: All insurers may not have submitted claim information to the Board.

Close Window

Exhibit "B"

Exhibit "B"

9028ADS

DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. A-13-677611-C
DEPT. NO. XXIX

MADDEN DUDA, a minor, by and through Jovan Duda, his Natural Father and Guardian,

Plaintiffs,

vs.

GEORGE MICHAEL ELKANICH, M.D.; FEZA GUNALP, M.D.; REBECCA GILLILAN, CNIM; NEUROMONITORING ASSOCIATES, INC., A Nevada corporation; JOCELYN SEGOVIA, PA-C; VALLEY HOSPITAL MEDICAL CENTER, INC., a Nevada corporation; ROE CORPORATIONS I through X, inclusive; and DOES I through X, inclusive,

Defendants:

DEPOSITION OF STEVEN H. SPILLERS, M.D.

October 3, 2013

Pursuant to Notice taken on behalf of the Plaintiff at 1700 Lincoln Street, Suite 2300, Denver, Colorado 80203, at 9:19 a.m., before Diane K. Scholl, Registered Professional Reporter and Notary Public within Colorado.

APPEARANCES:

ROBERT E. MURDOCK, Attorney at Law, from the Law Firm of Murdock & Associates, CHTD, 520 South Fourth Street, Las Vegas, Nevada 89101, appearing on behalf of the Plaintiff.

JOHN J. SAVAGE, Attorney at Law, from the Law Firm of Cotton Driggs Walch Holley Woloson Thompson, 400 South 4th Street, 3rd Floor, Las Vegas, Nevada 89101, appearing on behalf of Defendants Elkanich and Segovia (by speakerphone).

JAMES MURPHY, Attorney at Law, from the Law Firm of Laxalt & Nomura, Ltd., 6720 Via Austi Parkway, Suite 430, Las Vegas, Nevada 89119, appearing on behalf of Defendant Neuromonitoring Associates, Inc.

ANJUEL E. WOODS, Attorney at Law, from the Law Offices of Arthur R. Tuverson, 7201 West Lake Mead Boulevard, Suite 410, Las Vegas, Nevada 89128, appearing on behalf of Defendant Gunalp.

S. BRENT VOGEL, Attorney at Law, from the Law Firm of Lewis Brisbois Bisgaard & Smith, 6385 South Rainbow Boulevard, Suite 600, Las Vegas, Nevada 89118, appearing on behalf of Defendant Gillilan.

KENNETH M. WEBSTER, Attorney at Law, from the Law Firm of Hall Prangle & Schoonveld, LLC, 1160 North Town Center Drive, Suite 200, Las Vegas, Nevada 89144, appearing on behalf of Defendant Valley Hospital Medical Center.

Daniel Laird, M.D., J.D., Attorney at Law, from the Richard Harris Law Firm, 801 South Fourth Street, Las Vegas, Nevada 89101, appearing on behalf of Plaintiff Autumn Matesi and Estate of Mary Haase (by speakerphone).

TROY R. RACKHAM, Attorney at Law, from the Law Firm of Fennemore Craig, 1700 Lincoln Street, Suite 2900, Denver, Colorado 80203, appearing on behalf of the Deponent.

I N D E X

WHEREUPON, the following proceedings were taken pursuant to the Nevada Rules of Civil Procedure:

STEVEN H. SPILLERS, M.D.,
having been first duly sworn to state the whole truth, testified as follows:

EXAMINATION

BY MR. MURDOCK:

Q. Please state your name for the record.

A. Steven H. Spillers.

Q. And, sir, you are a physician; is that correct?

A. Yes.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. On how many occasions?

A. Two other occasions.

Q. When were they?

A. The most recent one was just within the last couple of months, and prior to that it was a year ago, approximately.

Q. And the last -- one in the last couple of months, can you tell me about that

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one, please?
A. I was named in a malpractice suit, and I've been dismissed after my deposition.
Q. Do you know the title of the case?
A. Not offhand.
Q. Do you know who the plaintiff is in the case?
A. The plaintiff's name -- last name is Dixon, D-i-x-o-n, and I don't remember his first name.
MR. RACKHAM: Joe.
MR. MURDOCK: Okay.
A. Joseph. Okay.
Q. (BY MR. MURDOCK) And where did that case arise out of? In other words, was it Colorado or --
A. Yes, Colorado.
Q. Okay. Denver?
A. Yes.
Q. But you did have your deposition taken in that case?
A. Yes.
Q. And when was your prior deposition? You said you had one other?
A. Yes. I would just estimate maybe a

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year ago, but I don't remember the date.
Q. Were you a named party in that case?
A. Yes.
Q. What was the name of that case?
A. The patient's name -- last name was Speer, S-p-e-e-r, and first name was Randale, R-a-n-d-a-l-e.
Q. And where did that case arise out of?
A. In Denver.
Q. What is the status of that case?
A. I've been dismissed from that case, also.
Q. Did you settle that case?
A. No.
Q. Did you pay any money at all?
A. No.
Q. Well --
A. Only to my attorney.
Q. Did your insurance company pay any money?
A. Only to the attorney. Not to the --
Q. Okay. Same thing in the first case, in the Dixon case?
A. Yes.

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Q. Did you settle that case, or --
A. No. I was dismissed. Same thing.
Q. You've never had your deposition taken in a Nevada case; is that correct?
A. That's correct.
Q. I'm sure the rules are the same. Let me just go through the rules that will govern us here today.
You understand that the oath you've just taken is similar to the one you'll take when this case comes to trial?
A. Yes.
Q. Do you understand that the rule of perjury -- the law of perjury applies here as it does in a court of law?
A. Yes.
Q. Do you understand that, even though this is a very relaxed proceeding, you still have a duty to tell the truth?
A. Yes.
Q. If you don't understand a question today, please let me know. If you go ahead and answer the question, I'm going to assume that you understood it. Is that fair?
A. Yes.

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Q. Are you on any medication at this time?
A. No.
Q. My understanding is your mailing address is 1715 North Weber, Colorado Springs; is that correct?
A. That's correct.
Q. And your home address is 8928 Haven Rock Court in Colorado Springs; is that correct?
A. No. That's an old address.
Q. What's your new address, please?
A. 1530 Northfield Road.
Q. Colorado Springs?
A. Colorado Springs. You need the ZIP code?
Q. Yeah.
A. 80919.
Q. 809 --
A. 19.
Q. -- 19. Thank you.
A. Sure.
Q. You're represented by counsel here today; is that correct?
A. Yes.
Q. Who's paying for that counsel?

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A. I am.
Q. Have you -- are you insured?
A. Yes.
Q. Who's your insurance company?
A. It's called Genstar.
Q. Do you know what your limits are?
A. 1 million/3 million.
Q. Have you given a notice of this case?
A. I think so, yes.
Q. Do you have any umbrella coverage besides the -- or excess coverage besides the 1 million/3 million?
A. No.
Q. My understanding is that you were born in 1961; is that correct?
A. Yes.
Q. You were born in Oklahoma --
A. Yes.
Q. -- is that correct?
A. I was.
Q. My understanding is you attended college at Oral Roberts University in Tulsa, Oklahoma; is that correct?
A. That was medical school, yes.

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Q. Where'd you go to undergraduate?
A. I went to University of California at Riverside.
Q. Did you get a B.A. or B.S.?
A. A B.S. in psychobiology, and then a master's in biology.
Q. Both at UC Riverside?
A. Yes.
Q. Do you have a Ph.D.?
A. No.
Q. Have you ever told anybody that you had a Ph.D.?
A. No.
Q. So you never represented to anybody that you had a Ph.D.; is that correct?
A. That's correct.
Q. Were you ever asked if you had a Ph.D. by Neuromonitoring Associates?
A. No.
Q. Were you ever asked if you had a Ph.D. by Becky Gillilan?
MR. VOGEL: Gillilan.
Q. (BY MR. MURDOCK) Gillilan?
A. Not that I can recall, no.
Q. Were you ever asked if you had a

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Ph.D. from Valley Hospital?
A. No.
Q. So then you went to medical school at Oral Roberts University; is that correct?
A. That's correct.
Q. And you graduated in 1988; is that correct?
A. Yes.
Q. And my understanding was that you are board-certified; is that correct?
A. Yes.
Q. What are you board-certified in?
A. Clinical neurophysiology.
Q. What is that?
A. Clinical neurophysiology is sort of a subset of neurology that involves application of neurophysiologic kind of testing, so EEG, sleep, intraoperative monitoring, those are all -- fall under the general umbrella of clinical neurophysiology.
Q. Do you have a -- do you have an office?
A. Yes.
Q. Where is that office?
A. It's the mail -- what you call the

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mailing address is my office address.
Q. That would be at 1715 North Weber --
A. Yes.
Q. -- Suite 100?
A. Suite 100.
Q. How many employees do you have, if any?
A. Three.
Q. Who are they?
A. One is named Anne Kelly.
MR. VOGEL: Did you say Anne? I'm sorry.
Q. (BY MR. MURDOCK) Anne?
A. Anne, A-n-n-e.
MR. RACKHAM: If you want to take a break, I believe your new -- other lawyer is here.
MR. MURDOCK: Okay. Why don't we stop for a second.
(Discussion off the record.)
MR. MURDOCK: Okay. Back on.
Q. (BY MR. MURDOCK) So I think we got Anne Kelly as one of your employees.
A. Um-hum.
Q. Okay.

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on a monthly basis.
Q. (BY MR. MURPHY) Did they -- did they deduct payroll taxes from any payment made to you?
A. No.
Q. Did you ever receive a W-2 from Neuromonitoring Associates directed to you?
A. I don't believe so, no.
Q. Did you receive 1099s from Neuromonitoring Associates?
A. Remind me of what that is.
Q. 1099s would be a reference made by an employer -- or contractor, rather, to an individual who received payment, referring to that payment amount, that's also delivered to the IRS?
A. For the year?
Q. Sure.
A. Yes, I have received that.
Q. Do you have the ability to compete through your own professional corporation with Neuromonitoring Associates, if you wanted to?
A. No.
Q. How so?
A. Well, we don't do the same thing.

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Q. Do you have a formal master-type agreement with Neuromonitoring Associates that's in place on or around the time of the Mary Haase procedure?
A. I don't believe so.
Q. Is that common, where you may not have an overarching master agreement with a particular neuromonitoring company?
MR. MURDOCK: Objection, lacks foundation.
A. Somewhat common.
Q. (BY MR. MURPHY) You know your own business, don't you?
A. Yes.
MR. MURPHY: Thank you.
EXAMINATION
BY MR. WEBSTER:
Q. Dr. Spillers, my name's Ken Webster. I represent Valley Hospital.
You don't have any sort of contractual relationship with Valley Hospital, correct?
A. Correct.
Q. And that's been true throughout the entirety of your career as a neuromonitoring

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specialist, right?
A. Yes, that's correct.
Q. Have you ever been paid by Valley Hospital?
A. No.
Q. Has anybody from Valley Hospital ever called you or sent you an e-mail and said, "We need you on a case tomorrow"?
A. No.
Q. Okay. So when you were discussing earlier with Mr. Murphy about how you got called into this case, there are potential ways that you could be called into the case, one of which would be, if the hospital only contracts with one neuromonitoring company, it's conceivable that somebody from the OR in that facility could contact you and say, "We need you on a case," right?
A. It's conceivable, yes.
Q. Has that ever happened with Valley Hospital, in the entirety of your career?
A. No.
Q. Okay. You ever been paid by them? You don't get any financial remuneration for the work you do for Valley Hospital, correct?

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A. That's correct.
MR. WEBSTER: Okay. I don't have any other questions?
MR. MURDOCK: Troy?
MR. RACKHAM: I don't have any questions.
MR. MURDOCK: Okay. Just asking.
EXAMINATION
BY MR. MURDOCK:
Q. I have some more questions. Why don't we stay with -- on Ken's topic for a second. You -- have you ever been asked by Valley Hospital to apply for privileges at Valley Hospital?
A. I can't recall for certain. I think that I was credentialed there, but I'm not certain.
Q. And do you know if you were credentialed at the time of this incident on March 5, 2012.
A. No. That's what I was -- that's what I was answering earlier. I'm not certain that I -- that I was credentialed. I believe I was.
Q. You believe you were credentialed at

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Valley Hospital --
A. Yes.
Q. -- on March 5, 2012?
A. Yes.
Q. Would it surprise you to learn that Valley Hospital has no -- has produced no documents in this matter at least showing that you are privileged in any way at Valley Hospital?
A. That doesn't surprise me.
Q. Why would it not surprise you?
A. There are a lot of hospitals that don't require telemedicine credentialing.
Q. Okay, but that's not what I asked you.
A. Well, I'm in telemedicine. My practice --
Q. You said you were credentialed.
A. No, I said --
MR. MURPHY: Argumentative.
A. -- I couldn't remember for certain whether I was. There are a number of hospitals who don't require someone in my role, being telemedicine, to be credentialed the way a person who walks in and sees patients and so on

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does.
Q. Do the patients know that?
MR. RACKHAM: Foundation.
MR. WEBSTER: Form.
A. I don't think that -- I don't think that the patients know one way or other.
Q. In other words, did Valley Hospital ever have a chance to investigate you and your background, and your experience, your education, and everything else that you bring to the table, before you start reviewing cases for them?
MR. RACKHAM: Form.
MR. WEBSTER: Form.
MR. RACKHAM: Foundation.
Q. (BY MR. MURDOCK) For their patients?
A. Did they have an opportunity?
Q. Yeah. Did they ever ask you?
A. They never asked me that if --
Q. Okay.
A. Wait a minute. Let me -- let me take a step back.
Q. Okay.
A. I'm licensed in 20 states, and I'm credentialed at hospitals in all those states as

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part of my neuromonitoring practice. I don't just deal with one hospital, so I -- that's why I'm not certain which hospitals have required credentialing, which ones haven't.
Q. Okay.
A. So if they had asked me, I would have done it.
Q. Sure.
A. If they didn't ask me, then I'm -- then it wouldn't have been something that I would have done.
Q. Okay. But as we sit here today, do you have any remembrance or memory at all as to whether or not you were -- you were credentialed by Valley Hospital on March 5, 2012?
A. No, I don't.
Q. The operating room at Valley Hospital, as far as you know, is in Las Vegas, Nevada, correct?
A. Yes.
Q. You're an extension of that operating room, even though you're operating via telemedicine, correct?
MR. WEBSTER: Form.
MR. RACKHAM: Join.

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Q. (BY MR. MURDOCK) Because you're doing work that's actually happening right then and there in the OR. You're watching the monitors, that's going on in the OR, correct?
A. I'm watching the monitors in real-time, yes.
Q. Did Neuromonitoring Associates know you watch up to eight screens and eight surgeries at a time?
MR. RACKHAM: Foundation.
MR. MURPHY: Object to the form of the question.
MS. WOODS: Form.
MR. MURDOCK: Wow.
A. They knew that I watched multiple cases at a time. I --
Q. (BY MR. MURDOCK) How did they know that?
A. Well, because sometimes I watched multiple of their cases at a time.
Q. Did anybody from Neuromonitoring Associates ever tell you, "Hey, Doc, don't do that"?
A. No.
MR. MURPHY: Object to the form of

Exhibit "C"

Exhibit "C"

CURRICULUM VITAE

STEVEN H. SPILLERS, MD

COLORADO CENTER FOR NEUROSCIENCE, PC
1715 N. Weber St. Suite 100 Colorado Springs, CO 80907
P: 719-955-6481 F: 719-227-9013 www.ccneuro.net sspillers@ccneuro.net

EDUCATION:

June 1983: B.S. Psychobiology, University of California, Riverside.

August 1984: M.A. Biology (Physiology emphasis), University of California, Riverside.

May 1988: M.D., Oral Roberts University School of Medicine, Tulsa, Oklahoma.

POST-DOCTORAL TRAINING:

6/24/1988 – 6/23/1989: Transitional Internship. UCLA School of Medicine. Harbor-UCLA Medical Center. 1000 W. Carson St. Torrance, CA 90502

7/1/1989 – 6/30/1992: Residency. UCLA School of Medicine. Harbor-UCLA Medical Center. Torrance, CA

7/1/1992 – 6/30/1994: Fellowship, EEG/Epilepsy/Clinical Neurophysiology. Department of Neurology. UCLA School of Medicine

CERTIFICATION:

Board Certified: American Board of Clinical Neurophysiology, 1998 – present.
Diplomate, National Board of Medical Examiners, 1989.
Drug Enforcement Administration: 1989 – present.

CURRENT POSITION:

7/2003 – Present: Clinical Neurophysiology: Remote Oversight of Intraoperative NeuroMonitoring (IONM). Remote Interpretation of EEG, cEEG, and LTVME.

Office Practice: Currently 1 day per month.

PREVIOUS POSTIONS:

1/2003 – 6/2003: Neurological Associates. 5401 N. Knoxville Ave. Suite 218. Peoria, IL 61614.

8/1995 – 12/2002: Director, Central Illinois Neurosciences. 900 N. Main St. Suite 250. Peoria, IL 61602.

8/1995 – 12/2002: Director, Central Illinois Comprehensive Epilepsy Center. 900 N. Main St. Suite 250. Peoria, IL 61602.

7/1994 – 7/1995: Associate Neurologist. Department of Neuroscience, Marshfield Clinic. 1000 N. Oak Ave. Marshfield, WI 54449

7/1992 – 7/1994: Clinical Instructor of Neurology (Fellowship), Department of Neurology, UCLA School of Medicine. Reed Neurological Research Center. Los Angeles, CA 90024-1769.

ACADEMIC APPOINTMENTS:

8/1994 – 9/1995: Assistant Clinical Professor. Department of Neurology. University of Wisconsin School of Medicine. Madison, WI

8/1995 – 6/2003: Assistant Clinical Professor. Department of Neurology. University of Illinois College of Medicine

TEACHING EXPERIENCE:

1983-84 Academic Year: Graduate Teaching Assistantship. Department of Biology, University of California, Riverside. Upper Division Human Physiology, Vertebrate Anatomy.

1989-1992 (Spring Quarter): Once weekly teaching of second year Medical Students: Technique of the Neurological Exam

7/1991 – 6/1992: Ongoing teaching of residents and medical students as Chief Resident in Department of Neurology. Harbor-UCLA Medical Center

July 1992 – June 1994: Teaching of residents and medical students as Clinical Assistant Professor on the Epilepsy Monitoring Unit during Fellowship.

RESEARCH EXPERIENCE:

June, 1993-June, 1994: Clinical study of utility of Cyberonics Vagus Nerve Stimulator in patients with medically refractory epilepsy who are not surgical candidates, working with Jerome Engel, Jr., M.D., Ph.D., in association with Cyberonics, Inc.

July, 1993-June, 1994: Clinical study of validity of Digitrace home EEG monitoring systems as a supplement to long term pre-surgical monitoring of patients with medically

refractory epilepsy, working with Jerome Engel, Jr., M.D., Ph.D., in association with Digitrace, Inc.

July, 1992-June, 1994: Studying physiological and metabolic disturbances in patients with temporal lobe epilepsy using a novel technique of computerized FDG PET scan-MRI merger. Working with Jerome Engel, Jr., M.D., Ph.D., and John Mazziotta, M.D., Ph.D., Department of Neurology, UCLA School of Medicine

May, 1993-June, 1994: Studying MRI spectroscopy in patients with temporal and extra-temporal epilepsy. Collaborators: Jerome Engel, Jr., M.D., Ph.D., Thomas Greider, M.D., Ph.D, and John Curran, M.D.

July, 1990-July, 1992: Recorded from depth (temporal lobe) electrodes in human epileptic patients as part of preoperative evaluation, studying structural connectivity between temporal lobe structures, also studying activity patterns of individual units during temporal lobe seizure activity. With: Charles L. Wilson, Ph.D., Department of Neurology, UCLA School of Medicine.

1990-1992: Investigating cellular excitability in Guinea pig neocortical slices using intracellular and extracellular techniques. With: John H. Ashe, Ph.D., Professor, Department of Psychology, University of California, Riverside.

1986-1988: Regeneration studies in spinal cord of the rat using novel technique; skeletal muscle as a graft material. Used a novel tool: the Electromagnetic Field Focusing Probe (EFF Probe) as a neurosurgical tool to create spinal cord lesions. Supervisors: Angelo Patil, M.D., Department of Neurosurgery, University of Nebraska, Omaha, NE, and William S. Yamanaski, Ph.D., Department of surgery, University of Oklahoma School of Medicine.

1982-1984: Neurophysiology, Electrophysiology and NeuroPharmacology of the hippocampus in rat and opossum, studied long-term potentiation (LTP) in the hippocampus utilizing the in-vitro slice preparation with both extracellular and intracellular recording. Supervisor: John H. Ashe, Ph.D., Professor, Department of Psychology, University of California, Riverside.

PUBLICATIONS AND PAPERS PRESENTED:

Karen J. Weatherford, L. Rebecca Campbell, Peter A. Ahman, Kevin H. Ruggles, Steven H. Spillers, Brenda L. Anderson: Lamotrigine in primary generalized epilepsy. Abstract, American Epilepsy Society Meeting, Baltimore, MD. December, 1995.

Brenda L. Anderson, Sharon M. Haessley, Karen J. Weatherford, Peter A. Ahman, L. Rebecca Campbell, Steven H. Spillers, Kevin H. Ruggles: An observational study of

efficacy and tolerance of Gabapentin. Abstract, American Epilepsy Society Meeting, Baltimore, M.D., December, 1995.

Stephen Read, Bruce Miller, Ismael Mena, Steven Spillers, Suzanne Woolley, Hideo Itabashi, Ronald Kim, Nelson Yamagata, and Hugh McIntyre (1992): SPECT/Pathology correlation in dementia.
NEUROLOGY, Supplement 3, V. 41, NO. 4, (6065).

Spillers, SH; Wilson, CL; Khan, SU; and Levesque, ML (1991): Decreased responsiveness of limbic pathways in the epileptogenic mesial temporal lobe.
NEUROLOGY, Supplement 1, V. 41, NO. 3, (418P).

Spillers, SH; Patil, AA; Yamanashi, WS; and Hill, DL (1987): Use of an electromagnetic field focusing probe to generate lesions in the spinal cord of the rat. SOCIETY FOR NEUROSCIENCE ABSTRACTS, v. 13, 1987. Presented at The Annual Meeting of the Society for Neuroscience, 1987.

Spillers, SH and Gribkoff, VK (1983): The influence of duration and frequency of stimulus trains on the amplitude and hippocampal slice. Presented at the WESTERN PSYCHOLOGY CONFERENCE, University of Santa Clara, Santa Clara, CA March, 1983.

Ashe, JH; Gribkoff, VK; and Spillers, SH (1982): Physiological plasticity in the opossum and rat hippocampus: In vitro extracellular and intracellular responses. THE PHYSIOLOGIST, v. 25, no. 4. Presented at the Meeting of The American Physiological Society, 1982.

Gribkoff, VK; Spillers, SH; and Ashe, JH (1982): Intracellular recordings from the in vitro hippocampus of the North American Opossum (didelphis virginiana): Responses to afferent stimulation. THE PHYSIOLOGIST, v.25 no.4. Presented at the Meeting of the American Physiological Society, 1982.

INVITED PRESENTATIONS:

Spillers, S.H. Emergency Evaluation of the Stroke Patient. Presented 26 January 2006. Grand Rounds, Penrose Main Hospital, Colorado Springs, CO

Spillers, S.H., Advances in the Treatment of Epilepsy: Presented December 1, 2000 at the Annual Meeting of the Illinois Osteopathic Medical Society, Chicago, Illinois.

Spillers, S.H., Epilepsy Surgery: Selected Cases. Presented 12 January, 1996. University of Illinois College of Medicine, Department of Neurology Grand Rounds.

Spillers, S.H., Epilepsy: Diagnosis and Management II. Presented January, 1996. University of Illinois College of Medicine, Department of Family Practice.

Spillers, S.H., Epilepsy: Diagnosis and Management I. Presented December, 1995. University of Illinois College of Medicine, Department of Family Practice.

COMMUNITY SERVICE:

1990-1992: Consulting Neurologist (Volunteer): California Pediatric and Family Medical Center. 1520 S. Olive Street Los Angeles, CA 90015

2013: Board of Directors, SET Family Medical Clinic, Colorado Springs, CO

2014-Present: Volunteer Neurologist, Mission Medical Clinic, Colorado Springs, CO

STATE LICENSES:

Alaska	Arizona	California	Colorado
Georgia	Illinois	Indiana	Iowa
Kansas	Kentucky	Maine	Missouri
Montana	Nebraska	Nevada	New Jersey
N. Carolina	N. Dakota	Ohio	Oregon
South Dakota	Tennessee	Texas	Utah
Virginia	Washington	Wisconsin	Wyoming

ORGANIZATIONAL MEMBERSHIPS:

American Academy of Neurology. 1990 to present
American Epilepsy Society. 1992 to present
America Clinical Neurophysiological Society. 1992 to present

FUNDING AND AWARDS:

Merritt-Putnam Clinical Research Fellowship. Awarded by the Epilepsy Foundation of America. Academic Year July 1, 1992 Through June 30, 1993.

Recipient, Undergraduate Research Grant, University of California, Riverside, 1982.

HONORS:

Dean's List, University of California, Riverside, 1982 and 1983.

Chief Resident, Department of Neurology, Harbor-UCLA Medical Center July 1991 through June 1992.

Exhibit "D"

Exhibit "D"

Services Offered by Colorado Center for Neuroscience

- *Routine EEG/cEEG*
- *Stat EEG*
- *IONM*
- *cEEG*
- *LTME*
- *Expert Consultation*
- *File Review*

Remote EEG Interpretation

This includes routine EEGs, both inpatient and outpatient, and ambulatory EEGs. All that is needed is access to the raw EEG data to read, patient information for billing, and access to the dictation system to complete the report. Alternatively, a report can be generated independently and faxed or emailed to the appropriate location. Turnaround time for routine studies is usually 24 hours or less on weekdays, 48 hours on weekends and holidays.

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Remote Stat EEG Interpretation

Dr. Spillers does not have a typical office practice. He is available at any time during the day to read a STAT EEG remotely. This requires that the EEG machine have internet access so that he can view the EEG in real time. Otherwise, he can review it as soon as it is available if there is no real time access. STATs are typically read in an hour or less and a preliminary report can be sent to the ordering physician by text, fax, or email (direct number must be provided).

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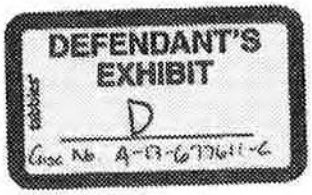
Intraoperative Neuromonitoring

Intraoperative monitoring (IONM) tests the function of the nervous system repeatedly during surgical and other procedures that involve risk to the nervous system. The goal is to identify changes in nervous system function in a timely fashion and report these changes to the surgeon. The surgeon can then make adjustments to reduce or eliminate any risk and prevent the patient awakening from surgery with a permanent deficit. The most common tests include somatosensory evoked potentials (SSEP), trans-cranial motor evoked potentials (TCMEP), free-running EMG, pedicle screw testing, and EEG. Less common testing includes brainstem evoked potentials (BAEP), and cranial nerve monitoring. IONM is most commonly requested for spine and brain surgery, but is also appropriate during other surgical procedures that place the central nervous system at risk.

See the list of *Surgeries Monitored* in the blue box to the right.

Back to the Top

Remote cEEG Interpretation



Surgeries Monitored

Orthopedic Spine

- Diskectomy
- Corpectomy
- Laminectomy
- Decompressions
- Vertebrectomy
- Instrumentation
- Odontoid/Dens fractures
- Scoliosis
- Pain Stimulator Placement

Neurosurgical

- Spine Cases
  - Diskectomy
  - Corpectomy
  - Laminectomy
  - Decompressions
  - Vertebrectomy
  - Instrumentation
  - Odontoid/Dens fractures
- Craniotomies with cranial nerve or cortical tract at risk
- MicroVascular Decompression
- Vestibular Nerve Section
- Disc replacement
- Spinal Cord Tumor (intramedullary and extramedullary)
- Spine AVMs
- Cauda Equina Tumors
- Syringomyelia
- Tethered Cord release
- Pain Stimulator Placement

Interventional Neuroradiology

- Aneurysm Clipping and Coiling

Otolaryngologic

- Parotidectomy
- Laryngectomy
- Parotid and thyroid tumor resection
- Acoustic neuroma
- Cholesteatoma
- Middle Ear Exploration

Vascular

- Carotid Endarterectomy
- Aortic Aneurysm Repair
- Dissection of the Aorta repair

Continuous EEG (sometimes referred to as ICU-EEG) is continuous monitoring of EEG of patients, typically in the ICU. This method of monitoring is becoming available nationwide in hospitals of all sizes and locations. Over 90% of seizures in the ICU are nonconvulsive and therefore, not clinically obvious. The purpose of cEEG is to identify subclinical seizures, non-convulsive status epilepticus, or other changes in EEG pattern that might reflect a neurologic change that is unrecognizable clinically. cEEG monitoring can be beneficial for both evaluating treatment approaches, and establishing a prognosis for these patients. There are a number of indications for cEEG:

- Status Epilepticus
- Ischemic Stroke
- Subarachnoid Hemorrhage
- Intracranial Hemorrhage
- Encephalitis and other CNS infections
- Traumatic Brain Injury
- Therapeutic Hypothermia (Adults)
    - Coma post-Cardiac Arrest
    - Ischemic stroke
    - Severe Traumatic Brain Injury
    - Fulminant Hepatic Failure
    - Therapeutic Hypothermia (Neonates/Pediatrics)

There are a multiple models for cEEG, depending on the availability of technologists and the volume of cases in a particular facility. cEEG is reviewed by Dr. Spillers and a professional report is dictated for each 12 to 24 hours of recording time.

Back to the Top

Long Term Monitoring for Epilepsy (LTME)

LTME refers to simultaneous recording of EEG and clinical behavior (by video) over extended periods of time to evaluate patients with paroxysmal disturbances of cerebral function. LTME is used when it is important to correlate clinical behavior with EEG events. EEG recordings of long duration may be helpful in circumstances in which patients have intermittent disturbances that are difficult to record during routine EEG testing. LTME is typically limited to patients with epileptic seizure disorders or suspected epileptic seizure disorders. This includes ruling out epileptic seizure disorders in patients with non-epileptic events. LTME does not involve real time analysis of the data.

Back to the Top

Expert Consultation

Expert consultation for legal cases available upon request. Please *contact Dr. Spillers.*

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File Review

File review available upon request. Please *contact Dr. Spillers.*

- Carotid Stent Placement

Exhibit "E"

Exhibit "E"

Page 4
25. cont.

HOSPITAL AFFILIATIONS FOR STEVEN H. SPILLERS

PENROSE HOSPITAL
2222 N NEVEDA AVENUE
CO. SPRINGS, CO. 80907
ACTIVE FROM 7/03 TO PRESENT
719-776-5000 FAX 719-776-2580

NEW HANOVER REGIONAL MEDICAL CENTER
2131 SOUTH 17TH STREET
WILMINGTON, NC. 28402-9000
910-343-7289 FAX 910-343-7222
ACTIVE FROM 1-30-07 TO 1-1-09

LONGMONT UNITED HOSPITAL
1950 MOUNTAIN VIEW AVENUE
LONGMONT, CO. 80502
303-651-5111
ACTIVE FROM 3-8-07 TO 3-1-2011

BOULDER COMMUNITY HOSPITAL
P.O. BOX 9019 N BROADWAY & BALSAM
BOULDER, CO. 80301-9019
303-440-2273 FAX 303-440-2063
ACTIVE FROM 12-1-06 TO PRESENT

LUTHERAN MEDICAL CENTER
8300 WEST 38TH AVENUE
WHEAT RIDGE, CO. 80033
303-425-2009 FAX 303-467-8790
ACTIVE FROM 10-1-07 TO 10-1-09

GOOD SAMARITAN MEDICAL CENTER
200 EXEMPLA CIRCLE
LAFAYETTE, CO. 80026
303-689-6700 FAX 303-689-6703
ACTIVE FROM 9-1-07 TO 9-1-09

MEMORIAL HOSPITAL
1400 BOULDER STREET
CO. SPRINGS, CO. 80909
719-365-5000
INACTIVE 8-03 TO 8-07

METHODIST MEDICAL CENTER
900 N MAIN STREET SUITE 250
PEORIA, IL 61602
309-672-4545
INACTIVE 8-95 TO 6-03

ST. FRANCIS MEDICAL CENTER
221 NE GLEN OAK AVENUE
PEORIA, IL 61603
309-672-5000
INACTIVE

SWEDISH MEDICAL CENTER
747 BROADWAY/A-FLOOR WEST
SEATTLE, WA 98122-4307
206-386-2550 FAX 206-386-3570
ACTIVE 7-26-06 TO PRESENT

ST. PATRICK HOSPITAL
500 WEST BROADWAY
P.O. BOX 4587
MISSOULA, MT 59806
406-543-7271
ACTIVE 11-27-07 TO PRESENT

GOTTLIEB MEMORIAL HOSPITAL
701 W. NORTH AVENUE
MELROSE PARK, IL 60160
708-681-3200
ACTIVE 1-22-08 TO PRESENT

CAROLINAS MEDICAL CENTER UNION
P.O. BOX 5003
MONROE, NC 28111

704-283-3100 ACTIVE 3-27-08 TO PRESENT

WHEATON FRANCISCAN HEALTHCARE
3421 WEST 9TH STREET
WATERLOO, IA 50702
319-272-8000 FAX 319-272-7313
ACTIVE 1-18-2008 TO PRESENT

MONROE CLINIC AND HOSPITAL
515 22ND AVENUE
MONROE, WI 53566
608-324-1305
ACTIVE 12-12-07 TO PRESENT

PACIFIC HOSPITAL OF LONG BEACH
2776 PACIFIC AVENUE
LONG BEACH, CA 90806
562-595-1911
ACTIVE 8/06 TO PRESENT

SALEM HOSPITAL
POST OFFICE BOX 14001
SALEM, OREGON 97309-5014
503-5611-5200
ACTIVE TO PRESENT

ALEGENT HEALTH
IMMANUEL MEDICAL CENTER
6901 NORTH 72ND STREET
OMAHA, NE 68122
402-572-2121 FAX 402-829-8505
ACTIVE 7/08 TO PRESENT

EVERGREEN HOSPITAL MEDICAL CENTER
12040 NE 128TH STREET
KIRKLAND, WA 98034-3098
425-899-1000 FAX 425-899-1898
ACTIVE 5/06 TO PRESENT

EXEMPLA HEALTHCARE – CVO
8300 WEST 38TH AVE
WHEAT RIDGE, CO 90033
303-425-2776 FAX 303-467-4284
ACTIVE 9-07 TO PRESENT

OVERLAKE HOSPITAL MEDICAL CENTER
1035 116TH AVENUE NE
BELLEVUE, WA 98004
425-688-5210 FAX 425-467-3684
ACTIVE 6/07 TO PRESENT

MULTICARE HEALTH SYSTEM
315 MARTIN LUTHER KING JR. WAY
P.O. BOX 5299
TACOMA, WA 98415-0299
253-403-1000 FAX 253 403-4870
ACTIVE 12/07 TO PRESENT

HARRISON MEDICAL CENTER
2520 CHERRY AVENUE
BREMERTON, WA 98310
360-377-3911
1-22-09 TO PRESENT

NORTH COLORADO MEDICAL CENTER
BANNER HEALTH
1801 16TH STREET
GREELY, CO 80631
970-350-6010 FAX 970-350-6046
ACTIVE 12-08 TO PRESENT

PARKVIEW COMMUNITY HOSPITAL
3865 JACKSON STREET
RIVERSIDE, CA 92503
951-688-2211 FAX 951-352-5318
ACTIVE 2-25-09 TO PRESENT

KADLEC MEDICAL CENTER
888 SWIFT BOULEVARD
RICHMOND, WA 99352
509-946-4611
ACTIVE 12/31/2008 TO 12/1/2010

Exhibit "F"

Exhibit "F"

Nevada State Board of Medical Examiners

10 May 2016

MAY 13 2016

Vera Minkova
KeachMurdock
521 S. 3rd Street
Las Vegas, NV 89101

Dear Ms. Minkova:

Thank you for your inquiry. Please find 46 pages of requested information regarding:

Steven Spillers, M.D.

If you have any further questions or concerns, please do not hesitate to contact me at (775) 324-9364.

Regards,

Libi Anders
Public Information Officer/Research Analyst
Nevada State Board of Medical Examiners

DEFENDANT'S EXHIBIT
F
Case No. A-17-677611-C

☐ LAS VEGAS OFFICE
Board of Medical Examiners
Building A, Suite 2
6010 S. Rainbow Boulevard
Las Vegas, NV 89118
Phone: 702-486-3300
Fax: 702-486-3301

☒ RENO OFFICE
Board of Medical Examiners
Suite 301
1105 Terminal Way
Reno, NV 89502
Phone: 775-688-2559
Fax: 775-688-2321

7/1/2007- 6/30/2009 PHYSICIAN
APPLICATION FOR LICENSURE
NEVADA STATE BOARD OF
MEDICAL EXAMINERS

Post Office Box 7238 Reno, Nevada 89510 Phone (775) 688-2559

Date Received by Bd RECEIVED NOV 12 2009 NEVADA STATE BOARD OF MEDICAL EXAMINERS

License No

File No

(For Board Use Only)

1. Present Legal Name Spillers (Last) Steven (First) Howard (Middle) (Maiden)

List any other name(s) ever used N/A

2 Mailing Address 1715 N. Weber, Suite 100 (Street) CO Springs (City) El Paso (County) CO (State) 80907 (Zip)

3 Home Address (Street) (City) (County) (State) (Zip)

4. Telephone Number 719 955-6481 (Office) (Home) Fax Number 719 227-9013

Cellular Number (Optional) Email address

5. Date of Birth: 1961 (Month / Day / Year) Place of Birth: OK, USA (City, State, Country)

6. Citizenship: U.S. Citizen ✓ Alien Registration # Employment Authorization # Applying for Visa

Submit a certified copy of birth certificate or original Certificate of Naturalization or current U.S. passport or copy of the front and back of your alien registration card, Employment Authorization or Visa. Please note: Copy of document authorizing a name change (marriage license, divorce decree, etc) must be included.

7 Social Security Number: Color of Eyes Color of Hair Height Weight

NRS 630.165(3) An application submitted pursuant to subsection 1 or 2 must include the social security number of the applicant;
NRS 630.165(5) The applicant bears the burden of proving and documenting his qualifications for licensure.

For the purposes of the following questions, these phrases or words have these meanings:

"Ability to practice medicine" is to be construed to include all of the following:

1. The cognitive capacity to make appropriate clinical diagnoses and exercise reasoned medical judgments and to learn and keep abreast of medical developments;
2. The ability to communicate those judgments and medical information to patients and other health care providers, with or without the use of aids or devices, such as voice amplifiers; and
3. The physical capability to perform medical tasks such as physician examination and surgical procedures, with or without the use of aids or devices, such as corrective lenses or hearing aids.

"Medical condition" includes physiological, mental or psychological conditions or disorders, such as, but not limited to, orthopedic, vision, speech, hearing, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, emotional or mental illness, HIV disease, tuberculosis, drug addiction, and alcoholism.

"Chemical substances" is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction.

FOR ALL "YES" RESPONSES TO THE FOLLOWING QUESTIONS, YOU MUST SUBMIT YOUR WRITTEN EXPLANATION(S) ON A SEPARATE SHEET ATTACHED TO YOUR COMPLETED *APPLICATION FOR LICENSURE* FORM.

8 Do you have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?
Yes ✓ No

9. If you have a medical condition which in any way impairs or limits your ability to practice medicine, is that impairment or limitation reduced or ameliorated because of the field of practice, the setting, or the manner in which you have chosen to practice?
Yes ✓ No

10. If you use chemical substances, does your use in any way impair or limit your ability to practice medicine with reasonable skill and safety?
Yes ✓ No

11. Have you failed to initiate the performance of public service within one year after the date the public service is required to begin in satisfaction of your receiving a loan or scholarship from the federal government or a state or local government for your medical education?
Yes ✓ No

NSBME-Spillers002

12. Have you EVER been named as a defendant or have been requested to respond as a defendant to any legal action involving professional liability (malpractice) or had a professional liability claim paid in your behalf or paid such a claim yourself? (IF ANSWER IS "YES", YOU MUST COMPLETE FORM E AND FORM 6 – see Application Checklist.) ____Yes ✓No

13. Have you EVER been investigated for, arrested, charged with, convicted of, or plead guilty or nolo contendere to any offense or violation of any federal (including U.S. Military), state or local law, including any foreign country, which is a misdemeanor, gross misdemeanor, court-martial, or felony, excluding any minor traffic offense (including driving or being in control of a motor vehicle while under the influence of any chemical substance, including alcohol, is not considered a minor traffic offense) or for any offense which is related to the manufacture, distribution, prescription or dispensing of controlled substances? *Please note that you MUST disclose ANY investigation or arrest, whether or not it ultimately resulted in conviction of any offense. ____Yes ✓No

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14. Have you previously applied for medical licensure in Nevada (including a residency program)? MAR 0 1 2010 NOV. 1 2 2009 ____Yes ✓No

15. List names and addresses of all medical schools attended. HAVE EACH MEDICAL SCHOOL SUBMIT AN OFFICIAL TRANSCRIPT DIRECTLY TO THE BOARD. NEVADA STATE BOARD OF MEDICAL EXAMINERS NEVADA STATE BOARD OF MEDICAL EXAMINERS

Name	City/State	Place Where Instruction Received	Dates of Attendance From (Mo/Yr) To (Mo/Yr)
Oral Roberts University	Tulsa, OK	School of Medicine	08/84 to 05/88

(All information must begin on the application. If more space is needed, please attach separate sheet.)

16. Doctor of Medicine Degree granted by

Medical School Name	City/State	Exact Date of Issuance
Oral Roberts University	Tulsa, OK	05-07-1988

17. List all ACGME* approved graduate medical education you have received as an Intern, Resident or Fellowship in the United States or Canada.
*Accreditation Council for Graduate Medical Education

Postgraduate Year	Hospital/ Institution	City/State	Specify (I = Internship or R = Residency)	Type of Specialty	Dates of Attendance From (Mo/Yr) To (Mo/Yr)
1	Harbor-UCLA	Torrance, CA	I	Transitional	06/1988 to 06/1989
2-4	Harbor-UCLA	Torrance, CA	R	Neurology	07/1989 to 06/199

(All information must begin on the application, if more space is needed, please attach separate sheet.)

18. List all non-ACGME approved Fellowship training programs attended in the United States or Canada.

Institution	City/State	Type of Fellowship	Dates of Attendance From (Mo/Yr) To (Mo/Yr)
5-6 University of California	Los Angeles, CA	Neurology/Clinical Neurophysiology	07/1992 - 06/199

(All information must begin on the application, if more space is needed, please attach separate sheet.)

19. Have you EVER been investigated or have any actions, restrictions, limitations, probations or disciplinary actions ever been imposed on you while participating in any type of training program? (If "Yes," attach explanation on separate sheet.) ____Yes ✓No

20. If you graduated from a medical school located outside the United States of America or Canada, list your ECFMG#: _____

21. For each of the following licensing examinations, list the location, parts and dates taken, and scores obtained. (Also include any failed examinations). FOR EACH EXAM TAKEN, HAVE CERTIFICATE OF SCORES SUBMITTED FROM THE TESTING ENTITY DIRECTLY TO THE BOARD OFFICE.

a. NATIONAL BOARDS: (ALSO INCLUDE ALL INFORMATION PERTAINING TO ANY AND ALL FAILED EXAMINATIONS.)

Location	Part Taken	Date (Mo/Yr)	Results (Two Digit Scores)
NBME	I	6/1986	82
NBME	II	9/1987	81
NBME	III	3/1989	75

NSBME-Spillers003

b. FLEX (Federation Licensing Examination): (ALSO INCLUDE ALL INFORMATION PERTAINING TO ANY AND ALL FAILED EXAMINATIONS.)

Location	Part Taken	Date (Mo/Yr)	Results (Two Digit Scores)

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NEVADA STATE BOARD OF MEDICAL EXAMINERS

c. USMLE (United States Medical Licensing Examination): (ALSO INCLUDE ALL INFORMATION PERTAINING TO ANY AND ALL FAILED EXAMINATIONS.)

Location	Part Taken	Date (Mo/Yr)	Results (Two Digit Scores)

d. LMCC (Licentiate of the Medical Council of Canada): (ALSO INCLUDE ALL INFORMATION PERTAINING TO ANY AND ALL FAILED EXAMINATIONS.)

Location	Part Taken	Date (Mo/Yr)	Results (Scores)

e. State Written Examination:

Location	Part Taken	Date (Mo/Yr)	Results (Scores)

f. SPEX (Special Purpose Examination):

Location	Date (Mo/Yr)	Results (Scores)

22. State your scope of practice/specialty(ies): Neurology, Clinical Neurophysiology

23. List any and all certifications and re-certifications by a board or sub-board recognized by the AMERICAN BOARD OF MEDICAL SPECIALTIES.

Specialty Board	Certification #	Dates of Certification / Recertification (Mo/Yr)

NSBME-Spillers004

24. Account for, in chronological order, all activities since graduation from medical school. ALL PERIODS OF TIME MUST BE ACCOUNTED FOR (Curriculum Vitae is unacceptable)

Activities	Location (City/State/Country)	From (Mo./Yr.) To (Mo./Yr.)
Marshfield Clinic Associate Neurologist	Marshfield WI, USA	7/94 to 7/95
Methodist Hospital Neurology Practice	Peoria, IL, USA	8/95 to 12/02
Neurological Associates Neurology Practice	Peoria, IL, USA	1/03 to 6/03
Colorado Center for Neuroscience Solo Practice	Co Springs, CO USA	7/03 to pres
Harbor-UCLA Medical Center-Internship	Torrance, CA, USA	6/88 - 6/89
Harbor-UCLA Medical Center-Residency	Torrance, CA USA	7/89 - 6/92
UCLA School of Medicine - Fellowship	Los Angeles, CA, USA	7/92 - 7/94

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NEVADA STATE BOARD OF MEDICAL EXAMINERS

(All information must begin on the application. If more space is needed, please attach separate sheet.)

25. List below the requested information for all hospitals or surgery centers in which you ARE, OR HAVE EVER BEEN a staff member at any level during the last ten years. If none, please indicate. Do not list internship, residency or fellowship affiliation.

Hospital	Complete Mailing Address	Dates of Appointment From (Mo./Yr.) To (Mo./Yr.)
Penrose Hospital	2222 N Nevada Ave. CO Springs, CO 80907	07/03 to pres
New Hanover Regional	2131 South 17th St. Wilmington, NC 28402	1/07 to pres
Longmont United Hospital	1950 Mountain View Longmont, CO 80502	3/07 to 3/09
Boulder Comm. Hospital	PO Box 909 N Broadway & Balsam Boulder, CO 80301	12/06 to 12

(All information must begin on the application. If more space is needed, please attach separate sheet.)

Current

26. List any and all licenses (including training licenses and permits) YOU HOLD OR HAVE HELD to practice medicine in any state, territory or country.

State/Territory Country	License #	Exact Date of Issuance	Dates of Practice From (Mo./Yr.) To (Mo./Yr.)
California	G067359	9-13-06	
Colorado	41492	4-21-03	
Illinois	036091428	7-26-95	
Nebraska	24344	9-6-07	

(All information must begin on the application. If more space is needed, please attach separate sheet.)

27. Have you EVER been denied a license, permission to practice medicine or any other healing art, or permission to take an examination to practice medicine or any other healing art in any state, country or U.S. territory? (If "Yes," attach explanation on separate sheet.) ____Yes ✓No

28. Have you EVER had a medical license or license to practice any other healing art revoked, suspended, limited, or restricted in any state, country or U.S. territory? (If "Yes," attach explanation on separate sheet.) ____Yes ✓No

29. Have you EVER voluntarily surrendered a license to practice medicine or any other healing art in any state, country or U.S. territory? (If "Yes," attach explanation on separate sheet.) ____Yes ✓No

30. Have you EVER been denied membership or expelled from a medical society or other professional medical organization? (If "Yes," attach explanation on separate sheet.) ____Yes ✓No

31. Have you EVER been: a) notified that you were under investigation for; b) investigated for; c) charged with; or d) convicted of any violation of a statute, rule or regulation governing your practice as a physician by any medical licensing board, hospital, medical society, governmental entity or agency other than the Nevada State Board of Medical Examiners? (If "Yes," attach explanation on separate sheet.) ____Yes ✓No

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