Case No. _____

In the Supreme Court of Nevada

JOCELYN SEGOVIA, PA-C,

Petitioner,

vs.

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

Respondents,

and

MADDEN DUDA, a minor, by and through JOVAN DUDA, his natural father and guardian; 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,

Real Parties in Interest.

PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS

With Supporting Points and Authorities

District Court Case Nos. A-13-677611-C and A-13-677720-C

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PETITION FOR WRIT OF PROHIBITION
OR, IN THE ALTERNATIVE, MANDAMUS

1. This petition arises from the district court case *Duda v. Elkanich, et al.*, Clark County District Court No. A-13-677611-C, before the respondent judge, The Honorable Michelle Leavitt.

2. The plaintiff in the underlying case alleges various negligence-based causes of action against the defendant medical professionals arising from the death of a patient.

3. One of the defendants is petitioner Jocelyn Segovia, who works as a physician assistant.

4. NRS 41A limits the potential liability of a "provider of health care" sued for professional negligence in two important ways: it caps the amount of non-economic damages, NRS 41A.035, and it abrogates joint and several liability, NRS 41A.045.

5. NRS 41A.017 identifies various medical professionals who are deemed a "provider of healthcare." The version of the statute in effect when this lawsuit was filed did not specifically list "physician assistant." The current version does.

6. The legislative history accompanying passage of the amendment to NRS 41A.017 adding "physician assistant" demonstrates

the legislature's intention to clarify the existing statute as opposed to expanding the category of professionals deemed a "provider of healthcare."

7. Nevada law requires statutory amendments that clarify existing statutes to be applied retroactively. That is, when an amendment is enacted to clarify the meaning of the existing statute, courts should interpret the original version of the statute consistent with the amended version. *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 157, 179 P.3d 542, 554–55 (2008); *In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000); *Sheriff, Washoe Cty. v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975).

8. Under this fundamental canon of statutory interpretation, a "physician assistant" is a "provider of healthcare" regardless of whether the original or current version of NRS 41A.017 applies.

9. The district court failed to correctly apply the law and granted plaintiff's motion for partial summary judgment that Ms. Segovia is not a "provider of healthcare."

10. If allowed to stand, the district court's erroneous ruling will deprive Ms. Segovia of the protections of NRS 41A.035 and .045 and expose her to substantially greater liability and damages than permitted by those statutes.

11. In order to ensure that Ms. Segovia receives the statutory protections to which she is entitled, and in order to ensure that she receives those protections before incurring the expense of a lengthy, complex medical malpractice – wrongful death trial, Ms. Segovia asks this Court to:

a. Exercise its discretionary mandamus and/or prohibition jurisdiction to intervene and vacate the district court's December 22, 2016 Order granting plaintiff's motion for partial summary judgment; and

b. Direct the district court to find that Ms. Segovia is a provider of healthcare entitled to the benefits of NRS 41A, including limiting the amount of damages that can be awarded against her under NRS 41A.035 and limiting the application of joint and several liability under NRS 41A.045.

Dated this 21st day of February, 2017.

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Under penalties of perjury, the undersigned declares that he is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true. This verification is made pursuant to NRS 15.010.

Dated this 21st day of February, 2017.

DANIEL F. POLSENBERG

Subscribed and sworn to before me
this 21st day of February, 2017.

NOTARY PUBLIC

JESSICA M. HELM
Notary Public State of Nevada
No: 08-8522-1
My appt. exp. November 5, 2020

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner JOCELYN SEGOVIA, PA-C is an individual.

Petitioner has been represented in this litigation by John H. Cotton and Katherine L. Turpen of JOHN H. COTTON & ASSOCIATES and Daniel F. Polsenberg and Joel D. Henriod of LEWIS ROCA ROTHGERBER CHRISTIE LLP.

Dated this 21st day of February, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it raises a question of statewide, public importance. NRAP 21(a)(3)(A); NRAP 17(a)(11). The Court's resolution of the issue presented here will impact the amount of damages awardable in every lawsuit against a physician assistant that was filed before June 9, 2015 (which is the effective date of a relevant amendment to NRS 41A.017).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

REGULATIONS

POINTS AND AUTHORITIES IN SUPPORT OF PETITION

ISSUE PRESENTED

Did the district court err as a matter of law when it ruled that a "physician assistant" is not a "provider of health care" under the original version of NRS 41A.017?

STATEMENT OF FACTS

The relevant facts are simple and uncontested.

A. Nature of the Case

Petitioner Jocelyn Segovia is a physician assistant licensed to provide medical services in the State of Nevada pursuant to NRS Chapters 630 and 633. She practices under the auspices of her supervising physician, Dr. George Michael Elkanich. (3 App. 536.)

The underlying lawsuit arises out of the death of a patient who was treated by Ms. Segovia, Dr. Elkanich and other defendant medical providers.

B. The Statutory Scheme

In 2004, Nevada voters approved the Keep Our Doctors in Nevada ("KODIN") initiative. The initiative, known as "Question No. 3," included adoption of statues limiting liability of "providers of health care" in two substantial ways:

- NRS 41A.035 creates a $350,000 ceiling on the amount of non-economic damages that can be awarded against a "provider of health care," regardless of the number of plaintiffs, defendants or causes of action.
- NRS 41A.045 abrogates joint and several liability against a "provider of health care" in an action for injury or death.

C. "Provider of Health Care"

Plaintiff filed this lawsuit in March 2013. At that time, NRS 41A.017 defined "provider of health care" as follows:

> "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 dietician or a licensed hospital and its employees.

On March 16, 2015, Senate Bill no. 292 was introduced in the Nevada Senate. (2 App 447.) The original version of the bill sought to amend NRS 41A.017 to expand the occupations that would be considered a "provider of health care" by adding the following: physician assistant, practitioner of respiratory care, occupational therapist,

licensed marriage and family therapist, licensed clinical professional counselor, music therapist, athletic trainer, and perfusionist. (*Id.*)

As the bill worked its way through committee, however, all of those occupations were stripped from the bill except for "physician assistant." In testimony before the Senate Committee on Judiciary, KODIN's counsel John Cotton explained that the more limited amendment was designed to clarify the meaning of the original statute and reiterate the legislature's original intent:

> Senate Bill 292 clarifies technical errors that have periodically arisen from the courts' misinterpretation of Question No. 3. I was asked by KODIN to devise changes . . . [to] ***reiterate the Legislature's intent*** from the 18th Special Session in 2002 and the Statewide Ballot in 2004.
>
> * * *
>
> Section 2 of S.B. 292 defines the term "provider of health care." As Senator Robinson testified the proposed amendment, Exhibit E, removes many of the names that were added to the bill.
>
> The proposed amendment was necessary because NRS 630A already has a number of different caregivers included. ***It was not our intent to add additional providers of health care into the bill***. ***Our goal with SB 292 was to reiterate and clarify KODIN's intent with Question No. 3 from 2004***.

(3 App. 559 (emphasis added).)

The legislature ultimately adopted the amendment and inserted "physician assistant" —and none of the other occupations listed in the original SB 292 – into NRS 41A.017.[1]

PROCEDURAL HISTORY

Plaintiff below moved for partial summary judgment seeking a determination that Ms. Segovia is not a "provider of health care" and thus not entitled to the abrogation of joint and several liability and the damages cap set forth in NRS 41A. (2 App. 431–45.) The parties agreed that plaintiff's motion would succeed or fail based on a single legal issue – was the amendment adding the words "physician

---

[1] The amended NRS 41A.017 also added language clarifying that its protections apply not just to individual medical providers, but also to the entities employing them. (3 App. 559.) The statute thus now provides:

> "Provider of health care" means a physician licensed ~~under~~ ***pursuant to*** chapter 630, or 633 of NRS, ***physician assistant***, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietician or a licensed hospital***, clinic, surgery center, physicians' professional corporation or group practice that employs any such person*** and its employees.

assistant" to NRS 41A.017 a clarifying amendment to be applied retroactively or a substantive change to the law that could only be applied prospectively?

After full briefing, (2 App. 486–95, 3 App. 588–96), and oral argument, (3 App. 614–33), the district court granted plaintiff's motion, (3 App. 637–52). The parties then stipulated to vacate the trial date pending resolution of this writ petition. The court has scheduled a status check for January 22, 2018.

WHY THE WRIT SHOULD ISSUE

This petition meets the criteria this Court has established for entertaining a writ petition.

1. The petition raises important issues of law requiring clarification

This Court will exercise its discretion to grant writ relief where "an important issue of law requires clarification." *Redeker v. District Court*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006). The issue presented here —whether a physician assistant is entitled to the protections of the original version of NRS 41A—presents an important legal issue of first impression. The petition also affords the Court an opportunity to clarify the law regarding retroactive application of statutory amendments, a

recurring legal issue that frequently arises when district courts construe amended statutes. *See Mountainview Hosp., Inc. v. Eighth Judicial District*, 128 Nev. Adv. Op. 17, 273 P.3d 861, 865 (2012) (considering writ petition presenting a "potentially significant, recurring question of law").

2. Issues relating to professional negligence claims against medical providers raise important public policy concerns

This Court recognizes that issues arising under NRS 41A (actions for professional negligence) raise important public policy concerns and frequently accepts writ petitions seeking interpretations of various aspects of the statute. *See, e.g.*, *Tam v. Eighth Judicial District,* 131 Nev. Adv. Op. 80, 358 P.3d 234, 237 (2015) (considering issues arising under NRS 41A.035 because of the "important legal issue in need of clarification involving public policy"); *Mountainview Hosp., Inc. v. Eighth Judicial District*, 128 Nev. Adv. Op. 17, 273 P.3d 861, 864–65 (2012) (considering issues arising under NRS 41A.071 because legal issues were "unsettled and potentially significant, recurring question of law"); *Washoe Med. Ctr. v. Second Judicial District*, 122 Nev. 1298, 1302, 148 P.3d 790, 792 (2006) (considering issues arising under NRS 41A.071 because issue was one of "first impression").

3. The issues are not fact-based

Consideration of a writ petition is appropriate where, as here, the petition raises a purely legal issue that does not depend on any disputed facts. *Badger v. Eighth Judicial District*, 132 Nev. Adv. Op. 39, 373 P.3d 89, 93 (2016) ("We exercise our discretion to consider this writ petition because the petition involves a significant and potentially recurring question of law, the petition is not fact-based, and the district court failed to grant summary judgment where a Nevada statute required it.")

4. Writ relief will promote judicial economy

"[A]lthough an appeal from a final judgment appears to be an adequate and speedy remedy for the individual parties, resolving this writ petition could affect the course of the litigation and thus promote sound judicial economy and administration." *Tam*, 131 Nev. Adv. Op. 39, 358 P.3d at 237; *see also Salaiscooper v. Eighth Judicial Dist. Court,* 117 Nev. 892, 901–02, 34 P.3d 509, 516–18 (2001) (hearing writ petition to further "sound judicial economy and administration").

Resolution of the issue raised in this petition will promote judicial economy and profoundly affect the course of the litigation. Most of the defendants in the underlying case have settled. The parties knew with

certainty whether the protections provided by NRS 41A applied to those defendants before they entered into settlement negotiations. Unless this Court resolves this writ petition by determining whether Ms. Segovia is entitled to the statutory protections afforded to "providers of health care," the parties cannot make informed decisions regarding settlement. A determination by this Court now will allow the parties to assess their positions in light of the law and potentially avoid the need for a protracted and expensive trial.

5. Resolving the petition will not cause delay

The Court's hearing of this matter will not delay the district court proceedings. A trial date has not been scheduled. The parties and the district court recognized the importance of the Court providing an answer to the question raised by the petition and agreed that the trial would not be scheduled until this petition is resolved.

STANDARD OF REVIEW

Statutory interpretation is a question of law that this Court reviews de novo, including in the context of a writ petition. *Walters v. Eighth Judicial Dist.*, 127 Nev. 723, 727, 263 P.3d 231, 234 (2011).

ARGUMENT ON THE MERITS

I.

AMENDMENTS THAT CLARIFY EXISTING STATUTES ARE APPLIED RETROACTIVELY

While statutory amendments typically are applied only prospectively, that general rule has an important exception: retrospective application is required when the amendment merely clarifies the intent of the prior statute. *See Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 157, 179 P.3d 542, 554–55 (2008). "Where a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute." *Sheriff of Washoe Cty. v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975); *see also In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000).

An amendment signals a change in legislative intent – and thus prospective application —only "when the Legislature makes a *substantial change* in the statute's language." *Metz v. Metz*, 120 Nev. 786, 792, 101 P.3d 779, 783–84 (2004) (emphasis added). By contrast,

when an amendment merely adds language clarifying or specifying the statute's intent, courts should apply the language retrospectively when interpreting the statute's original language. *E.g., Pub. Employees*, 124 Nev. at 141, 179 P.3d at 544 (amended statute referring to individuals who "participate in" benefits program applied retrospectively even though original statute referred to individuals who "join" program); *Sheriff of Washoe County*, 91 Nev. at 734, 542 P.2d at 443 (retroactively applying statutory amendment defining capital murder as a killing resulting from a "single plan" to original statute that defined it as a killing resulting from a "common plan").

II.

THIS COURT HAS ALREADY RULED THAT THE AMENDMENTS TO NRS 41A.017 CLARIFIED BUT DID NOT CHANGE THE LAW

On September 12, 2016, this Court issued an unpublished Order in *Zhang v. Barnes*, No. 67219, 2016 WL 4926325 (Nev. Sept. 12, 2016). *Zhang* was a medical malpractice case arising under the pre-amendment version of NRS 41A. One of the issues confronting the Court was whether the cap on noneconomic damages against a "provider of healthcare" contained in NRS 41A.035 applied to a defendant professional medical corporation notwithstanding that such

entities were not listed as a "provider of healthcare" in the pre-amendment version NRS 41A.017.

The Court held that NRS 41A.035 damages cap applied and relied on the 2015 amendment to NRS 41A017 as clarifying, but not changing, the statute's meaning:

> In 2015, in fact, the Legislature amended the definition of "provider of healthcare" in NRS 41A.017 to expressly so state [that physicians' medical corporations are a provider of healthcare]. This amendment did not change but clarified the law, ...

Zhang, 2016 WL 4936325 at *5.

Zhang addressed the very amendment at issue in this petition. The Court's determination that the amendment clarified the statute, but did not change its meaning, was correct and should be applied here.

III.

THE LEGISLATURE INTENDED THE AMENDMENTS TO NRS 41A.017 TO BE A CLARIFICATION

This Court commonly looks to the legislative history surrounding an amendment to ascertain whether the legislature intended the amendment to be a change in the law or a clarification. *E.g., Tam v. Eighth Judicial District*, 131 Nev. Adv. Op. 80, 358 P.3d 234, 240 (2015) (relying on testimony before Senate Judiciary Committee that

amendment was meant to clarify original statute); *Adm'r of the Real Estate Educ., Research & Recovery Fund v. Buhecker,* 113 Nev. 1147, 1150–51, 945 P.2d 954, 956 (1997) (relying on official's description of amendment as a "clarification" of existing statute in materials provided to legislative committee to establish that "amendment was not a change in the legislature's intent, but a clarification" of the statute).

The legislative history here is dispositive.

A. Testimony Before the Legislature Shows the Amendment Was a Clarification

Divining whether the legislature intended an amendment to be a clarification of a substantive change sometimes can be an exercise in guess work. Here it's not. The legislative history is on-point and incontrovertible.

Mr. Cotton's testimony before the Senate Committee on Judiciary could not have been more clear or precise: He explained that he was asked to draft changes to the statute to "reiterate the Legislature's intent" from the original statute. (3 App. 559.) "It was not our intent to add additional providers of health care into the bill. Our goal with S.B. 292 was to reiterate and clarify KODIN's intent with Question No. 3 from 2004." (*Id.*)

That testimony is the best evidence of the legislature's intent. It added "physician assistant" to NRS 41A.017 to clarify that a "physician assistant" was intended to be treated as a "provider of healthcare" all along.

B. The Revisions to Senate Bill 292 Confirm Cotton's Testimony

The evolution of Senate Bill 292 confirms Mr. Cotton's testimony. The originally-proposed version of the bill would have greatly expanded the professions deemed "providers of health care" by adding not just "physician assistant," but also "practitioner of respiratory care," "occupational therapist," "licensed marriage and family therapist," "licensed clinical professional counselor," "music therapist," "athletic trainer," and "perfusionist." (2 App. 448.) Had all of those occupations been added, the amendment undoubtedly would have been a "substantial change" in law that could only be applied prospectively.

But, as Mr. Cotton explained to the legislature, proponents of the amendment did not want to add additional healthcare providers into the bill. (3 App. 559.) The legislature therefore stripped all of the additional professions out of Senate Bill 292, leaving "physician assistant" as the only profession in the amendment that had not been

specifically identified by name in the original version. That narrowing confirms the legislature's intention not to make wholesale substantive changes to the statute, but instead to clarify the statute's original intent.

C. This Court Has Already Found Cotton's Testimony Persuasive

During the district court proceedings, plaintiff sought to discredit Mr. Cotton's testimony before the legislature because he was, at the time of his testimony, representing Ms. Segovia in this lawsuit. The implicit suggestion that Mr. Cotton would provide false testimony on behalf of his client KODIN is both offensive and unsupported by anything in the record. More fundamentally, plaintiff's effort to disparage Mr. Cotton ignores that this Court has already relied on Mr. Cotton's legislative testimony regarding the 2015 amendments to NRS 41A when construing a different aspect of those amendments. *See Tam v. Eighth Judicial District*, 131 Nev. Adv. Op. 80, 358 P.3d 234, 240 (2015) (citing Cotton testimony as evidencing legislative intent in amending NRS 41A.035).

The testimony from Mr. Cotton that this Court relied on in *Tam* is remarkably similar to the testimony at issue here. In *Tam*, the Court

cited page 14 of Mr. Cotton's testimony to support the statement that the legislature's amendment to NRS 41A.035 "was to clarify that the cap for noneconomic damages is intended to apply per action." *Id.* Mr. Cotton's testimony at issue here came exactly one page later, on page 15, where he said the intent in listing "physician assistant" in NRS 41A.017 was "to reiterate and clarify KODIN's intent."

There is no reason why Mr. Cotton's testimony would be persuasive when he discussed the legislature's intention to "clarify" one part of the statutory scheme but not persuasive one page later when he discussed the legislature's intention to "clarify" another part. The Court's prior reliance on Mr. Cotton's testimony was appropriate, and it should do so again here.

D. Other KODIN Testimony Does Not Conflict With Cotton's

Plaintiff argued below that KODIN representative Lesley Pittman's testimony before a legislative committee undermined Mr. Cotton's testimony. Not so.

Ms. Pittman testified:

> [The amendment] adds physician assistant, clinic, surgery center, professional corporation or physicians' group practices that employ any such person and its employees. This was really

> designed because the KODIN initiative captures only physicians and hospitals, but as our health care system has morphed and changed over the years, there are hospitals that have clinics and there are urgent care centers, so this is designed to capture those entities as well.

(3 App. 609.)

Plaintiff makes much ado of Ms. Pittman's use of the word "adds." Of course the amendment "adds" the words "physician assistant," "clinic," etc. to the statute. All amendments "add" words. But, the addition of words does not address the question whether the new words are intended to clarify or change the meaning of the statute. That question must be resolved by reviewing the specific legislative history of the amendment.

By plaintiff's logic, the fact that the amendment "added" the words "professional corporation or physicians' group practices that employ any such person and its employees" must mean those entities were not covered by the original NRS 41A.017. As described above, this Court has already ruled to the contrary. *Zhang*, 2016 WL 4926325 at 5.

Ms. Pittman obviously was not trying to speak in precise terms about the statute. That's evident from her comment that the original KODIN initiative "captures only physicians and hospitals." If taken

literally, that would mean the original version of the statute did not include an individual employed as a dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or licensed dietician. All of those occupations were listed in the original NRS 41A.017. Ms. Pittman's general reflections are hardly evidence disputing Mr. Cotton's on-point testimony.

IV.

AGENCY LAW AND PUBLIC POLICY SUPPORT CLASSIFYING A PHYSICIAN ASSISTANT AS A PROVIDER OF HEALTH CARE

A. Interpreting the Original Statute to Apply to Physician Assistants is Consistent with General Principles of Agency Law

Nevada Administrative Code 630.375 states that "a physician assistant is considered to be and is *deemed the agent of his or her supervising physician* in the performance of all medical activities." (emphasis added). Courts have held that, under principles of agency law, an agent acting within the scope of his or her agency is entitled to assert defenses to a tort claim that the principal would be entitled to assert. *E.g.*, *Kezer v. Mark Stimson Assocs.*, 742 A.2d 898, 903 (Me.

1999) (holding that "as their agents, real estate brokers have all of the defenses as their principals that arise out of the transaction").

A good example is *Douglas v. Pontiac General Hospital*, 473 N.W.2d 68 (Mich. 1991). An injured patient filed a medical malpractice lawsuit against a physician who treated him in a hospital. The hospital itself was immune from liability under a Michigan statute providing governmental immunity for certain kinds of injury claims. The Michigan Supreme Court held that the defendant physician was also entitled to immunity under that statute even though he was not a hospital employee. The court did not write an opinion, but instead adopted the dissenting opinion in the underlying decision of the Michigan Court of Appeals. That dissenting opinion, in turn, explained that because the physician "acted as the hospital's agent . . . [he] was entitled to assert the [hospital's] immunity defense." *Douglas v. Pontiac General Hospital*, 452 N.W.2d 845, 847 (Mich. App. 1990) (Batzer, J., dissenting).

These agency principles should allow a physician assistant to invoke the defenses available to a physician under NRS 41A even in a case where the applicable version of NRS 41A.017 did not explicitly list

"physician assistant" as a provider of healthcare. By law, physician assistants can only perform medical services "under the supervision of a supervising physician" (NRS 630.015) and as "authorized to perform by his or her supervising physician." NRS 630.271. *See also* NRS 633.107 & 633.432 (same requirements for physician assistants working under supervision of a supervising osteopathic physician). They perform such services as agents of their supervising physicians and should be entitled to the same statutory defenses available to their supervising physicians.

B. Public Policy Supports the Result

Denying physician assistants the ability to invoke the same NRS 41A defenses as their supervising physicians would not only run afoul of both rules of statutory interpretation and agency principles, it also would run counter to public policy promoting the use of physician assistants to make medical treatment more readily available and less costly to consumers. *See Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 80, 358 P.3d 234, 239 (2015) (noting that NRS 41A promotes the "legitimate governmental interest of ensuring that adequate and affordable health care is available to Nevada's citizens"); Roblin et al., *Use of Midlevel Practitioners to Achieve Labor Cost Savings in the Primary Care Practice of an MCO*, 39 Health Serv. Res. 607, 607–26

(2004) (explaining that the use of physician assistants has resulted in more efficiency and improved access to care).

V.

CONCLUSION

Courts should strive to give "a fair and reasonable interpretation" of statutes. *Palmer v. State*, 106 Nev. 151, 152, 787 P.2d 803, 805 (Nev. 1990). The fair and reasonable interpretation of NRS 41A.017 is that it applies to physician assistants, both before and after the statute was amended.

Ms. Segovia respectfully requests that the Court issue a writ directing the district court to treat her as a provider of healthcare entitled to the benefits of NRS 41A, including by limiting the amount of damages that can be awarded against her under NRS 41A.035 and limiting the application of joint and several liability under NRS 41A.045.

Dated this 21st day of February, 2017.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word with 14 point, double-spaced Century Schoolbook font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3,689 words.

3. I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that

the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 21st day of February, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2017, I served a copy of the foregoing "Petition for Writ of Prohibition or, in the Alternative, Mandamus" by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

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Honorable Michelle Leavitt
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EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
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/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP