IN THE SUPREME COURT OF THE STATE OF NEVADA
DOCKET NO. 72416

JOCELYN SEGOVIA,
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.

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Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR WRIT OF PROHIBITION
OR, IN THE ALTERNATIVE, MANDAMUS
EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
DISTRICT COURT CASE NOS. A-13-677611-C and A-13-677720-C

REAL PARTIES IN INTEREST AUTUMN MATESI AND ROBERT ANSARA AS SPECIAL ADMINISTRATOR OF THE ESTATE OF MARY ANN HAASE'S JOINDER IN MADDEN DUDA'S ANSWERING BRIEF AND ANSWERING BRIEF

CLARK SEEGMILLER, ESQ. NV BAR NO. 3873
SEEGMILLER & ASSOCIATES
10655 PARK RUN DRIVE, SUITE 250
Las Vegas, NV 89144
Telephone: 702-966-7777

NRAP 26.1 DISCLOSURE

The Real Party in Interest Autumn Matesi and Robert Ansara as Special Administrator of the Estate of Mary Ann Haase, by and through their attorneys of record Seegmiller & Associates hereby submits their Disclosure Statement pursuant to NRAP 26.1

The undersigned counsel of record certifies that there are no parent corporations and/or publicly held company that owns 10% or more of the party's stock.

Autumn Matesi and Robert Ansara as Special Administrator of the Estate of Mary Ann Haase has been represented by the law firm Seegmiller & Associates in all proceedings before the District Court and in the instant matter.

DATED this 12th day of May, 2017.

SEEGMILLER & ASSOCIATES

/s/ Clark Seegmiller
Clark Seegmiller, Esq.
Nevada Bar No. 3873
10655 Park Run Drive, Suite 250
Las Vegas, NV 89144
(702) 966-7777
Attorneys for Real Parties in Interest
Autumn Matesi and Robert Ansara as Special Administrator of the Estate of Mary Ann Haase

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I. INTRODUCTION

Real parties in interest Autumn Matesi and Robert Ansara as Special Administrator of the Estate of Mary Ann Haase adopt by reference in its entirety Real Party In Interest Madden Duda's Answering Brief pursuant to NRAP 28(i) and only adds the following legal argument in support of the issue of statutory interpretation already addressed in the Duda Answering Brief.

II. LEGAL ARGUMENT

Statutory interpretation looks first to the plain language of the statute

This Court has a long history of following an orderly, accepted practice when tasked with reviewing the meaning and application of a statute. The first step in statutory interpretation is to look to the language of the statute itself for any ambiguous language that could affect the Court's decision. The Court has repeated this tenet no matter the subject matter of the statute. Then, if the language is deemed unambiguous, the inquiry is complete and does not consider other sources to explain the already clear meaning of the statute.

> When interpreting a statute, we **first** determine whether its language is ambiguous. If the language is clear and unambiguous, we do not look beyond its plain meaning,

> and we give effect to its apparent intent from the words used, unless that meaning was clearly not intended.

Stockmeier v. Psychological Review Panel, 122 Nev. 534, 135 P.3d 807, 810 (2006) *(Emphasis added)*

The Petitioner has not identified which language it alleges is ambiguous in the definition of "provider of health care" in NRS 41A.017 when this lawsuit was filed in 2013:

> "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.

The statute clearly and unequivocally identifies those entities which would enjoy limited liability benefits of NRS 41A.035 and NRS 41A.045. The legislature could have included physician's assistants specifically but did not.

> This court has established that when it is presented with an issue of statutory interpretation, it should give effect to the statute's plain meaning (citing *Public Employees' Benefits Prog. v. LVMPD,* 179 P.3d 542, 548 (Nev. 2008)) Thus, when the language of a statute is plain and unambiguous, such that it is capable of only one meaning, this court **should not** construe that statute otherwise.

MGM Mirage v. Nevada Ins. Guar. Ass'n, 209 P.3d 766, 769 (Nev. 2009) *(Emphasis added)*

The definition of "provider of health care" does not leave any doubt as to whom the statute applies; they are identified with specificity. The legislature could have included any number of other licensed entities, including physician's assistants, but chose not to do so at that time. The argument now that the "intent" was to cover a physician's assistant flies in the face of accepting an unambiguous statute on its face.

> We must attribute the plain meaning to a statute that is not ambiguous. An ambiguity arises where the statutory language lends itself to two or more reasonable interpretations.

Schofield v. State, 132 Nev.Adv.Op. 26, 372 P.3d 488, 490 (2016)

There was not one word in NRS 41A.017 in 2013 that raises the issue of multiple interpretations. None of the identified specialties can reasonably be interpreted to also mean a physician's assistant. *Schofield* then instructs that the court takes the next step and does look further than the statute itself if the statute is determined "ambiguous" .

> "If the statute is ambiguous, then this court will look beyond the statutory language itself to determine the legislative intent of the statute." (citing, *Haney v. State,* 124 Nev. 408, 412, 185 P.3d 350, 353 (2008)

Schofield at 491.

Once the court reviews the statute and determines that the language is unambiguous, as the court reaffirmed in *Valdez v. Aguilar,* 132 Nev. Adv.Op. 37, 373, P.3d 84, 85 (2016) citing *MGM,* "we 'give effect to the statute's plain meaning' and when its language 'is plain and unambiguous, such that it is capable of only one meaning, [we do] not construe that statute otherwise."

Without any argument that the statute is ambiguous on its face, Petitioner has chosen to begin by reviewing legislative history and to argue that the legislative "intent" was to clarify an existing statute. The court does not jump first to legislative history and "intent" and does not reach out for other sources outside the statute itself if the language is clearly unambiguous.

> It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the legislature, and **the best evidence of the legislature's intent is the text of the statute itself.**

Matter of State of New York v. Ted B., 132 A.D. 3d 28, 31 (N.Y.App.Div. 2d Dep't 2015) (internal citations omitted and *emphasis added)*

After addressing and determining the statutory interpretation, the court then looks to the application of the statute to the facts of the case before the court. In this case, Petitioner has argued that the amendment adding "physician's assistant" as a defined "provider of health care" in NRS 41A.017 is retrospective. "When

the Legislature intends retroactive application, it is capable of stating so clearly." *In re Estate of Thomas*, 116 Nev. 492, 998 P.2d 560, 562 (2000).

The Duda Answering Brief has explored this issue thoroughly and thus is adopted by reference in this Answering Brief.

III. CONCLUSION

These Real Parties In Interest have joined in Duda's Answering Brief and adopted by reference that Brief in its entirety. The purpose of this additional briefing was to support the statutory interpretation argument that NRS 41A.017 is not ambiguous on its face and does not require further inquiry beyond the clear language of the statute prior to the amendment post-dating this claim.

The Court should deny this Writ.

Dated 12th day of May, 2017.

Respectfully Submitted,

SEEGMILLER & ASSOCIATES

/s/ Clark Seegmiller
Clark Seegmiller, Esq.
Nevada Bar No. 3873
10655 Park Run Drive, Suite 250
Las Vegas, NV 89144
Attorneys for Real Parties in Interest Autumn Matesi and Robert Ansara as Special Administrator of the Estate of Mary Ann Haase

IV. CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief 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:

[x] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman Font 14; or

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

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)©), it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains [ ] words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____words or_____lines of text; or

[x] Does not exceed__5___pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for

improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, 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 brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 12TH day of May, 2017.

SEEGMILLER & ASSOCIATES

/s/ Clark Seegmiller
Clark Seegmiller, Esq.
Nevada Bar No. 3873
10655 Park Run Drive, Suite 250
Las Vegas, NV 89144
Attorneys for Real Parties in Interest Autumn Matesi and Robert Ansara as Special Administrator of the Estate of Mary Ann Haase

V. CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2017 I electronically filed and served the foregoing Real Party in Interest Autumn Matesi and Robert Ansara as Special Administrator to the Estate of Mary Ann Haase's Joinder in Madden Duda's Answering Brief and Answering Brief using The Supreme Court's Web Based Electronic Filing System (EFlex) in accordance with the Master Service List as Follows:

Joel Henriod, Esq. / JHenriod@LRRC.com

John Cotton, Esq. / JHCotton@JHCottonLaw.com

Daniel Polsenberg, Esq. / DPolsenberg@LRRC.com

Robert E. Murdock, Esq. /rem@keachmurdock.com

Eckley M. Keach, Esq./ emkeach@yahoo.com

By US Mail to:
Honorable Michelle Leavitt
Department 12
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, Nevada 89155

Katherine Turpen, Esq.
JOHN H. COTTON & ASSOCIATES
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

/s/Melissa Suitor
Employee of Seegmiller & Associates