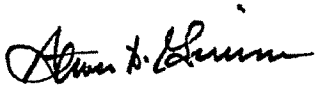


# EXHIBIT 6

1 OMSJ  
2 Zoe Terry, Esq.  
3 Nevada Bar No. 10900  
4 TERRY LAW GROUP, PC  
5 410 S. Rampart Blvd. #390  
6 Las Vegas, Nevada 89145  
7 (702) 726-6797  
8 Attorney for Plaintiff

  
CLERK OF THE COURT

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SUSAN DOLORFINO,  
Plaintiff,

vs.

CASE NO. : A-16-735063-C  
DEPT. NO. : X

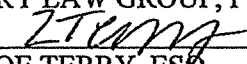
UNIVERSITY MEDICAL CENTER; ROBERT  
ODELL, M.D., PHD MEDICAL  
ENTERPRISES; DOES 1 through 100,  
inclusive; and ROE CORPORATIONS 1  
through 100, inclusive  
Defendants.

**OPPOSITION TO DEFENDANT, ROBERT HARPER ODELL, JR., M.D.'S  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Plaintiff, SUSAN DOLORFINO, by and through her attorney of record, Zoe  
Terry, Esq. of the law firm of Terry Law Group, PC and moves this Court to deny Defendant,  
ROBERT HARPER ODELL, JR., M.D.'s Motion for Summary Judgment.

This Opposition is made and based upon all the papers and pleadings of file herein, the attached  
Points and Authorities and such oral argument as the Court may entertain at the hearing of this Motion.

DATED this 15<sup>th</sup> day of August, 2016.

TERRY LAW GROUP, PC  
BY:   
ZOE TERRY, ESQ.  
Nevada Bar #10900  
410 S Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**POINTS AND AUTHORITIES**

**I.**

**FACTS**

This case arises out of an incident on April 13, 2015. Plaintiff, Susan Dolorfino, (hereinafter "SUSAN") sought treatment at University Medical Center, (hereinafter "UMC") for heavy vaginal bleeding. An ultrasound showed a four (4) inch mass in her cervix which would go on to require a total abdominal hysterectomy. Surgery was scheduled for April 14, 2015 at approximately 5:00 p.m. There was a power outage and UMC experienced a total black out during the surgery and during that time the anesthesiologist, ROBERT HARPER ODELL, JR., M.D.'s (hereinafter "DR. ODELL"), dropped a tool on Ms. Dolorfino's face, loosening her tooth.

DR. ODELL's, Motion for Summary Judgment is based on the fact SUSAN did not attach an expert affidavit to her Complaint pursuant to NRS 41A.071. However, this was not necessary as her case falls within an exception contained in NRS 41A.100.

**II.**

**ARGUMENT**

On a Motion for Summary Judgment the burden is on the moving party to show there is no triable issue of material fact. In determining whether summary judgment is appropriate, the Court will view the pleadings and evidence in a light most favorable to the non-moving party.

NRS 41A.100(1)(d) states:

"Liability for personal injury or death is not imposed upon any provider of health care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the provider of health care caused the personal injury or death occurred in any one or more of the following circumstances:

.....An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto;"

1 The Legislature has, in effect, already determined that certain situations ordinarily do not occur  
2 in the absence of negligence. Thus, all a plaintiff need do to warrant an instruction under the statutory  
3 medical malpractice res ipsa loquitur rule (or rebuttable presumption as it is now) is present some  
4 evidence of the existence of one or more factual predicates enumerated in the above section of NRS  
5 41A.100. If the trier of fact then finds that one or more of the factual predicates exist, then the  
6 presumption must be applied. Johnson v. Egtegar, 112 Nev. 428, 915 P.2d 271, 112 Nev. Adv. Rep.  
7 60, 1996 Nev. LEXIS 66 (Nev. 1996).

8  
9 In Banks v. Sunrise Hosp., 120 Nev. 822, 102 P.3d 52, 2004 Nev. LEXIS 121, 120 Nev. Adv.  
10 Rep. 89 (Nev. 2004), James Banks, Jr. (James), suffered cardia arrest while undergoing rotator cuff  
11 surgery at Sunrise Hospital and was left in a permanent vegetative state. James and his guardian ad  
12 litem, sued Sunrise Hospital, the surgeon and the anesthesiologist. The surgeon and anesthesiologist  
13 settled with James shortly before trial. A jury found Sunrise liable for James's injury and awarded  
14 substantial damages.

15 The Court in Banks confirmed that NRS 41A.100 has replaced the doctrine of res ipsa  
16 loquitur in medical malpractice cases and that a rebuttable presumption of medical malpractice  
17 applies when the plaintiff has provided some evidence of one of the factual predicates  
18 enumerated in Nev. Rev. Stat. § 41A.100(1).

19  
20 Nev. Rev. Stat. § 41A.100(1)(d) provides that a rebuttable presumption of medical  
21 malpractice arises when the patient suffers an injury during the course of treatment to a part of  
22 the body not directly involved in the treatment or proximate thereto. The Court held that in  
23 Banks, Plaintiff had underwent surgery for treatment to his shoulder, but suffered an injury to  
24 his brain, causing his vegetative state. They found that the brain is not directly or proximately  
25 related to the rotator cuff surgery. This was so even though the likely cause of his injuries were  
26 failures on the part of the anesthesiologist and/or the anesthesiology machine. Therefore, the  
27 district court did not abuse its discretion when it submitted a res ipsa loquitur instruction to the  
28

1 jury. No doubt a heart attack and/or brain damage were listed as known risks of anesthesia on  
2 the informed consents James signed prior to surgery but the Court in Banks still held that the  
3 brain was not directly or proximately related to the rotator cuff surgery.

4 SUSAN underwent an emergency hysterectomy but suffered injury to her teeth. Just  
5 like in Banks, the logical conclusion is that her teeth are not directly or proximately related to  
6 the hysterectomy surgery even if the injury occurred during the anesthesiology part of the  
7 surgery.

8  
9 It is SUSAN's understanding that DR. ODELL dropped a blade on SUSAN's teeth  
10 during an electrical black out. Even if DR. ODELL was performing an endotracheal intubation  
11 and not a tracheotomy, a tool does not drop onto a patient's tooth knocking it loose absence  
12 negligence. If DR. ODELL is now swearing under oath that SUSAN's tooth became loose as  
13 he passed the tube down her throat past her teeth this is not what he told SUSAN after the  
14 procedure or what he told her counsel in a later conversation.

15 There was a storm on April 14, 2015 and records from Nevada Power confirm a power  
16 outage of 22 seconds at 18:53 p.m. on April 14, 2015, (see attached as Exhibit "1"). Records  
17 from UMC also confirm there was a power outage at the time of intubation "during which there  
18 was note of injury to the patient's right superior central incisor," (see attached as Exhibit "2").  
19 Dr. ODELL's own anesthesia record notes "power outage," (see attached as Exhibit "3") and  
20 there is a note that he discussed the "circumstances of power outage" with SUSAN and her  
21 "husband" on April 16, 2015, (see attached as Exhibit "4"). Yet there is absolutely no mention  
22 of the power outage in his Affidavit in Support of his Motion for Summary Judgment at all.

23  
24 Further, SUSAN denies that DR. ODELL spoke to her at all prior to the procedure, let  
25 alone to warn her that injury to her teeth was one of the risks of general anesthesia, (see  
26 attached Declaration as Exhibit "5"). The informed consent for anesthesia signed by SUSAN  
27 does indeed reference "swelling around the mouth and injury to teeth/dental appliances" as a  
28

1. potential problem she could experience as a result of the anesthetic, but this implies possible  
2 problems following anesthesia. At worst, a patient may expect injury to teeth if an incident  
3 occurred as DR. ODELL described in his affidavit but this is not what SUSAN was told  
4 happened and at no point did SUSAN consent to having instruments dropped on her mouth.  
5 SUSAN's partner, Ramon Santa Ana was present when DR. ODELL informed SUSAN that he  
6 had dropped an instrument on to her mouth, (see attached Declaration as Exhibit "6").  
7

8 Summary judgment is appropriate only when the moving party is entitled to judgment as a  
9 matter of law and no genuine issue remains for trial. Shepherd v. Harrison, 100 Nev. 178, 678 P.2d  
10 670 (1984). The rule authorizes summary judgment only where the moving party is entitled to  
11 judgment as a matter of law where it is quite clear what the truth is and that no genuine issue remains  
12 for trial. Short v. Hotel Riviera, Inc., 79 Nev. 94, 378 P.2d 979 (1963). When the rule speaks of a  
13 "genuine" issue of material of fact, it does so with the adversarial system in mind. The word  
14 "genuine" has moral overtones, and does not mean a fabricated issue. Aldabe v. Adams, 81 Nev. 280,  
15 402 P.2d 34 (1965). A genuine issue of material fact is one where the evidence is such that a  
16 reasonable jury could return a verdict for the non-moving party. Posadas v. City of Reno, 101 Nev.  
17 448, 851 P.2d 438 (1993). Where an issue of material fact exists, summary judgment should not be  
18 entered. Mitchell v. Bailey and Selover, Inc., 96 Nev. 147, 605 P.2d 1138 (1980). A court should  
19 exercise great care in granting summary judgment; a litigant has a right to trial where there is the  
20 slightest doubt as to the facts. Nehls v. Leonard, 97 Nev. 325, 630 P.2d 258 (1981).  
21

22 There remain issues of genuine fact regarding how SUSAN's tooth became loose and in any  
23 event her tooth was not directly involved in the treatment (hysterectomy). Anesthesiology was part of  
24 the surgery, just like in Banks, but dropping an instrument on a patients mouth is not a known risk of  
25 anesthesiology, let alone a hysterectomy.  
26

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

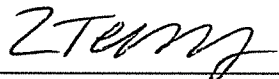
III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that Defendant DR. ODELL's Motion for Summary Judgment be denied.

DATED this 15<sup>th</sup> day of August, 2016.

TERRY LAW GROUP

  
ZOE TERRY, ESQ.  
Nevada Bar # 6519  
410 S Rampart Blvd., Suite 390  
Las Vegas, NV 89145  
Attorney for Plaintiff

AFFIDAVIT OF ZOE TERRY, ESQ.

STATE OF NEVADA       )  
                                      ) ss:  
COUNTY OF CLARK     )

COMES NOW the affiant, Zoe Terry, Esq., first being duly sworn, and deposes and testifies as follows:

- 1) I am Zoe Terry, Esq. I am over the age of 18 and competent to testify. I have personal knowledge of the following facts, except where expressly stated that my testimony is based on information and belief;
- 2) I am an attorney licensed to practice law in the state of Nevada, bar number 0010900. I represent Plaintiff, Susan Dolorfino in the above case.
- 3) I am a solo practitioner and managing partner of Terry Law Group, PC.
- 4) Pursuant to NRCp 56(f), I confirm that an Early Case Conference was held on June 10, 2016 and a Joint Case Conference Report was filed on July 15, 2016 but a second Early Case Conference needs to be held now that UMC has filed their Answer.

///

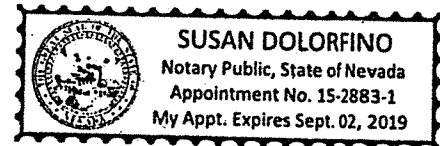
- 1 5) Discovery has not even started yet and no depositions have been taken. Depositions need to  
2 be taken of all parties.
- 3 6) Further, I spoke with Dr. Odell on April 14, 2016 and he confirmed that the lights went out  
4 during the surgery and a blade slipped out of his hands. He did confirm that it had been a  
5 difficult intubation but at no point did he inform me that SUSAN's tooth had been knocked  
6 loose by the intubation tube.

7  
8 FURTHER YOUR AFFIANT SAYETH NAUGHT

9 Zoe Terry  
Zoe Terry, Esq.

10 SUBSCRIBED AND SWORN TO BEFORE ME  
11 THIS 15<sup>th</sup> DAY OF AUGUST, 2016.

12 NOTARY PUBLIC



13 CERTIFICATE OF SERVICE

14 I hereby certify that on the 15<sup>th</sup> day of August, 2016, I served a true and correct copy of the  
15 foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT ROBERT HARPER ODELL, JR.,**  
16 **M.D.'S MOTION FOR SUMMARY JUDGMENT**, addressed to the following counsel of record at  
17 the following address(es), as follows:

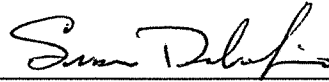
18        **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with  
19 postage thereon fully prepaid, addressed as indicated on service list below in the  
20 United States mail at Las Vegas, Nevada.

21        **VIA FACSIMILE:** by causing a true copy thereof to be telecopied to the number  
22 indicated on the service list below.

23 ☒ **VIA E-SERVICE:** an electronic copy of the preceding document was concurrently  
24 served upon opposing counsel via the Court's electronic service system.

25 John H. Cotton, Esq.  
26 John H. Cotton & Associates, Ltd  
27 7900 West Sahara Avenue, Ste. 200  
28 Las Vegas, NV 89117  
Attorneys for Defendant  
ROBERT HARPER ODELL, JR., M.D.

1 Jeffrey I. Pitegoff, Esq.  
2 Morris, Sullivan, Lemkul & Pitegoff  
3 3770 Howard Hughes Parkway, Suite 170  
4 Las Vegas, NV 89169  
5 Attorneys for Defendant  
6 UNIVERSITY MEDICAL CENTER  
7 OF SOUTHERN NEVADA  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

An employee of TERRY LAW GROUP, PC

# EXHIBIT 1

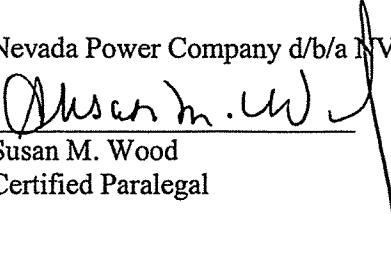
### DECLARATION OF CUSTODIAN OF RECORDS

The undersigned, declares under penalty of perjury and pursuant to N.R.S. 52.260 AND 53.045 ("Declaration") that the following is true and correct.

1. That I am an employee of Nevada Power Company d/b/a NV Energy ("NV Energy") and my duties make me a custodian of the records as to contacting the internal departments for the gathering of documents attached to this Declaration.
2. That NV Energy was served with an administrative subpoena in the matter regarding *Susan Dologino vs. University Medical Center of Southern Nevada, et al.*, District Court Case #A-16-735063-C and the attached documents, records and things (hereinafter referred to as "documents") are in response to the subpoena. If a requested document is not attached, then either (a) I was unable to locate it following a good faith effort to locate and obtain such document, or (b) the attorney or person seeking the document agreed that it need not be provided as part of this response.
3. That the documents may contain personal identifying information which is protected by law or other information which is protected by law or N.R.C.P. 26. If so, then the recipient is obligated to protect this information from unauthorized disclosure.
5. That the originals of said documents are, and as far as known to the undersigned always have been, in the possession of NV Energy and/or its authorized employees, agents, or representatives; that the same are documents which were generated, made, or otherwise received by personnel employed by NV Energy, and that said documents are documents which were generated during the course of the regularly conducted business activities of NV Energy.
6. That true and correct copies of said documents have been delivered, or otherwise caused to be delivered, to the attorney or person issuing said Subpoena.

Dated this 25 day of May, 2016

Nevada Power Company d/b/a NV Energy

  
\_\_\_\_\_  
Susan M. Wood  
Certified Paralegal

## Outage Detail

<b>Outage No</b> <span style="border: 1px solid black; padding: 2px;">646106</span> <span style="border: 1px solid black; padding: 2px; margin-left: 5px;">Query</span>	<b>Curr District</b> RANCHO <b>Curr Substation</b> ALTA <b>Curr Feeder</b> AL-1209 <b>Phases</b> ABC <b>Extent</b> DEVICE <b>Device ID</b> AL-1209 <b>Device Name</b> AL-1209	<b>Cust. Aff.</b> 0 <b>Cust. Rest.</b> 673 <b>Prior. Cust.</b> 0 <b>KVA</b> 0 <b>Unrest. Cust. Hours</b> 0				
<b>All</b> ALL <b>Region</b> NVES <b>Service Area</b> RYAN <b>District</b> RANCHO	<b>Address</b> [S2061-31][309 S VALLEY VIEW BLVD LAS VEGAS][36° 10 .2906 N / 115° 11 30.8261 W] <b>Fault Location</b> <b>Begin Device</b> <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span> <b>End Device</b> <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span> <b>Related Event</b> <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span> <b>Comments</b> <div style="border: 1px solid black; width: 150px; height: 40px; margin-top: 5px;"></div>	<input type="checkbox"/> Safety Hold <input type="checkbox"/> Major Events <input type="checkbox"/> Utility Equip. Damaged <input type="checkbox"/> Damage Not Recorded <input checked="" type="checkbox"/> Incident Complete <input type="checkbox"/> Non-Reportable <input type="checkbox"/> 3rd Party Events				
<b>Status</b> Incident Complete <b>Master Outage</b> <b>Secondary Outage</b> No <b>Momentary Outage</b> Yes <b>Planned Outage</b> No <b>Hazard Level</b> <b>Personnel Standing By</b> No <b>Critical Facility Code</b> <b>Duration</b> 0:00:22 <b>Power Off</b> 04/14/2015 18:53:13 <b>Power On</b> 04/14/2015 18:53:35 <b>Est. Time of Restoration</b> <span style="border: 1px solid black; padding: 2px;">04/14/2015 23:45</span> <b>Cur. Est. Time of Restor.</b> 04/14/2015 23:45 <b>Equipment Cause</b> <table border="0" style="display: inline-table; vertical-align: top;"> <tr> <td style="text-align: right;"><b>Type</b></td> <td><b>Category</b></td> </tr> <tr> <td style="text-align: right;">FORCED</td> <td>Storm In Area</td> </tr> </table>	<b>Type</b>	<b>Category</b>	FORCED	Storm In Area		
<b>Type</b>	<b>Category</b>					
FORCED	Storm In Area					

Apply Out. Changes
Reset
Out. Status
Cause Detail
Equip. Detail
Referral Detail
Referral List
Log

Est. Time Arrived	Enroute Time	Time Arrived	Stop Time	Rejected Time
-------------------	--------------	--------------	-----------	---------------

Update Selected Crew Activity Rows
Reset
Crew Disp.
Area Outages
Area Map

- Exclude: COMPLETE ☐ REJECTED ☐ Save Pref.

# EXHIBIT 2

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

ADMITTED: 04/13/2015

DISCHARGED: 04/18/2015

ADMISSION DIAGNOSES:

1. 54-year-old G2 P1-1-0-2
2. Cervical and vaginal bleeding
3. Cervical fibroid
4. Symptomatic anemia

POSTOPERATIVE DIAGNOSES:

1. 54-year-old G2 P1-1-0-2
2. Cervical and vaginal bleeding
3. Cervical fibroid - 13 centimeter cervical
4. Symptomatic anemia
5. Right superior central incisor laxity following intubation complication

PROCEDURE: Examination under anesthesia, hysteroscopy, curettage, total abdominal hysterectomy, bilateral salpingectomy, and cystoscopy performed on 04/14/2015. During the procedure there was note of power outage at time of intubation, during which there was note of injury to the patient's right superior central incisor with noted laxity of above tooth following the procedure. This was tooth was splinted by dental resident who was consulted in the PACU following the procedure.

HOSPITAL COURSE: 54-year-old G2 P1-0-1-1-2 female presented to UMC Hospital with complaints of heavy vaginal bleeding and symptomatic anemia. During patient's workup she was noted with a cervical fibroid for which operative evaluation was performed. The cervical fibroid was unable to be removed vaginally and the patient's case was needed to be converted to a total abdominal hysterectomy. A bilateral salpingectomy was additionally performed along with attempted prior hysteroscopy and curettage and postoperative cystoscopy. During the procedure there was note of power outage at time of intubation and there was note of trauma to the patient's right central superior incisor. Postoperatively in the PACU the dental resident service was consulted and this tooth was splinted.

Risk management was consulted and saw the patient while she was postoperative and arranged for outpatient care with dentistry and coverage.

The patient's postoperative course was additionally complicated by pneumonia. The patient was noted to be afebrile greater than 24 hours prior to discharge and she was evaluated with a CTA on April 16, 2015 without

evidence of PE. She had been noted with bilateral lower lobe

atelectasis versus infiltrate. The patient was noted with leukocytosis that

DOLORFINO, SUSAN ROSE

improved throughout the remainder of her stay. Pulmonary services were consulted and evaluated the patient and changed the antibiotic coverage from Azithromycin and Cefepime to ceftriaxone, clindamycin and Flagyl. The additionally provided recommendations for outpatient antibiotic therapy for which patient was placed on as noted below.

The patient was transfused during her stay to correct anemia and her hemoglobin was within normal limits prior to discharge. She was advanced to and tolerating a soft diet. Her pain was well controlled with oral medications. Her incision was clean, dry and intact, closed with staples. Her incision was without evidence of infection.

A urine culture was performed that noted coag positive Staph with sensitivities covered by her antibiotics. Patient cleared for and discharged home in stable condition on 04/18/2015. Patient to follow up at the Women's Clinic within 7-10 days for postoperative evaluation and staple removal, as well as review pathology.

Patient advised to follow up with dentistry as soon as possible.

Patient was provided with Percocet as needed for breakthrough pain. She was advised to maintain 6 weeks of pelvic rest, lift no heavier than 15 pounds during that time.

Patient was provided with a prescription for Avelox 400 milligrams p.o. daily for 6 additional days for continued treatment of her postoperative pneumonia. She was provided with iron supplementation, as well as Colace to maintain soft stools and ibuprofen for additional pain control.

Patient advised to return to the ER or call clinic with any additional concerns.

Discharged home in stable condition.

JS/MedQ

DD: 05/01/2015 04:22:30

DT: 05/01/2015 07:14:27

JOSEPH SHEA, MD (Resident)

LAWRENCE SHAW, MD

PATIENT: DOLORFINO, SUSAN

ACCOUNT#: 1510300271

MR#: 0002632381

ADM DATE: 04/13/2015

JOB#: 502344/653563634

PHYSICIAN: LAWRENCE SHAW, MD

DICTATED BY: JOSEPH SHEA, MD (Resident)

DISCHARGE SUMMARY

Electronically Authenticated by:

Lawrence Shaw, MD On 05/04/2015 05:10 PM PDT

DOLORFINO, SUSAN ROSE

000082

Electronically Authenticated and Edited by:  
Joseph Shea, MD On 05/11/2015 12:18 PM PDT

# EXHIBIT 3



\* 3 0 P R R C D \*

 ACCT: 1510300271 DOB: 06/15/1960  
 DOLORFINO SUSAN 54Y F  
 MR# 0002632381 ADM: 04/13/15


## SURGICAL SERVICES ANESTHESIA RECORD

MRU01251 (03/07/13)

Page 1 of 2

BP: 115/57	Resp: 20	SpO <sub>2</sub> : 98%	Pulse: 92	Temp: 99.5	Ht: 5'7"	Wt: 172 lb	Age: 54	Sex: F	Handed: R/L
Signature: <i>[Signature]</i>					Time: 1:10 Date: 4/14/15				
Beta Blocker Given: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A <input type="checkbox"/> No (list reason below)					If "No", list reason:				

220											<input checked="" type="checkbox"/> Patient identified and reviewed, Procedure Site verified <input checked="" type="checkbox"/> Patient Reassessed Prior to Induction, first VS are pre-induction <input checked="" type="checkbox"/> Anesthesia and Monitor Equipment checked before Induction <input type="checkbox"/> Risks/benefits/alternatives of anesthesia procedures discussed with patient/family.
200											
180											
160											
140											
120											
100											
80											
60											
40											
20											

TIME											TOTAL
REMARKS: All doses are (mg) * unless otherwise specified											
TEMP	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	37.5	
EKG	1	2	3	4	5	6	7	8	9	10	
SpO <sub>2</sub>	98	98	98	98	98	98	98	98	98	98	
ETCO <sub>2</sub>	32	36	36	36	36	36	36	36	36	36	
FIO <sub>2</sub>	50										
O <sub>2</sub> L/min	8										
N <sub>2</sub> /Air	1.3										
Sevo	3-1										
Des											
Propofol	150										
Versed											
Benlyan	1										
Morphine	30	10									
Morphine (10/100)											
Neuraxial Narc:											
Dose:											
Time:											
Difficulty:											
IVF											

<b>AIRWAY</b>	<b>REGIONAL</b>	<b>MONITORS</b>	<b>TOTALS</b>
Mask: <input type="checkbox"/> Circuit <input type="checkbox"/> Nasal Cannula	Technique:	<input checked="" type="checkbox"/> Gas Analyzer <input type="checkbox"/> Spirometer	Urine: 600
LMA: Size: 1.5		<input checked="" type="checkbox"/> Oximeter <input type="checkbox"/> NIBP	EBL: 400
ETT: <input type="checkbox"/> Oral <input checked="" type="checkbox"/> Nasal		<input checked="" type="checkbox"/> EKG <input type="checkbox"/> Nrv Stim	Crystallloid: 3000
Size: 2.0	Drugs:	<input checked="" type="checkbox"/> Temp <input type="checkbox"/> TEE	Colloid:
Cuff: 15	Neuraxial Narc:	<input type="checkbox"/> A Line <input type="checkbox"/> Brain Function	Blood Products:
Difficulty: 2	Dose:	<input type="checkbox"/> CVP <input type="checkbox"/> O.G or N.G	PRBC x 2
Ventilator: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Time:	<input type="checkbox"/> PA Cath <input type="checkbox"/> Eye Care	
TV/F/PIP: 500/20/26	Difficulty:	<input type="checkbox"/> Forced air warming device	IV Size: Site:
		<input type="checkbox"/> Other: Blood Wound	

Procedure: <i>hysteroscopy, D&amp;E</i>	Date: 4-14-15
Surgeons: <i>Carissa Richardson</i>	Anesthesia Start: 1:35 End: 2:36
Anesthesiologist Sign: <i>[Signature]</i>	Monitors Intended: <i>[Signature]</i>

DOLORFINO, SUSAN ROSE

# EXHIBIT 4



\* 1 P H Y P R N \*

ACCT: 1510300271 DOB: 06/15/1960  
 DOLORFINO  
 SUSAN ROSE 54Y F  
 MR# 0002632381 ADM: 04/13/15



## GENERAL PROGRESS NOTE

MRU02010 (12/11/13)

Page 1 of 1

DATE	TIME	NOTES
4/16/15	1100	Called to assist with transport to CT scan pt receiving PRBC transfusion, see blood form for V and V5 PT with Hx 92 10/15/15 ll 18 regular 95% Returned to 430 after CTA chest, without incident, ambulating to chair without difficulty. <i>C. D. H. H. H.</i>
4/16/15	1500	ANESTHESIA Saw pt to leg - 450 to 10 loosened - most likely will be lost per Daniel Case, circumstances, I never allow explained to pt & I understand and understand. Explain to pt they are key to financial assistance to replace with <i>Help</i> 0204 702 521 9542

PROMOTE PATIENT SAFETY - Do NOT use the following dangerous abbreviations:  
 AD AS AU IU U QD QS QU QD QOD MS MSO, MgSO, UG SS Trailing Zeros

DOLORFINO, SUSAN ROSE

000087

# EXHIBIT 5

1 **DECL**

2 Zoe Terry, Esq.

3 Nevada Bar No. 10900

4 **TERRY LAW GROUP, PC**

5 410 S. Rampart Blvd. #390

6 Las Vegas, Nevada 89145

7 (702) 726-6797

8 Attorney for Plaintiff

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**  
12

13 SUSAN DOLORFINO,

14 Plaintiff,

15 vs.

CASE NO. : A-16-735063-C

DEPT. NO. : X

16 UNIVERSITY MEDICAL CENTER; ROBERT  
17 ODELL, M.D., PHD MEDICAL  
18 ENTERPRISES; DOES 1 through 100,  
19 inclusive; and ROE CORPORATIONS 1  
20 through 100, inclusive

21 Defendants.

22 **DECLARATION OF SUSAN DOLORFINO**

23 I, SUSAN DOLORFINO, state as follows:

- 24 1. I live at 3009 Rose Ville Way, Las Vegas, Nevada, 89145 and I was born on June 15,  
25 1960.
- 26 2. On April 13, 2015, I was taken by ambulance from UMC Quickcare to UMC Hospital  
27 with heavy vaginal bleeding. At UMC I underwent an ultrasound which showed that I  
28 had a large mass on my cervix and I was told I would need to undergo surgery.
- 29 3. I spoke with Dr. Carissa Richardson several times in the Emergency Room prior to the  
30 surgery but at no point did I speak to Dr. Odell, the anesthesiologist.
- 31 4. On April 14, 2015 I underwent surgery to remove the mass, however, due to the size,  
32 they alternatively had to carry out an emergency hysterectomy. I did sign a stack of  
33 paperwork that I was told to sign, including informed consents, prior to the surgery but  
34 this was five minutes before the surgery and I did not have time to read them all.

- 1 5. My partner, Ramon Santa Ana, was waiting for me in the recovery room and one of the  
2 nurses mentioned to him that my front tooth had been damaged during the intubation  
3 process. A Male dentist apparently then came in and started looking at my tooth and  
4 asked Ramon if he wanted them to pull my tooth or splint it and he told them not to pull  
5 it. The dentist told him eventually I would lose it.  
6  
7 6. Dr. Odell came and spoke to me in my hospital room about two days after the surgery.  
8 He introduced himself and said that during the surgery the lights went out and that the  
9 hospital generator kicks in after 7 seconds. Dr. Odell told me in front of Ramon that he  
10 had dropped an instrument on my tooth while the lights were still out and that this had  
11 never happened to him before.  
12  
13 7. I later consulted a dentist, Dr. Ken Wagner, who told me my front right incisor was not  
14 salvageable and needs to be extracted along with the two teeth next to it. I will need a  
15 bridge but I have not been able to afford this treatment. The splint stayed on my tooth  
16 up until a month ago when it fell off.  
17  
18 8. I declare under penalty of perjury that the foregoing is true and correct.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Executed on 12<sup>th</sup> day of August, 2016,



Susan Dolorfino

# EXHIBIT 6

1 **DECL**

2 Zoe Terry, Esq.

3 Nevada Bar No. 10900

4 **TERRY LAW GROUP, PC**

5 410 S. Rampart Blvd. #390

6 Las Vegas, Nevada 89145

7 (702) 726-6797

8 Attorney for Plaintiff

9  
10  
11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**  
13

14 SUSAN DOLORFINO,

15 Plaintiff,

16 vs.

CASE NO. : A-16-735063-C

DEPT. NO. : X

17 UNIVERSITY MEDICAL CENTER; ROBERT  
18 ODELL, M.D., PHD MEDICAL  
19 ENTERPRISES; DOES 1 through 100,  
20 inclusive; and ROE CORPORATIONS 1  
21 through 100, inclusive

22 Defendants.


23 **DECLARATION OF RAMON SANTA ANA**

24 I, RAMON SANTA ANA, state as follows:

- 25
- 26 1. I live at 451 Crestdale Lane, #69, Las Vegas, Nevada, 89144 and I was born on January 26, 1962.
  - 27 2. On April 13, 2015, I drove to UMC Hospital where my wife, Susan Dolorfino, had been taken by ambulance from UMC Quickcare with heavy vaginal bleeding.
  - 28 3. On April 14, 2015 she underwent surgery. I was waiting for her to wake up in the recovery room and one of the nurses told me that her front tooth had been damaged during the intubation process. A Male dentist then came in and started looking at her tooth and asked me if he should pull the tooth or splint it. I told them I did not want her to wake up from surgery to find she had a tooth missing and not to pull it. The dentist told me that eventually she would lose the tooth anyway.

- 1 4. Dr. Odell came and spoke to Susan and I in her hospital room on April 16, 2015. He  
2 introduced himself and said that during the surgery the lights went out and that the  
3 hospital generator kicks in after 7 seconds. Dr. Odell said that he had dropped an  
4 instrument on Susan's tooth while the lights were still out and that this had never  
5 happened to him before in his long career.  
6  
7 5. I asked him who was going to pay to replace Susan's tooth. He said you need to bring  
8 that up with the Hospital.  
9  
10 6. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12 day of AUGUST, 2016,

  
Ramon Santa Ana

## EXHIBIT 7

1 OMSJ

2 Zoe Terry, Esq.

3 Nevada Bar No. 10900

4 TERRY LAW GROUP, PC

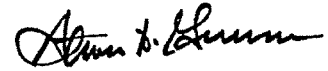
5 410 S. Rampart Blvd. #390

6 Las Vegas, Nevada 89145

7 (702) 726-6797

8 Attorney for Plaintiff

Electronically Filed  
08/15/2016 01:25:56 PM



CLERK OF THE COURT

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

DISTRICT COURT  
CLARK COUNTY, NEVADA

SUSAN DOLORFINO,

Plaintiff,

vs.

CASE NO. : A-16-735063-C  
DEPT. NO. : X

UNIVERSITY MEDICAL CENTER; ROBERT  
ODELL, M.D., PHD MEDICAL  
ENTERPRISES; DOES 1 through 100,  
inclusive; and ROE CORPORATIONS 1  
through 100, inclusive

Defendants.

OPPOSITION TO DEFENDANT, UNIVERSITY MEDICAL CENTER OF SOUTHERN  
NEVADA'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, SUSAN DOLORFINO, by and through her attorney of record, Zoe  
Terry, Esq. of the law firm of Terry Law Group, PC and moves this Court to deny Defendant,  
UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA's Motion for Summary Judgment.

This Opposition is made and based upon all the papers and pleadings of file herein, the attached  
Points and Authorities and such oral argument as the Court may entertain at the hearing of this Motion.

DATED this 15<sup>th</sup> day of August, 2016.

TERRY LAW GROUP, PC

BY:   
ZOE TERRY, ESQ.

Nevada Bar #10900

410 S Rampart Blvd., Suite 390

Las Vegas, Nevada 89145

1 POINTS AND AUTHORITIES

2 I.

3 FACTS

4 This case arises out of an incident on April 13, 2015. Plaintiff, Susan Dolorfino, (hereinafter  
5 "SUSAN") sought treatment at University Medical Center, (hereinafter "UMC") for heavy vaginal  
6 bleeding. An ultrasound showed a four (4) inch mass in her cervix which would go on to require a total  
7 abdominal hysterectomy. Surgery was scheduled for April 14, 2015 at approximately 5:00 p.m. There  
8 was a power outage and UMC experienced a total black out during the surgery and during that time the  
9 anesthesiologist, ROBERT HARPER ODELL, JR., M.D.'s (hereinafter "DR. ODELL"), dropped a  
10 tool on Ms. Dolorfino's face, loosening her tooth. SUSAN believes that UMC had an inadequate back-  
11 up generator which meant that the power was out in the hospital for at least 6 or 7 seconds.  
12

13 UMC's, Motion for Summary Judgment is based on the fact SUSAN did not attach an expert  
14 affidavit to her Complaint pursuant to NRS 41A.071. However, this was not necessary as her case  
15 falls within an exception contained in NRS 41A.100. Further, many of the causes of action against  
16 UMC do not require an expert affidavit.  
17

18 II.

19 ARGUMENT

20 On a Motion for Summary Judgment the burden is on the moving party to show there is no  
21 triable issue of material fact. In determining whether summary judgment is appropriate, the Court will  
22 view the pleadings and evidence in a light most favorable to the non-moving party.

23 NRS 41A.100(1)(d) states:

24 "Liability for personal injury or death is not imposed upon any provider of health care based on  
25 alleged negligence in the performance of that care unless evidence consisting of expert medical  
26 testimony, material from recognized medical texts or treatises or the regulations of the licensed  
27 medical facility wherein the alleged negligence occurred is presented to demonstrate the  
28 alleged deviation from the accepted standard of care in the specific circumstances of the case  
and to prove causation of the alleged personal injury or death, except that such evidence is not  
required and a rebuttable presumption that the personal injury or death was caused by  
negligence arises where evidence is presented that the provider of health care caused the

1 personal injury or death occurred in any one or more of the following circumstances:

2 .....An injury was suffered during the course of treatment to a part of the body not directly  
3 involved in the treatment or proximate thereto;"

4 The Legislature has, in effect, already determined that certain situations ordinarily do not occur  
5 in the absence of negligence. Thus, all a plaintiff need do to warrant an instruction under the statutory  
6 medical malpractice res ipsa loquitur rule (or rebuttable presumption as it is now) is present some  
7 evidence of the existence of one or more factual predicates enumerated in the above section of NRS  
8 41A.100. If the trier of fact then finds that one or more of the factual predicates exist, then the  
9 presumption must be applied. Johnson v. Egtegar, 112 Nev. 428, 915 P.2d 271, 112 Nev. Adv. Rep.  
10 60, 1996 Nev. LEXIS 66 (Nev. 1996).

11 In Banks v. Sunrise Hosp., 120 Nev. 822, 102 P.3d 52, 2004 Nev. LEXIS 121, 120 Nev. Adv.  
12 Rep. 89 (Nev. 2004), James Banks, Jr. (James), suffered cardiac arrest while undergoing rotator cuff  
13 surgery at Sunrise Hospital and was left in a permanent vegetative state. James and his guardian ad  
14 litem, sued Sunrise Hospital, the surgeon and the anesthesiologist. The surgeon and anesthesiologist  
15 settled with James shortly before trial. A jury found Sunrise liable for James's injury and awarded  
16 substantial damages.

17  
18 The Court in Banks confirmed that NRS 41A.100 has replaced the doctrine of res ipsa  
19 loquitur in medical malpractice cases and that a rebuttable presumption of medical malpractice  
20 applies when the plaintiff has provided some evidence of one of the factual predicates  
21 enumerated in Nev. Rev. Stat. § 41A.100(1).

22  
23 Nev. Rev. Stat. § 41A.100(1)(d) provides that a rebuttable presumption of medical  
24 malpractice arises when the patient suffers an injury during the course of treatment to a part of  
25 the body not directly involved in the treatment or proximate thereto. The Court held that in  
26 Banks, Plaintiff had underwent surgery for treatment to his shoulder, but suffered an injury to  
27 his brain, causing his vegetative state. They found that the brain is not directly or proximately  
28 related to the rotator cuff surgery. This was so even though the likely cause of his injuries were

1 failures on the part of the anesthesiologist and/or the anesthesiology machine. Therefore, the  
2 district court did not abuse its discretion when it submitted a res ipsa loquitur instruction to the  
3 jury. No doubt the anesthesiology consent in Banks listed heart attack and brain damage as  
4 possible side effects of anesthesia. However, the Court still found that when James went in for  
5 a rotator cuff surgery, he did not expect to end up with brain damage.

6 SUSAN underwent an emergency hysterectomy but suffered injury to her teeth. Just  
7 like in Banks, the logical conclusion is that her teeth are not directly or proximately related to  
8 the hysterectomy surgery even if the injury occurred during the anesthesiology part of the  
9 surgery.  
10

11 It is SUSAN's understanding that DR. ODELL dropped a blade on SUSAN's teeth  
12 during an electrical black out. Even if DR. ODELL was performing an endotracheal intubation  
13 and not a tracheotomy, a tool does not drop onto a patient's tooth knocking it loose absence  
14 negligence. If DR. ODELL is now swearing under oath that SUSAN's tooth became loose as  
15 he passed the tube down her throat past her teeth this is not what he told SUSAN after the  
16 procedure or what he told her counsel in a later conversation.  
17

18 There was a storm on April 14, 2015 and records from Nevada Power confirm a power  
19 outage of 22 seconds at 18:53 p.m. on April 14, 2015, (see attached as Exhibit "1"). Records  
20 from UMC also confirm there was a power outage at the time of intubation "during which there  
21 was note of injury to the patient's right superior central incisor," (see attached as Exhibit "2").  
22 Dr. ODELL's own anesthesia record notes "power outage," (see attached as Exhibit "3") and  
23 there is a note that he discussed the "circumstances of power outage" with SUSAN and her  
24 "husband" on April 16, 2015, (see attached as Exhibit "4"). Yet there is absolutely no mention  
25 of the power outage in his Affidavit in Support of his Motion for Summary Judgment at all.

26 Further, SUSAN denies that DR. ODELL spoke to her at all prior to the procedure, let  
27 alone to warn her that injury to her teeth was one of the risks of general anesthesia, (see  
28

1 attached Declaration as Exhibit "5"). The informed consent for anesthesia signed by SUSAN  
2 does indeed reference "swelling around the mouth and injury to teeth/dental appliances" as a  
3 potential problem she could experience as a result of the anesthetic, but this implies possible  
4 problems following anesthesia when the other problems in that group are read together.

5 At worst, a patient may expect injury to teeth if an incident occurred as DR. ODELL  
6 described in his affidavit but this is not what SUSAN was told happened and at no point did  
7 SUSAN consent to having instruments dropped on her mouth. SUSAN's partner, Ramon  
8 Santa Ana was present when DR. ODELL informed SUSAN that he had dropped an instrument  
9 on to her mouth, (see attached Declaration as Exhibit "6").  
10

11 Further, SUSAN's claims against UMC are not just limited to medical malpractice but  
12 also include claims for *inter alia* negligence, vicarious liability, negligent hiring and negligent  
13 supervision. None of these claims require an expert affidavit.

14 Summary judgment is appropriate only when the moving party is entitled to judgment as a  
15 matter of law and no genuine issue remains for trial. Shepherd v. Harrison, 100 Nev. 178, 678 P.2d  
16 670 (1984). The rule authorizes summary judgment only where the moving party is entitled to  
17 judgment as a matter of law where it is quite clear what the truth is and that no genuine issue remains  
18 for trial. Short v. Hotel Riviera, Inc., 79 Nev. 94, 378 P.2d 979 (1963). When the rule speaks of a  
19 "genuine" issue of material of fact, it does so with the adversarial system in mind. The word  
20 "genuine" has moral overtones, and does not mean a fabricated issue. Aldabe v. Adams, 81 Nev. 280,  
21 402 P.2d 34 (1965). A genuine issue of material fact is one where the evidence is such that a  
22 reasonable jury could return a verdict for the non-moving party. Posadas v. City of Reno, 101 Nev.  
23 448, 851 P.2d 438 (1993). Where an issue of material fact exists, summary judgment should not be  
24 entered. Mitchell v. Bailey and Selover, Inc., 96 Nev. 147, 605 P.2d 1138 (1980). A court should  
25 exercise great care in granting summary judgment; a litigant has a right to trial where there is the  
26 slightest doubt as to the facts. Nehls v. Leonard, 97 Nev. 325, 630 P.2d 258 (1981).  
27  
28

1 There remain issues of genuine fact regarding how SUSAN's tooth became loose and in any  
2 event her tooth was not directly involved in the treatment (hysterectomy). Anesthesiology was part of  
3 the surgery, just like in Banks, but dropping an instrument on a patients mouth is not a known risk of  
4 anesthesiology, let alone a hysterectomy. SUSAN went in for an emergency hysterectomy and did not  
5 expect to come out with a damaged front tooth that would require a bridge.

6  
7 **III.**

8 **CONCLUSION**

9 Based on the foregoing, Plaintiff respectfully requests that Defendant UMC's Motion for  
10 Summary Judgment be denied.

11 DATED this 15<sup>th</sup> day of August, 2016.

12 TERRY LAW GROUP

13  
14 2 Terry  
15 ZOE TERRY, ESQ.  
16 Nevada Bar # 6519  
17 410 S Rampart Blvd., Suite 390  
18 Las Vegas, NV 89145  
19 Attorney for Plaintiff

20 **AFFIDAVIT OF ZOE TERRY, ESQ.**

21 STATE OF NEVADA )  
22 ) ss:  
23 COUNTY OF CLARK )

24 COMES NOW the affiant, Zoe Terry, Esq., first being duly sworn, and deposes and testifies as  
25 follows:

- 26 1) I am Zoe Terry, Esq. I am over the age of 18 and competent to testify. I have personal  
27 knowledge of the following facts, except where expressly stated that my testimony is based  
28 on information and belief;
- 2) I am an attorney licensed to practice law in the state of Nevada, bar number 0010900. I  
represent Plaintiff, Susan Dolorfino in the above case.

- 1 3) I am a solo practitioner and managing partner of Terry Law Group, PC.
- 2 4) Pursuant to NRCP 56(f), I confirm that an Early Case Conference was held on June 10, 2016
- 3 and a Joint Case Conference Report was filed on July 15, 2016 but a second Early Case
- 4 Conference needs to be held now that UMC has filed their Answer.
- 5 5) Discovery has not even started yet and no depositions have been taken. Depositions need to
- 6 be taken of all parties.
- 7 6) Further, I spoke with Dr. Odell on April 14, 2016 and he confirmed that the lights went out
- 8 during the surgery and a blade slipped out of his hands. He did confirm that it had been a
- 9 difficult intubation but at no point did he inform me that SUSAN's tooth had been knocked
- 10 loose by the intubation tube.
- 11

12 FURTHER YOUR AFFIANT SAYETH NAUGHT

13 ZTerry  
Zoe Terry, Esq.

14 SUBSCRIBED AND SWORN TO BEFORE ME  
15 THIS 15<sup>th</sup> DAY OF August, 2016.  
16 Susan Dolorfino  
NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of August, 2016, I served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT UMC'S MOTION FOR SUMMARY JUDGMENT**, addressed to the following counsel of record at the following address(es), as follows:

\_\_\_\_ **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

\_\_\_\_ **VIA FACSIMILE:** by causing a true copy thereof to be telecopied to the number indicated on the service list below.

\_\_\_\_ **VIA PERSONAL DELIVERY:** by causing a true copy thereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

✓ **VIA E-SERVICE:** an electronic copy of the preceding document was concurrently served upon opposing counsel via the Court's electronic service system.

John H. Cotton, Esq.  
John H. Cotton & Associates, Ltd  
7900 West Sahara Avenue, Ste. 200  
Las Vegas, NV 89117  
Attorneys for Defendant  
ROBERT HARPER ODELL, JR., M.D.

Jeffrey I. Pitegoff, Esq.  
Morris, Sullivan, Lemkul & Pitegoff  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, NV 89169  
Attorneys for Defendant  
UNIVERSITY MEDICAL CENTER  
OF SOUTHERN NEVADA



\_\_\_\_\_  
An employee of TERRY LAW GROUP, PC

# EXHIBIT 1

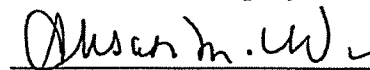
## DECLARATION OF CUSTODIAN OF RECORDS

The undersigned, declares under penalty of perjury and pursuant to N.R.S. 52.260 AND 53.045 ("Declaration") that the following is true and correct.

1. That I am an employee of Nevada Power Company d/b/a NV Energy ("NV Energy") and my duties make me a custodian of the records as to contacting the internal departments for the gathering of documents attached to this Declaration.
2. That NV Energy was served with an administrative subpoena in the matter regarding *Susan Dolorgino vs. University Medical Center of Southern Nevada, et al.*, District Court Case #A-16-735063-C and the attached documents, records and things (hereinafter referred to as "documents") are in response to the subpoena. If a requested document is not attached, then either (a) I was unable to locate it following a good faith effort to locate and obtain such document, or (b) the attorney or person seeking the document agreed that it need not be provided as part of this response.
3. That the documents may contain personal identifying information which is protected by law or other information which is protected by law or N.R.C.P. 26. If so, then the recipient is obligated to protect this information from unauthorized disclosure.
5. That the originals of said documents are, and as far as known to the undersigned always have been, in the possession of NV Energy and/or its authorized employees, agents, or representatives; that the same are documents which were generated, made, or otherwise received by personnel employed by NV Energy, and that said documents are documents which were generated during the course of the regularly conducted business activities of NV Energy.
6. That true and correct copies of said documents have been delivered, or otherwise caused to be delivered, to the attorney or person issuing said Subpoena.

Dated this 25 day of May, 2016

Nevada Power Company d/b/a NV Energy

  
Susan M. Wood  
Certified Paralegal

## Outage Detail

<b>Outage No</b> 646106 <span style="border: 1px solid black; padding: 2px;">Query</span> <b>All</b> ALL <b>Region</b> NVES <b>Service Area</b> RYAN <b>District</b> RANCHO	<b>Curr District</b> RANCHO <b>Curr Substation</b> ALTA <b>Curr Feeder</b> AL-1209 <b>Phases</b> ABC <b>Extent</b> DEVICE <b>Device ID</b> AL-1209 <b>Device Name</b> AL-1209 <b>Address</b> [S2061-31][309 S VALLEY VIEW BLVD LAS VEGAS][36° 10' 29.06 N / 115° 11' 30.8261 W] <b>Fault Location</b> <b>Begin Device</b> <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span> <b>End Device</b> <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span> <b>Related Event</b> <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span> <b>Comments</b> <div style="border: 1px solid black; width: 150px; height: 40px; position: relative;"><div style="position: absolute; top: -15px; right: 0;">^</div><div style="position: absolute; bottom: -15px; right: 0;">v</div></div>	<b>Cust. Aff.</b> 0 <b>Cust. Rest.</b> 673 <b>Prior. Cust.</b> 0 <b>KVA</b> 0 <b>Unrest. Cust. Hours</b> 0  <input type="checkbox"/> Safety Hold <input type="checkbox"/> Major Events <input type="checkbox"/> Utility Equip. Damaged <input type="checkbox"/> Damage Not Recorded <input checked="" type="checkbox"/> Incident Complete <input type="checkbox"/> Non-Reportable <input type="checkbox"/> 3rd Party Events
<b>Status</b> Incident Complete <b>Master Outage</b> <b>Secondary Outage</b> No <b>Momentary Outage</b> Yes <b>Planned Outage</b> No <b>Hazard Level</b> <b>Personnel Standing By</b> No <b>Critical Facility Code</b> <b>Duration</b> 0:00:22 <b>Power Off</b> 04/14/2015 18:53:13 <b>Power On</b> 04/14/2015 18:53:35 <b>Est. Time of Restoration</b> <span style="border: 1px solid black; padding: 2px;">04/14/2015 23:45</span> <b>Cur. Est. Time of Restor.</b> 04/14/2015 23:45 <b>Equipment Type</b> <span style="border: 1px solid black; padding: 2px;">Type</span> <span style="border: 1px solid black; padding: 2px;">Category</span> <b>Cause</b> <span style="border: 1px solid black; padding: 2px;">Type</span> <span style="border: 1px solid black; padding: 2px;">Category</span> FORCED Storm In Area		

Apply Out. Changes
Reset
Out. Status
Cause Detail
Equip. Detail
Referral Detail
Referral List
Log

Est. Time Arrived	Enroute Time	Time Arrived	Stop Time	Rejected Time

Update Selected Crew Activity Rows
Reset
Crew Disp.
Area Outages
Area Map

- Exclude: COMPLETE ☐ REJECTED ☐ Save Pref.

## EXHIBIT 2

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

ADMITTED: 04/13/2015

DISCHARGED: 04/18/2015

ADMISSION DIAGNOSES:

1. 54-year-old G2 P1-1-0-2
2. Cervical and vaginal bleeding
3. Cervical fibroid
4. Symptomatic anemia

POSTOPERATIVE DIAGNOSES:

1. 54-year-old G2 P1-1-0-2
2. Cervical and vaginal bleeding
3. Cervical fibroid - 13 centimeter cervical
4. Symptomatic anemia
5. Right superior central incisor laxity following intubation complication

PROCEDURE: Examination under anesthesia, hysteroscopy, curettage, total abdominal hysterectomy, bilateral salpingectomy, and cystoscopy performed on 04/14/2015. During the procedure there was note of power outage at time of intubation, during which there was note of injury to the patient's right superior central incisor with noted laxity of above tooth following the procedure. This was tooth was splinted by dental resident who was consulted in the PACU following the procedure.

HOSPITAL COURSE: 54-year-old G2 P1-0-1-1-2 female presented to UMC Hospital with complaints of heavy vaginal bleeding and symptomatic anemia. During patient's workup she was noted with a cervical fibroid for which operative evaluation was performed. The cervical fibroid was unable to be removed vaginally and the patient's case was needed to be converted to a total abdominal hysterectomy. A bilateral salpingectomy was additionally performed along with attempted prior hysteroscopy and curettage and postoperative cystoscopy. During the procedure there was note of power outage at time of intubation and there was note of trauma to the patient's right central superior incisor. Postoperatively in the PACU the dental resident service was consulted and this tooth was splinted.

Risk management was consulted and saw the patient while she was postoperative and arranged for outpatient care with dentistry and coverage.

The patient's postoperative course was additionally complicated by pneumonia. The patient was noted to be afebrile greater than 24 hours prior to discharge and she was evaluated with a CTA on April 16, 2015 without

evidence of PE. She had been noted with bilateral lower lobe

atelectasis versus infiltrate. The patient was noted with leukocytosis that

improved throughout the remainder of her stay. Pulmonary services were consulted and evaluated the patient and changed the antibiotic coverage from Azithromycin and Cefepime to ceftriaxone, clindamycin and Flagyl. The additionally provided recommendations for outpatient antibiotic therapy for which patient was placed on as noted below.

The patient was transfused during her stay to correct anemia and her hemoglobin was within normal limits prior to discharge. She was advanced to and tolerating a soft diet. Her pain was well controlled with oral medications. Her incision was clean, dry and intact, closed with staples. Her incision was without evidence of infection.

A urine culture was performed that noted coag positive Staph with sensitivities covered by her antibiotics. Patient cleared for and discharged home in stable condition on 04/18/2015. Patient to follow up at the Women's Clinic within 7-10 days for postoperative evaluation and staple removal, as well as review pathology.

Patient advised to follow up with dentistry as soon as possible.

Patient was provided with Percocet as needed for breakthrough pain. She was advised to maintain 6 weeks of pelvic rest, lift no heavier than 15 pounds during that time.

Patient was provided with a prescription for Avelox 400 milligrams p.o. daily for 6 additional days for continued treatment of her postoperative pneumonia. She was provided with iron supplementation, as well as Colace to maintain soft stools and ibuprofen for additional pain control.

Patient advised to return to the ER or call clinic with any additional concerns.

Discharged home in stable condition.

JS/MedQ  
DD: 05/01/2015 04:22:30  
DT: 05/01/2015 07:14:27

JOSEPH SHEA, MD (Resident)

LAWRENCE SHAW, MD

PATIENT: DOLORFINO, SUSAN                      ACCOUNT#: 1510300271  
MR#: 0002632381  
ADM DATE: 04/13/2015  
JOB#: 502344/653563634

PHYSICIAN: LAWRENCE SHAW, MD  
DICTATED BY: JOSEPH SHEA, MD (Resident)

#### DISCHARGE SUMMARY

Electronically Authenticated by:  
Lawrence Shaw, MD On 05/04/2015 05:10 PM PDT

DOLORFINO, SUSAN ROSE

Electronically Authenticated and Edited by:  
Joseph Shea, MD On 05/11/2015 12:18 PM PDT

# EXHIBIT 3



ACCT: 1510300271 DOB: 06/15/1960  
DOLORFINO  
SUSAN 54Y F  
MR# 0002632381 ADM: 04/13/15

## Page 1 of 2

000110

# EXHIBIT 4



\* 1 P H Y P R N \*

ACCT: 1510300271 DOB: 06/15/1960  
 DOLORFINO  
 SUSAN ROSE  
 MRF 0002632381 54Y F  
 ADM: 04/13/15



## GENERAL PROGRESS NOTE

MRU02010 (12/11/13)

Page 1 of 1

DATE	TIME	NOTES
4/11/15	1100	Called to assist with transport to CT scan. PT receiving PRBC transfusion, see Med form for V/S. PT with Hx 92 106/50 RR 18 regular RR 20. Returned to 430 after CTA chest, without incident, ambulating to chair without difficulty. <i>C. D. Hartz</i>
4/11/15	1530	ANESTHESIA Saw pt to leg - PT too flaccid - mouth biting will be lost per Daniel. Case, circumstances, & power only explained to pt & resumed. up under sedation. Explained to pt they are keying in on a difficult situation. They are keying in on a difficult situation. assistive to replace with <i>ADP</i> <i>0004 702 Sat 954</i>

PROMOTE PATIENT SAFETY - Do NOT use the following dangerous abbreviations:  
 AD AS AU IU U QD QS QU QD QOD MS MSO, MgSO, UG SS Trailing Zeros

DOLORFINO, SUSAN ROSE

000112

# EXHIBIT 5

1 **DECL**  
2 Zoe Terry, Esq.  
3 Nevada Bar No. 10900  
4 **TERRY LAW GROUP, PC**  
5 410 S. Rampart Blvd. #390  
6 Las Vegas, Nevada 89145  
7 (702) 726-6797  
8 Attorney for Plaintiff

9  
10  
11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 SUSAN DOLORFINO,

14 Plaintiff,

15 vs.

CASE NO. : A-16-735063-C  
DEPT. NO. : X

16 UNIVERSITY MEDICAL CENTER; ROBERT  
17 ODELL, M.D., PHD MEDICAL  
18 ENTERPRISES; DOES 1 through 100,  
19 inclusive; and ROE CORPORATIONS 1  
20 through 100, inclusive

21 Defendants.

22 **DECLARATION OF SUSAN DOLORFINO**

23 I, SUSAN DOLORFINO, state as follows:

- 24 1. I live at 3009 Rose Ville Way, Las Vegas, Nevada, 89145 and I was born on June 15,  
25 1960.
- 26 2. On April 13, 2015, I was taken by ambulance from UMC Quickcare to UMC Hospital  
27 with heavy vaginal bleeding. At UMC I underwent an ultrasound which showed that I  
28 had a large mass on my cervix and I was told I would need to undergo surgery.
3. I spoke with Dr. Carissa Richardson several times in the Emergency Room prior to the  
surgery but at no point did I speak to Dr. Odell, the anesthesiologist.
4. On April 14, 2015 I underwent surgery to remove the mass, however, due to the size,  
they alternatively had to carry out an emergency hysterectomy. I did sign a stack of  
paperwork that I was told to sign, including informed consents, prior to the surgery but  
this was five minutes before the surgery and I did not have time to read them all.

- 1 5. My partner, Ramon Santa Ana, was waiting for me in the recovery room and one of the  
2 nurses mentioned to him that my front tooth had been damaged during the intubation  
3 process. A Male dentist apparently then came in and started looking at my tooth and  
4 asked Ramon if he wanted them to pull my tooth or splint it and he told them not to pull  
5 it. The dentist told him eventually I would lose it.  
6  
7 6. Dr. Odell came and spoke to me in my hospital room about two days after the surgery.  
8 He introduced himself and said that during the surgery the lights went out and that the  
9 hospital generator kicks in after 7 seconds. Dr. Odell told me in front of Ramon that he  
10 had dropped an instrument on my tooth while the lights were still out and that this had  
11 never happened to him before.  
12  
13 7. I later consulted a dentist, Dr. Ken Wagner, who told me my front right incisor was not  
14 salvageable and needs to be extracted along with the two teeth next to it. I will need a  
15 bridge but I have not been able to afford this treatment. The splint stayed on my tooth  
16 up until a month ago when it fell off.  
17  
18 8. I declare under penalty of perjury that the foregoing is true and correct.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Executed on 12<sup>th</sup> day of August, 2016,



Susan Dolorfino

# EXHIBIT 6

1 **DECL**  
2 Zoe Terry, Esq.  
3 Nevada Bar No. 10900  
4 **TERRY LAW GROUP, PC**  
5 410 S. Rampart Blvd. #390  
6 Las Vegas, Nevada 89145  
7 (702) 726-6797  
8 Attorney for Plaintiff

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 SUSAN DOLORFINO,  
13  
14 Plaintiff,

15 vs.

CASE NO. : A-16-735063-C  
DEPT. NO. : X

16 UNIVERSITY MEDICAL CENTER; ROBERT  
17 ODELL, M.D., PHD MEDICAL  
18 ENTERPRISES; DOES 1 through 100,  
19 inclusive; and ROE CORPORATIONS 1  
20 through 100, inclusive  
21 Defendants.


22 **DECLARATION OF RAMON SANTA ANA**

23 I, RAMON SANTA ANA, state as follows:

- 24 1. I live at 451 Crestdale Lane, #69, Las Vegas, Nevada, 89144 and I was born on January  
25 26, 1962.
- 26 2. On April 13, 2015, I drove to UMC Hospital where my wife, Susan Dolorfino, had been  
27 taken by ambulance from UMC Quickcare with heavy vaginal bleeding.
- 28 3. On April 14, 2015 she underwent surgery. I was waiting for her to wake up in the  
recovery room and one of the nurses told me that her front tooth had been damaged  
during the intubation process. A Male dentist then came in and started looking at her  
tooth and asked me if he should pull the tooth or splint it. I told them I did not want her  
to wake up from surgery to find she had a tooth missing and not to pull it. The dentist  
told me that eventually she would lose the tooth anyway.

- 1 4. Dr. Odell came and spoke to Susan and I in her hospital room on April 16, 2015. He  
2 introduced himself and said that during the surgery the lights went out and that the  
3 hospital generator kicks in after 7 seconds. Dr. Odell said that he had dropped an  
4 instrument on Susan's tooth while the lights were still out and that this had never  
5 happened to him before in his long career.  
6  
7 5. I asked him who was going to pay to replace Susan's tooth. He said you need to bring  
8 that up with the Hospital.  
9  
10 6. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12 day of AUGUST, 2016,

  
Ramon Santa Ana

## EXHIBIT 8

  
CLERK OF THE COURT

1 **RIS**  
2 **JOHN H. COTTON, ESQ.**  
3 Nevada Bar Number 5268  
4 JHCotton@JHCottonlaw.com  
5 **KATHERINE L. TURPEN, ESQ.**  
6 Nevada Bar Number 8911  
7 KTurpen@JHCottonlaw.com  
8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910

13 Attorneys for Defendant Robert Harper Odell, Jr., M.D.

14 **DISTRICT COURT**  
15 \* \* \*  
16 **CLARK COUNTY, NEVADA**

17 **SUSAN DOLORFINO;**  
18  
19 Plaintiffs,

20 vs.

21 **UNIVERSITY MEDICAL CENTER OF**  
22 **SOUTHERN NEVADA; ROBERT HARPER**  
23 **ODELL, JR., M.D.; DOES 1 through 100,**  
24 **inclusive; and ROE CORPORATIONS 1**  
25 **through 100, inclusive**

26 Defendants.

CASE NO.: A-16-735063-C  
DEPT. NO: X

Hearing Date: September 6, 2016  
Hearing Time: 8:30 a.m.

27 **DEFENDANT ROBERT HARPER ODELL, JR., M.D.'S REPLY IN SUPPORT OF**  
28 **MOTION FOR SUMMARY JUDGMENT**

...

...

...

...

...

...

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The allegations of malpractice which underlie Plaintiff's claims against Dr. Odell for "Negligence" are not allegations to which *res ipsa loquitur* apply, and thus, require an expert affidavit. NRS 41A.071. The Complaint was filed without such expert support, in violation of NRS 41A.071, and dismissal, without leave to amend, is required. See, NRS 41A.071. See also, *Washoe Med. Ctr. v. Second Jud. Dist. Ct. Ex rel. Cnty. Of Washoe*, 122 Nev. 1298 (2006); *Buckwalter v. Eighth Jud. Dist. Ct.*, 234 P.3d 920 (2010).

**II. LAW AND ARGUMENT**

**A. Plaintiff's Claim for Negligence, under a theory of Res Ipsa Loquitur, is Legally Insufficient and Must Be Dismissed**

Dr. Odell is a Board Certified Anesthesiologist. Putting aside that Plaintiff has alleged in her Complaint that Dr. Odell performed a tracheotomy (which he most certainly did not), Dr. Odell's care and treatment of this patient was limited to anesthesiology services during her hysterectomy. Dr. Odell is not a surgeon. He did not provide surgical services and was not working in the patient's surgical field.<sup>1</sup> Instead, Dr. Odell's "course of treatment" for the Plaintiff concerned the placement of the endotracheal tube (through the mouth and past the teeth) and the management of the patient's airway during surgery. Plaintiff's teeth are, unquestionably, directly or proximately related to the rendering of anesthesiology services, intubation and the management of her airway during surgery. Accordingly, the exception to NRS 41A.071 set forth in NRS 41A.100(d) does not apply to the facts alleged in this case.

Under NRS 41A.100, a presumption of negligence applies only where one or more of the

---

<sup>1</sup> Plaintiff underwent a total abdominal hysterectomy. Her surgical field, where the Surgeons were operating, was the lower abdomen and pelvic cavity. Plaintiff incorrectly seeks to task Dr. Odell with liability under a theory of *Res Ipsa Loquitur* because she experienced an anesthesia related complication outside of the surgical field, when his course of treatment was not part of or otherwise in the surgical field.

1 factual circumstance enumerated by the statute are present. Johnson v. Egtegar, 112 Nev. 428,  
2 915 P.2d 271 (1996). Plaintiff, per her Complaint, asserts that subsection (d) applies to the facts  
3 of this case. Defendant respectfully disagrees.

4 NRS 41A.100 (d), Required evidence; exceptions; rebuttable presumption of negligence,  
5 as revised pursuant to SB292 and effective June 9, 2015, states in pertinent part:  
6

- 7 1. Liability for personal injury or death is not imposed upon any provider of  
8 health care based on alleged negligence in the performance of that care  
9 unless evidence consisting of expert medical testimony, material from  
10 recognized medical texts or treatises or the regulations of the licensed  
11 medical facility wherein the alleged negligence occurred is presented to  
12 demonstrate the alleged deviation from the accepted standard of care in  
the specific circumstances of the case and to prove causation of the alleged  
personal injury or death, except that such evidence is not required and a  
rebuttable presumption that the personal injury or death was caused by  
negligence arises where evidence is presented that the provider of health  
care caused the personal injury or death occurred in any one or more of the  
following circumstances:

13 (d) An injury was suffered during the course of treatment to a part of the body not  
14 directly involved in the treatment or proximate thereto; or

15 (emphasis added).

16 Plaintiff asserts that subsection (d) applies because Dr. Odell injured her tooth during  
17 surgery and that "her teeth are not directly or proximately related to the hysterectomy surgery."  
18 *Plaintiff's Opposition*, p. 4, ll. 5-8. Under the facts of this case, this amounts to a tortured and  
19 nonsensical application of the statute.

20 The application of NRS 41A.100, subsection (d) to a certain set of facts reasonably turns  
21 on what was "the course of treatment" for a particular defendant. For Dr. Odell, as an  
22 Anesthesiologist, the "course of treatment" for Plaintiff was the rendering of anesthesiology  
23 services, including endotracheal intubation and the maintenance of her airway. An injury to a  
24 tooth is most certainly directly or proximately related to the passing of the endotracheal tube  
25 through the mouth, as is the management of the patient's airway during surgery.  
26

27 Plaintiff's application of the statute creates a false standard as to Dr. Odell, and all  
28

1 Anesthesiologist, in as much as any anesthesia related complication during surgery would  
2 amount to Res Ipsa Loquitur because it is not directly related or proximate to the surgical field.  
3 Taken to its logical conclusion, medical malpractice plaintiffs could sue Anesthesiologists  
4 without ever having to comply with NRS 41A.071, so long as the surgery wasn't in or around the  
5 patient's head and neck, because it is not "directly or proximately related to" the surgery or the  
6 surgical field. This is not what is contemplated by NRS 41A.100 or NRS 41A.071.  
7

8 Anesthesiology is a complex medical subspecialty. In order to survive, Plaintiff's  
9 Complaint should have been supported by an affidavit of merit by an Anesthesiologist, opining  
10 that Plaintiff's tooth injury was the result of negligence on the part of Dr. Odell and not the result  
11 of a known complication, as indicated in the informed consent signed by Plaintiff. Instead,  
12 Plaintiff has forgone an expert opinion by asserting that the Anesthesia related complication was  
13 not directly related or proximate to her hysterectomy. As such, she attempts to proceed under a  
14 theory of Res Ipsa Loquitur. Arguably, this logic might hold true if Plaintiff was suing a  
15 Surgeon who injured her tooth while performing a hysterectomy. However, she is not. Plaintiff  
16 is, instead, suing an Anesthesiologist who allegedly injured her tooth while performing  
17 anesthesia services. Under this set of facts, NRS 41A.100(d) does not apply and an affidavit of  
18 merit was required.  
19

20 **B. Plaintiff's Complaint for Medical Malpractice Is Void Ab Initio And Must Be**  
21 **Dismissed Without Leave To Amend**

22 In Nevada, claims for medical malpractice/professional negligence against providers of  
23 healthcare, such as Dr. Odell, are governed by NRS Chapter 41A. NRS 41A.071 mandates that  
24 such a Complaint be filed with an affidavit of merit "supporting the allegations contained in the  
25 action." Noting the underlying purpose of the statute is to "ensure that [medical malpractice]  
26 actions be brought in good faith based upon competent expert opinion," the Nevada Supreme  
27 Court has held NRS 41A.071 "mandates dismissal, without leave to amend, for complete failure  
28

1 to attach an affidavit to the complaint.” Borger v. Dist. Ct., 120 Nev. Adv. Op. No. 102, (2004).  
2 Here, Plaintiff has attached no expert affidavit in support of her claims<sup>2</sup> of negligence against Dr.  
3 Odell for the rendering of medical care, instead, incorrectly relying upon NRS 41A.100 to keep  
4 her Complaint alive. When Plaintiff has failed to meet NRS 41A.071’s expert affidavit  
5 requirement, the complaint is void ab initio and must be dismissed. Washoe Medical Center v.  
6 Second Judicial District Court of State of Nevada, 122 Nev. 1298; 148 P.3d. 790 (2006).  
7

### 8 III. CONCLUSION

9 Dr. Odell’s course of treatment for Plaintiff, as contemplated by NRS 41A.100(d), was  
10 the rendering of Anesthesiology services. The injury to her tooth was directly or proximately  
11 related to these very services. As such, Plaintiff’s claims for negligence, under a theory of res  
12 ipsa loquitur, are insufficient to keep this matter alive as to Dr. Odell and he must be dismissed  
13 as a Defendant in this case.  
14

15 For the reasons set forth in Defendant’s moving papers, this Reply and any argument the  
16 Court may entertain at the time of hearing, Defendant respectfully moves this Court, pursuant to  
17 NRCP 56, NRS 41A.071, and NRS 41A.100, for an Order of Summary Judgment.

18 Dated this 29th day of August 2016.

19 **JOHN H. COTTON & ASSOCIATES, LTD.**  
20 7900 West Sahara Avenue, Suite 200  
21 Las Vegas, Nevada 89117

22 */s/ Katherine L. Turpen*

23 **JOHN H. COTTON, ESQ.**  
24 **KATHERINE L. TURPEN, ESQ.**  
25 Attorneys for Defendants  
Robert Harper Odell, Jr., M.D.

26 <sup>2</sup> Plaintiff’s Complaint asserts a cause of action of “Negligence” and a cause of action for  
27 “Medical Malpractice NRS 41A.100.” These causes of action are based on the same set of facts,  
28 the rendering of medical care by Dr. Odell. Regardless, Res Ipsa Loquitur is a theory of  
negligence and not a proper or independent “cause of action” recognized by the Courts in  
Nevada.

**CERTIFICATE OF ELECTRONIC SERVICE**

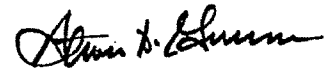
I hereby certify that on the 29<sup>th</sup> day of August 2016, I served a true and correct copy of the foregoing **DEFENDANT ROBERT HARPER ODELL, JR., M.D.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Zoe Terry, Esq.  
**TERRY LAW GROUP, P.C.**  
410 South Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
Attorneys for Plaintiffs

Jeffrey Pitegoff, Esq.  
**MORRIS, SULLIVAN, ET. AL.**  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
Attorneys for Defendant University Medical Center

/s/Terri Bryson  
An Employee of John H. Cotton & Associates

## EXHIBIT 9

  
CLERK OF THE COURT

**RPLY**  
JEFFREY I. PITEGOFF, ESQ.  
Nevada Bar No. 005458  
MORRIS, SULLIVAN, LEMKUL & PITEGOFF  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
Telephone No.: (702) 405-8100  
Fax No.: (702) 405-8101  
[pitegoff@morrissullivanlaw.com](mailto:pitegoff@morrissullivanlaw.com)  
*Attorneys for Defendant,*  
*University Medical Center of Southern Nevada*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SUSAN DOLORFINO,

Plaintiff,

vs.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA; ROBERT  
HARPER ODELL, JR., M.D., DOES I  
through 100, inclusive; and ROE  
CORPORATIONS 1 through 100, inclusive,  
  
Defendants.

CASE NO: A-16-735063-C  
DEPT NO.: VI

**REPLY TO PLAINTIFF'S  
OPPOSITION TO DEFENDANT  
UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA'S MOTION  
FOR SUMMARY JUDGMENT**

HEARING DATE: September 6, 2016

HEARING TIME: 8:30 a.m.

Defendant UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
(hereinafter "UMC"), by and through its attorneys at the law firm of MORRIS, SULLIVAN &  
LEMKUL & PITEGOFF, LLP, hereby submit the following REPLY to Plaintiff's Opposition  
to University Medical Center of Southern Nevada's Motion for Summary Judgment.

///

///

///

///

///

///

///



1 contained in NRS 41A.100 while raising moot issues with the circumstances surrounding  
2 informed consent.

3 The salient facts, however, are clear: (1) DR. ROBERT HARPER ODELL JR., M.D.  
4 ("Dr. Odell") performed an endotracheal intubation on the Plaintiff to maintain her airway  
5 while she was under general anesthesia, which was required and proximately related to  
6 Plaintiff's hysterectomy procedure; and (2) Plaintiff signed an informed consent document for  
7 general anesthesia, confirming that she understood the risk of injury to her teeth.

## 8 II.

### 9 LEGAL ARGUMENT

10 In the Opposition, Plaintiff makes one, overarching argument to address multiple  
11 issues.<sup>1</sup> These arguments do not raise genuine disputes of material fact because they are either  
12 legal conclusions or wildly speculative. However, the material facts remain: (1) the injury  
13 Plaintiff suffered was related to the endotracheal intubation, which was required for Plaintiff's  
14 hysterectomy; and (2) Plaintiff signed an informed consent document for general anesthesia,  
15 confirming that she understood the risk of injury to her teeth. Therefore, this Court must grant  
16 UMC's Motion for Summary Judgment.

#### 17 *1. The Injury Plaintiff Suffered was Related to the Endotracheal Intubation* 18 *Which was Required for Plaintiff's Hysterectomy*

19 "If an action for medical malpractice is filed in the district court, the district court shall  
20 dismiss the action, without prejudice, if the action is filed without an affidavit." *Humboldt*  
21 *Gen. Hosp. v. Sixth Jud. Dist. Ct.*, --- P.3d ----, 2016 WL 4046914, 132 Nev. Adv. Op. 53  
22 (2016) (citing NRS 41A.071). However, under NRS 41A.100(1)(d), "such evidence is not  
23 required and a rebuttable presumption that the personal injury or death was caused by  
24 negligence arises where evidence is presented that . . . an injury was suffered during the course  
25 of treatment to a part of the body not directly involved in the treatment or proximate thereto."

26 As Plaintiff notes in the Opposition, "NRS 4A.100 has replaced the doctrine of *res ipsa*  
27 *loquitur* in medical malpractice cases." *Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822,

28  

---

<sup>1</sup> See Plaintiff's Opposition at 2:19-6:6.

1 832, 102tP.3d 52, 59 (2004). As such, NRS 41A.100(1)(d) provides that a rebuttable  
2 presumption of medical malpractice arises when the patient suffers an injury that is not directly  
3 or proximately related to the treatment or procedure. *Id.* In *Banks*, the plaintiff underwent  
4 surgery for his rotator cuff, but due to an issue with the anesthesia, he suffered irreversible  
5 brain damage. *See id.* at 829. The court in *Banks* held that the res ipsa loquitur instruction to  
6 the jury was appropriate because the brain injury was not directly or proximately related to the  
7 rotator cuff surgery. *See id.* at 833.

8 While *Banks* is good case law, this Court should be cautious to adopt the holding at  
9 face value. As the *Banks* court notes in its own opinion: “We emphasize that our holding is  
10 limited to the facts of this case, considering the catastrophic nature of [plaintiff’s] injury, the  
11 unique position of [the hospital] and its knowledge concerning the incident, and should  
12 therefore be narrowly construed.” *See id.* at 831.

13 Plaintiff’s use of *Banks* in the Opposition is misguided. Although the *Banks* court  
14 ultimately decided that the district court did not abuse its discretion when it submitted a res  
15 ipsa loquitur instruction to the jury, it was well after the plaintiff in *Banks* had met the medical  
16 malpractice pleading requirements as required by Nevada law. As the *Banks* court notes in its  
17 factual summary: “Banks relied upon an affidavit of anesthesiologist Dr. Casey Blitt, who  
18 stated that Dr. Kinsman’s care fell below the standard of care.” *See id.* at 829. It is critical to  
19 note that regardless of the catastrophic nature of the brain injury, the plaintiff in *Banks* still  
20 relied on the affidavit of a medical professional to determine that the anesthesiologist’s care  
21 fell below the standard of care. Thus, Plaintiff’s use of the holding in *Banks* to assert that a  
22 medical affidavit is not required under NRS 41A.100 is wholly incorrect.

23 Despite this, Plaintiff argues that, “[j]ust like in *Banks*, the logical conclusion is that  
24 [Plaintiff’s] teeth are not directly or proximately related to the hysterectomy surgery even if the  
25 injury occurred during the anesthesiology part of the surgery.”<sup>2</sup> However, Plaintiff’s assertion  
26 that injury to teeth is not proximately related to a hysterectomy draws a legal conclusion about  
27 medical procedures that requires expert medical testimony, which Plaintiff fails to produce.

28  

---

<sup>2</sup> See Plaintiff’s Opposition at 4:6-10.

1 It is clear that Dr. Odell was performing the endotracheal intubation as a part of  
2 administering general anesthesia, which was required for Plaintiff's hysterectomy procedure.<sup>3</sup>  
3 In his affidavit, Dr. Odell explains that an endotracheal intubation involves placing a tube into  
4 a patient's mouth and passing the tube past the teeth and down through the patient's trachea to  
5 maintain an open airway while the patient is under general anesthesia.<sup>4</sup> Dr. Odell notes that the  
6 intubation of Plaintiff was difficult, and that he hit her tooth with the laryngoscope during the  
7 process.<sup>5</sup> Plaintiff offers no expert testimony stating that this procedure was not required, nor  
8 proximately related to the hysterectomy.

9 Without expert testimony that states otherwise, Plaintiff's allegation that her injury was  
10 not directly or proximately related to the hysterectomy surgery is merely speculative. The only  
11 expert qualified to testify about medical procedures thus far is Dr. Odell, who testified that he  
12 performed an endotracheal intubation to maintain Plaintiff's airway during the hysterectomy  
13 procedure.<sup>6</sup> Plaintiff sustained injury to her tooth during the endotracheal intubation, which  
14 was proximately related to the hysterectomy surgery. Therefore, NRS 41A.100(1)(d) does not  
15 apply and Plaintiff was required to submit her complaint with an affidavit. Without the  
16 affidavit, this Court must dismiss any claims related to, or arising out of UMC's alleged  
17 medical malpractice. *Humboldt*, --- P.3d ----, 2016 WL 4046914, 132 Nev. Adv. Op. 53  
18 (2016) (citing NRS 41A.071).

19 **2. Plaintiff Signed an Informed Consent Document for General Anesthesia,**  
20 **Confirming that She Understood the Risk of Injury to Her Teeth**

21 The Nevada Supreme Court has "indicated that Nevada follows the traditional rule that  
22 a plaintiff must show lack of informed consent through expert medical testimony." *Brown v.*  
23 *Capanna*, 105 Nev. 665, 669, 782 P.2d 1299, 1302 (1989) (citing *Beattie v. Thomas*, 99 Nev.  
24 579, 668 P.2d 268 (1983)). In *Brown*, the Nevada Supreme Court explained that, "because the  
25 Nevada Legislature has enacted NRS 41A.100 requiring plaintiffs in medical malpractice cases  
26 to demonstrate negligence through expert testimony, a plaintiff claiming that a doctor failed to  
27

28 <sup>3</sup> See Affidavit of Odell at paragraph 5.

<sup>4</sup> See Affidavit of Odell at paragraph 9.

<sup>5</sup> See Affidavit of Odell at paragraph 6.

1 acquire informed consent must demonstrate by expert testimony that informed consent was not  
2 obtained.” *Id.*

3 In *Humboldt*, a recently decided case from the Supreme Court of Nevada, the court  
4 examined the same issue presented in this case: “[W]hether informed consent issues generally  
5 constitute medical malpractice, such that NRS 41A.071 requires a medical affidavit to be filed  
6 with a complaint.” *Humboldt*, --- P.3d ---, 2016 WL 4046914, 132 Nev. Adv. Op. 53 (2016).  
7 The Nevada Supreme Court analyzed NRS Chapter 41A, noting that “NRS 41A.110  
8 establishes when informed consent is conclusively given by a patient.” *Id.* The court  
9 continues, “a licensed physician has conclusively obtained a patient’s consent for a medical  
10 procedure if a physician has explained in general terms, without specific details, the procedure  
11 to be conducted.” *Id.* (citing NRS 41A.100). When a plaintiff claims not to have consented at  
12 all to the treatment or procedure, the allegation constitutes a battery claim, and does not require  
13 a medical affidavit; however, “where general consent is provided for a particular treatment or  
14 procedure, and a question arises regarding whether the scope of that consent was exceeded, an  
15 expert medical affidavit is necessary.” *Id.*

16 In the Opposition, Plaintiff contradicts her own argument by first denying that she  
17 gave informed consent for the application of general anesthesia; and then stating that the injury  
18 she sustained exceeded the scope of the informed consent form that she signed.<sup>7</sup> Even if both  
19 arguments are to be believed, Plaintiff cannot avoid judgment as a matter of law.

20 Plaintiff’s first argument – that she did not consent whatsoever for the application of  
21 general anesthesia – would require her to plead battery, which she has failed to do.<sup>8</sup> As the  
22 Nevada Supreme Court clarified in *Humboldt*, the proper avenue for relief when a plaintiff  
23 claims to have not consented at all is a battery claim. *Id.* Plaintiff’s second assertion – that her  
24 injury exceeded the scope of the consent form that she signed – would require her to submit a  
25 medical affidavit.<sup>9</sup> As noted above, Plaintiff has not submitted any medical affidavits or expert  
26

27 <sup>6</sup> See Affidavit of Odell at paragraph 5.

28 <sup>7</sup> See Plaintiff’s Opposition at 4:26-5:10.

<sup>8</sup> See Plaintiff’s Opposition at 4:26-5:1.

<sup>9</sup> See Plaintiff’s Opposition at 5:1-5:8.

1 testimony to meet the pleading requirements under NRS 41A:071. Therefore, this Court must  
2 grant summary judgment in favor of UMC.

3       **3. Plaintiff's Contention that the Power Outage Caused Dr. Odell to Drop a**  
4       **Blade on her Tooth is an Unsubstantiated and Speculative Claim**

5       NRCPC 56(c) provides that summary judgment is appropriate "if the pleadings,  
6 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly  
7 before the court demonstrate that no genuine issue of material fact exists, and the moving party  
8 is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121  
9 P.3d 1026, 1031 (2005). As Plaintiff notes in the Opposition, the word "genuine" has moral  
10 overtones, and does not mean a fabricated issue. *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34  
11 (1965). Additionally, the nonmoving party "bears the burden to do more than simply show  
12 that there is some metaphysical doubt as to the operative facts in order to avoid summary  
13 judgment being entered in the moving party's favor." *Wood*, 121 Nev. at 732, 121 P.3d at  
14 1031.

15       Plaintiff provides no reliable evidence to substantiate her claim that there was a six to  
16 seven second power outage during her surgery and during that time that anesthesiologist Dr.  
17 Odell dropped a tool on her face, loosening her tooth.<sup>10</sup> The only parties that assert this fact  
18 are the interested parties of the Plaintiff, who allegedly heard this from Dr. Odell himself.<sup>11</sup>  
19 Even if these parties are to be believed, it does not excuse Plaintiff's failure to attach a medical  
20 affidavit to the Complaint. Since "[t]he nonmoving party is not entitled to build a case on the  
21 gossamer threads of whimsy, speculation, and conjecture," this Court must enter summary  
22 judgment in favor of UMC. See *Wood*, 121 Nev. at 732, 121 P.3d at 1031.

23 ///

24 ///

25 ///

26 ///

27 ///

28

---

<sup>10</sup> See Plaintiff's Opposition at 2:8-12.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Based on the foregoing, Defendant UMC respectfully moves this Court, pursuant to NRCp 56, NRS 41A.071, and NRS41A.100 for an Order of Summary Judgment.

DATED this 25<sup>th</sup> day of August, 2016.

**MORRIS, SULLIVAN, LEMKUL &  
PITEGOFF**

/s/ Jeffrey I. Pitegoff  
JEFFREY I. PITEGOFF, ESQ.  
NEVADA BAR NO. 005458  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
*Attorney for Defendant*  
*University Medical Center of Southern Nevada*

<sup>11</sup> See Affidavit of Zoe Terry, Declaration of Susan Dolorfino, and Declaration of Ramon Santa Ana.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Allyson Lodwick  
An Employee of MORRIS, SULLIVAN, LEMKUL & PITEGOFF

## EXHIBIT 10

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

CASE No. A-16-735063-C

Susan Dolorfino, Plaintiff(s) vs. University Medical Center of Southern Nevada, Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: **Malpractice - Medical/Dental**

Date Filed: **04/14/2016**

Location: **Department 29**

Cross-Reference Case Number: **A735063**

### PARTY INFORMATION

Defendant Robert Harper Odell Jr MD

Lead Attorneys  
John H Cotton  
*Retained*  
702-832-5909(W)

Defendant University Medical Center of Southern Nevada

Jeffrey I Pitegoff  
*Retained*  
702-405-8100(W)

Plaintiff Dolorfino, Susan

Zoe Terry  
*Retained*  
702-726-6797(W)

### EVENTS & ORDERS OF THE COURT

09/14/2016 All Pending Motions (9:00 AM) (Judicial Officers Scann, Susan, Bonaventure, Joseph T.)

#### Minutes

09/14/2016 9:00 AM

- DEFENDANT ROBERT HARPER ODELL, JR., MOTION FOR SUMMARY JUDGMENT...UNIVERSITY MEDICAL CENTER OF SOUTERN NEVADA'S MOTION FOR SUMMARY JUDGMENT  
Ms. Turpen advised there was a one year statute of limitation, unless it could be shown there was reasonable damage. Furthermore, the Court was correct in asserting Dr. Odell's Motion for Summary Judgment should be considered a Motion to Dismiss. Arguments by counsel regarding the merits of the motion. Ms. Turpen argued the Plaintiff's counsel claimed that since there was an alleged injury to Ms. Dolorfino's tooth during her hysterectomy, than that amounts to an injury under subsection D. However, the course of treatment should be considered. Moreover, Dr. Odell was an anesthesiologist, and was not working within the surgical field of the hysterectomy. Dr. Odell was managing treatment in the head and neck region. Furthermore, Plaintiff did not have an expert affidavit of merit to support their complaint, and had not met the pleading requirements. Plaintiff only lists two causes of action against Dr. Odell, and there were other causes of action against the facility. Ms. Terry advised according to Nevada Power's records, there was a twenty-two second power outage, which comports with UMC records. During that time, when the lights went out, Dr. Odell dropped an instrument of the Plaintiff's mouth, which then it was loosened the tooth. The tooth did not become loosened during incubation, it was loosened when an instrument was dropped on her mouth. Furthermore, In Dr. Odell's affidavit, he did not mention the power outage at all. Furthermore, the instrument being dropped on Plaintiff's mouth, was not a provision of anesthesia services. Additionally, the signed consent form was ambiguously worded. Plaintiff was not agreeable to instrument being dropped on her mouth, and Dr. Odell never met with Plaintiff until after he informed her he dropped the instrument on her mouth. Mr. Peterson stated there was no allegation, and no relation to the power outage that was the cause of Plaintiff's injury. Court noted an affidavit was necessary in this particular case. Court further noted, the Motion for Summary Judgment will be interpreted as a Motion to Dismiss, and both Motions for Dr.

Odell and the hospital will be granted. COURT ORDERED,  
Motions GRANTED WITHOUT PREJUDICE, an affidavit was  
required. Defendants to prepare the order.

Parties Present

Return to Register of Actions

# EXHIBIT 11

  
CLERK OF THE COURT

1 **NEOJ**  
2 **JOHN H. COTTON, ESQ.**  
3 Nevada Bar Number 5268  
4 JHCotton@jhcottonlaw.com  
5 **VINCENT J. VITATOE, ESQ.**  
6 Nevada Bar Number 12888  
7 VVitatoe@jhcottonlaw.com  
8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendant, Robert Harper O'Dell, Jr., M.D.*

14 **DISTRICT COURT**  
15 \* \* \*  
16 **CLARK COUNTY, NEVADA**

17 **SUSAN DOLORFINO;**  
18  
19 Plaintiffs,

CASE NO.: A-16-735063-C  
DEPT. NO: XXIX

20 vs.

21 **UNIVERSITY MEDICAL CENTER OF**  
22 **SOUTHERN NEVADA; ROBERT HARPER**  
23 **ODELL, JR., M.D.; DOES 1 through 100,**  
24 **inclusive; and ROE CORPORATIONS 1**  
25 **through 100, inclusive**

**NOTICE OF ENTRY OF ORDER**

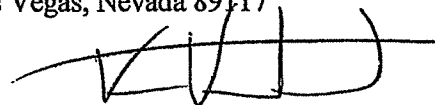
26 Defendants.

27 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

28 **YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE** that an Order was entered in  
the above entitled matter on the 6<sup>th</sup> day of February 2017, a copy of which is attached hereto.

Dated this 7<sup>th</sup> day of February 2017.

**JOHN H. COTTON & ASSOCIATES, LTD.**  
7900 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117



**JOHN H. COTTON, ESQ.**  
**VINCENT J. VITATOE, ESQ.**

John H. Cotton & Associates, Ltd.  
7900 West Sahara, Suite 200  
Las Vegas, Nevada 89117

JOHN H. COTTON & ASSOCIATES  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 7<sup>th</sup> day of February 2017, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

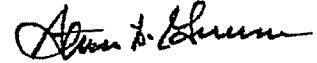
Zoe Terry, Esq.  
**TERRY LAW GROUP, P.C.**  
410 South Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiffs*

Jeffrey Pitegoff, Esq.  
**MORRIS, SULLIVAN, ET. AL.**  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
*Attorneys for Defendant University Medical Center*

  
An Employee of John H. Cotton & Associates

ORIGINAL

Electronically Filed  
02/06/2017 11:04:58 AM

  
CLERK OF THE COURT

ORD  
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005268  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888  
JOHN H. COTTON & ASSOCIATES  
790 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117  
Telephone: 702/832-5909  
Facsimile: 702/832-5910  
Attorneys for Defendant  
Robert Harper Odell, Jr., M.D.

DISTRICT COURT  
CLARK COUNTY, NEVADA

SUSAN DOLORFINO

Plaintiff,

vs.

Case No.: A-16-735063-C  
Dept. No.: XXIX

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA; ROBERT HARPER  
ODELL, JR., M.D.; DOES 1 through 100,  
inclusive; and ROE CORPORATIONS, I  
through X, inclusive.

Defendants.

ORDER

The above-captioned matter having come on for hearing before this Court, the Honorable Joseph T. Boneventure presiding, on Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment and Defendant University Medical Center of Southern Nevada's Joinder to the Motion for Summary Judgment, with Katherine L. Turpen, Esq. of the law firm of JOHN H. Cotton & Associates, Ltd. appearing on behalf of Defendant, Robert Harper Odell, Jr., M.D ("Dr. Odell" or "Defendant"), Ryan Peterson, Esq., of the law firm MORRIS, SULLIVAN, LEMKUL & PITEGOFF appearing on behalf of Defendant University Medical Center of Southern Nevada ("Defendant UMC"), and Zoe Terry, Esq. of TERRY LAW GROUP appearing on behalf of the Plaintiff, Susan Dolorfino ("Plaintiff"). The Court, having considered the pleadings, Motions, Joinder, Oppositions thereto, and Replies together with argument presented at the hearing on this matter, and good cause appearing therefor, finds as follows:

John H. Cotton & Associates, Ltd.  
7900 West Sahara, Suite 200  
Las Vegas, Nevada 89117

02-11-17 09:57 P.

000138

FINDINGS

Plaintiff filed a Complaint for claims against the Defendant Healthcare Providers arising out of allegations of Professional Negligence/Medical Malpractice, as governed by NRS Chapter 41A, et. seq. The Court finds that the allegations, as asserted in Plaintiff's Complaint, are insufficient to maintain claims under a theory of Res Ipsa Loquitur, NRS 41A.100(d). The Court finds that Plaintiff's Complaint against the Defendant Healthcare Providers required an expert witness affidavit of merit pursuant to NRS 41A.071. The Court further finds Plaintiff failed to comply with NRS 41A.071's expert affidavit requirement and that her Complaint is, therefore, void *ab initio* and must be dismissed. Washoe Medical Center v. Second Judicial District Court of State of Nevada, 122 Nev. 1298; 148 P.3d. 790 (2006). The Court further finds that Defendant Odell's Motion for Summary Judgment should be considered a Motion to Dismiss rather than a Motion for Summary Judgment.

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Defendant Dr. Odell's Motion and Defendant UMC's Joinder thereto are hereby GRANTED. Plaintiff's Complaint is dismissed in its entirety and WITHOUT PREJUDICE, pursuant to NRS 41A.071, 41A.100 and Washoe Medical Center v. Second Judicial District Court of State of Nevada, 122 Nev. 1298; 148 P.3d. 790 (2006).

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
DISTRICT COURT JUDGE

Approved as to Form and Content:

**TERRY LAW GROUP, PC**

\_\_\_\_\_  
Zoe Terry, Eq.  
NV Bar No.: 10900  
*Attorneys for Plaintiff*

**MORRIS, SULLIVAN, LEMKUL & PITEGOFF**

\_\_\_\_\_  
Ryan Peterson, Esq.  
NV Bar No. 10715

Respectfully Submitted:

DATED this \_\_\_\_ day of January, 2017.

**JOHN H. COTTON & ASSOCIATES**

By: \_\_\_\_\_  
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005268  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888

John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:


Defendant Dr. Odell's Motion and Defendant UMC's Joinder thereto are hereby GRANTED. Plaintiff's Complaint is dismissed in its entirety and WITHOUT PREJUDICE, pursuant to NRS 41A.071, 41A.100 and Washoe Medical Center v. Second Judicial District Court of State of Nevada, 122 Nev. 1298; 148 P.3d. 790 (2006).

IT IS SO ORDERED this 1 day of Feb, 2017.

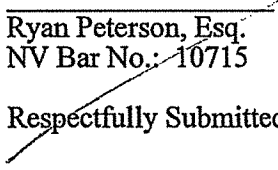
  
DISTRICT COURT JUDGE

Approved as to Form and Content:

**TERRY LAW GROUP, PC**

  
Zoe Terry, Esq.  
NV Bar No.: 10900  
Attorneys for Plaintiff

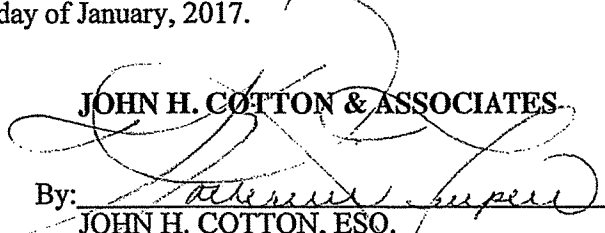
**MORRIS, SULLIVAN, LEMKUL & PITEGOFF**

  
Ryan Peterson, Esq.  
NV Bar No.: 10715

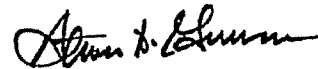
Respectfully Submitted:

DATED this 31<sup>st</sup> day of January, 2017.

**JOHN H. COTTON & ASSOCIATES**

By:   
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005268  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888

## EXHIBIT 12

  
CLERK OF THE COURT

COPY

1 NOAS  
2 ZOE TERRY, ESQ.  
3 Nevada Bar No. 10900  
4 TERRY LAW GROUP, PC  
5 410 S. Rampart Blvd, Suite 390  
6 Las Vegas, Nevada 89145  
7 Attorneys for Plaintiffs  
8 (702) 726-6797  
9 zoe@terrylawgroupc.com

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 SUSAN DOLORFINO,  
9 Plaintiffs,

10 vs.

11 UNIVERSITY MEDICAL CENTER OF  
12 SOUTHERN NEVADA; ROBERT HARPER  
13 ODELL, JR., M.D.; DOES 1 through 100, and  
14 ROE CORPORATIONS 1 through 100,  
15 inclusive,

16 Defendants.

Case No: A-16-735063-C

Dept. No: XXIX

NOTICE OF APPEAL

17 Notice is hereby given that Plaintiff/Appellant SUSAN DOLORFINO hereby appeals  
18 to the Supreme Court of Nevada from the Eighth Judicial District Court's Order Granting  
19 Defendant ROBERT HARPER ODELL, JR.'s Motion For Summary Judgment and  
20 UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA's Joinder to said Motion,  
21

22 ///

23 ///

24 ///

25 ///

1 entered on February 6, 2017 and for which Notice of Entry of Order was served February 7,  
2 2017.

3 DATED this 16<sup>th</sup> day of February, 2017.

4 TERRY LAW GROUP, PC

5 Z. Terry  
6 ZOE TERRY, ESQ.

7 Nevada Bar # 6519

8 410 S Rampart Blvd., Suite 390

9 Las Vegas, NV 89145

10 Attorney for Plaintiff/Appellant

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 16<sup>th</sup> day of February, 2017, I served a true and correct copy of the  
13 foregoing **NOTICE OF APPEAL**, addressed to the following counsel of record at the following  
14 address(es), as follows:

15        **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with  
16 postage thereon fully prepaid, addressed as indicated on service list below in the  
17 United States mail at Las Vegas, Nevada.

18        **VIA FACSIMILE:** by causing a true copy thereof to be telecopied to the number  
19 indicated on the service list below.

20        **VIA PERSONAL DELIVERY:** by causing a true copy thereof to be hand delivered  
21 on this date to the addressee(s) at the address(es) set forth on the service list below.

22   ✓   **VIA E-SERVICE:** an electronic copy of the preceding document was concurrently  
23 served upon opposing counsel via the Court's electronic service system.

24 John H. Cotton, Esq.  
25 JOHN H. COTTON & ASSOCIATES, LTD.  
26 7900 West Sahara Avenue, Suite 200  
27 Las Vegas, NV 89117  
28 (702) 832-5909 phone  
(702) 832-5910 fax  
*Attorneys for Defendant*  
*Robert Harper Odell, Jr., M.D.*

1 Jeffrey I. Pitegoff, Esq.  
2 MORRIS, SULLIVAN, LEMKUL & PITEGOFF  
3 3770 Howard Hughes Parkway, Suite 170  
4 Las Vegas, NV 89169  
5 (702) 405-8100 phone  
6 (702) 405-8101 fax  
7 *Attorneys for Defendant*  
8 *University Medical Center of Southern Nevada*



---

An employee of TERRY LAW GROUP, PC

## EXHIBIT 13

# Proposed Treatment Plan

04/30/2015

**Ronald K. Wagner DDS**

Kent Wagner DDS  
2045 Village Center Circle  
Las Vegas, NV 89134  
(702)878-5599

Susan R. Dolorfino  
3009 Roseville Way  
Las Vegas, NV 89102

ID: 14445

Phase	Date Plan	Appt	Provider	Service	Tth	Surf	Fee	Ins.	Pat.
1	04/30/2015		1	D7140 Extr.,erupted tth or exposed rt	7		\$110.00	\$88.00	\$22.00
1	04/30/2015		1	D7140 Extr.,erupted tth or exposed rt	8		\$110.00	\$88.00	\$22.00
1	04/30/2015		1	D7140 Extr.,erupted tth or exposed rt	9		\$110.00	\$88.00	\$22.00
1	04/30/2015		1	D7140 Extr.,erupted tth or exposed rt	10		\$110.00	\$88.00	\$22.00
1	04/30/2015		1	2701 lab design fee			\$600.00	\$0.00	\$600.00
Standard Fee: \$1,000.0 Adjust: \$400.00									
Subtotal for This Phase:							\$1,040.00	\$352.00	\$688.00
2	04/30/2015		1	D6245 Pontic-porcelain/ceramic	7		\$1,050.00	\$840.00	\$210.00
2	04/30/2015		1	D6245 Pontic-porcelain/ceramic	8		\$1,050.00	\$568.00	\$482.00
2	04/30/2015		1	D6245 Pontic-porcelain/ceramic	9		\$1,050.00	\$0.00	\$1,050.00
2	04/30/2015		1	D6245 Pontic-porcelain/ceramic	10		\$1,050.00	\$0.00	\$1,050.00
2	04/30/2015		1	D6740 Crown-porcelain/ceramic	6		\$1,050.00	\$0.00	\$1,050.00
2	04/30/2015		1	D6740 Crown-porcelain/ceramic	11		\$1,050.00	\$0.00	\$1,050.00
Subtotal for This Phase:							\$6,300.00	\$1,408.00	\$4,892.00

Subtotal: \$7,340.00 \$1,760.00 \$5,580.00  
*unc paid - 2000.00*

INSURANCE COVERAGE IS ONLY AN ESTIMATION. GUARANTOR IS RESPONSIBLE FOR ALL TREATMENT NOT COVERED BY INSURANCE.

Total Proposed: \$7,340.00  
 Total Completed: \$0.00  
 Total Accepted: \$0.00  
 Proposed Insurance: \$1,760.00

*Care Credit = \$3580.00*

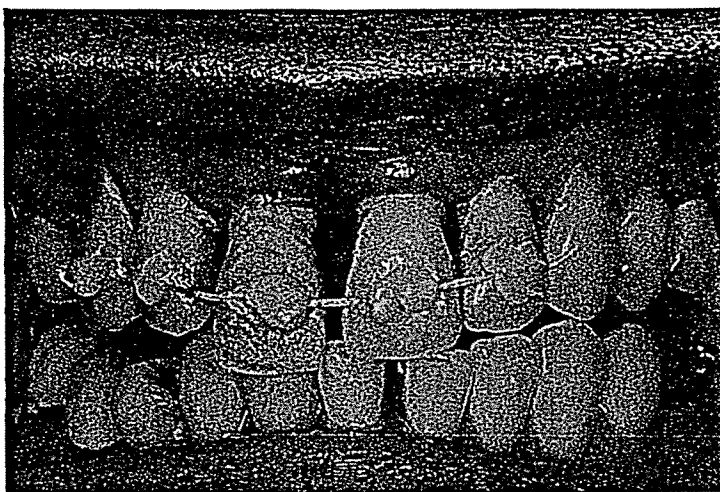
INSURANCE COVERAGE IS ONLY AN ESTIMATE. PATIENT IS RESPONSIBLE FOR ALL TREATMENT NOT COVERED BY INSURANCE.

Patient or Guarantor's Signature \_\_\_\_\_

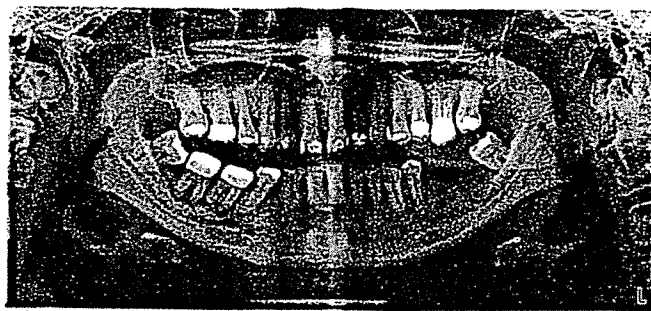
Date \_\_\_\_\_

**Photos and X-Rays from Ronald K. Wagner DDS**

**Susan Dolorfino**



**INITIAL IMAGE**

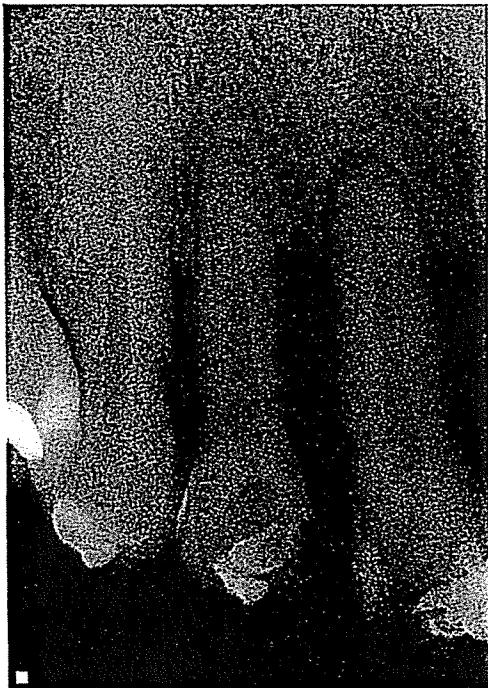
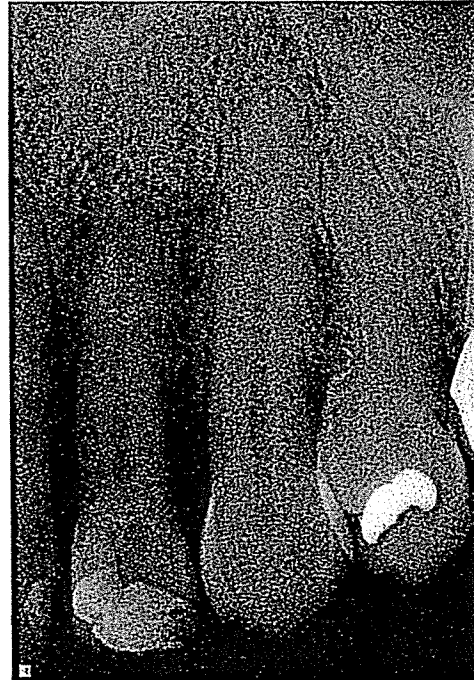


**PANOREX**

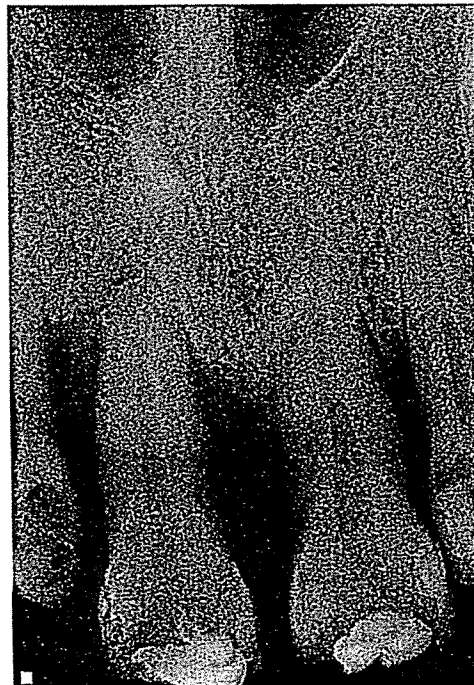
**Photos and X-Rays from Ronald K. Wagner DDS**

**Susan Dolorfino**

**Broken tooth #10**



**Upper Anterior (1 of 2)**



**Upper Anterior (2 of 2)**

1 ZOE TERRY, ESQ.  
Nevada Bar No. 0010900  
2 TERRY LAW GROUP, PC  
1980 Festival Plaza Dr., Suite 300  
3 Las Vegas, Nevada 89135  
4 Attorneys for Appellant

Electronically Filed  
Sep 06 2017 11:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

7 SUSAN DOLORFINO, )  
8 )  
Appellant, )  
9 )  
vs. )  
10 )  
UNIVERSITY MEDICAL CENTER OF )  
11 SOUTHERN NEVADA; )  
AND ROBERT HARPER ODELL, JR., )  
12 )  
Respondents. )  
13 )

**SUPREME COURT NO.: 72443**

14 **APPELLANT'S APPENDIX**

15 **VOLUME I**

17 **ATTORNEYS FOR APPELLANT**

18 ZOE TERRY, ESQ.  
Nevada Bar #10900  
19 TERRY LAW GROUP, PC  
1980 Festival Plaza Dr., Suite 300  
20 Las Vegas, Nevada 89135  
21 (702) 726-6797  
Attorney for Appellant

**ATTORNEYS FOR RESPONDENT, UMC**

JEFFREY PITEGOFF, ESQ.  
Nevada Bar #5458  
MORRIS, SULLIVAN, ET. AL.  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, NV 89169  
(702) 405-8100  
Attorneys for Respondent, UMC

22 **ATTORNEYS FOR RESPONDENT, DR. ROBERT ODELL, JR.**

23 JOHN H. COTTON, ESQ.  
Nevada Bar #5268  
24 VINCENT J. VITATOE, ESQ.  
Nevada Bar #12888  
25 JOHN H. COTTON & ASSOCIATES, LTD.  
7900 West Sahara Ave., Suite 200  
26 Las Vegas, Nevada 89117  
27 (702) 832-5909  
28 Attorney for Respondent, Dr. Robert Odell, Jr.

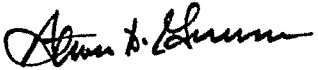
**VOLUME 1**

1. Complaint – (1-6);
2. Dr. Odell’s Answer to Complaint – (7-13);
3. UMC’s Answer to Complaint – (14-23);
4. Defendant Dr. Odell’s Motion for Summary Judgment – (24-46);
5. Defendant UMC’s Motion for Summary Judgment – (47-68);
6. Plaintiff’s Opposition to Dr. Odell’s Motion for Summary Judgment – (69-93);
7. Plaintiff’s Opposition to UMC’s Motion for Summary Judgment – (94-118);
8. Defendant Dr. Odell’s Reply to Plaintiff’s Opposition to Motion for Summary Judgment – (119-124);
9. Defendant UMC’s Reply to Plaintiff’s Opposition to Motion for Summary Judgment – (125-133);
10. Court Minutes – (134-135);
11. Notice of Entry of Order – (136-141);
12. Notice of Appeal – (142-144); and
13. Proposed Treatment Plan, Photos and X-rays from Ronald K. Wagner, DDS, (145-147)

# EXHIBIT 1

1 **COMP**  
2 ZOE TERRY, ESQ.  
3 Nevada Bar No. 0010900  
4 TERRY LAW GROUP, PC  
5 410 S Rampart Blvd, Ste 390  
6 Las Vegas, NV 89145  
7 Attorneys for Plaintiff  
8 (702) 726-6797

Electronically Filed  
04/14/2016 12:19:03 PM



CLERK OF THE COURT

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 SUSAN DOLORFINO,

9 Plaintiff,

10 vs.

CASE NO.: A- 16- 735063- C  
DEPT. NO.: VI

11 UNIVERSITY MEDICAL CENTER OF  
12 SOUTHERN NEVADA; ROBERT HARPER  
13 ODELL, Jr, M.D.; DOES 1 through 100,  
14 inclusive; and ROE CORPORATIONS 1  
15 through 100, inclusive

14 Defendants.

16 **COMPLAINT**

17 COMES NOW, Plaintiff, SUSAN DOLORFINO, by and through her counsel of record, ZOE  
18 TERRY, ESQ. of the law firm of Terry Law Group, PC and complains as follows:

19 **COMMON ALLEGATIONS**

20 1. At all times relevant herein, Plaintiff, SUSAN DOLORFINO was and still is a resident  
21 of Clark County, State of Nevada.

22 2. Plaintiff alleges on information and belief that at all times herein mentioned, Defendant,  
23 UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA, (hereinafter "UMC") is a Hospital  
24 in Nevada with its principal place of business in the State of Nevada.

25 3. Plaintiff alleges on information and belief that at all times herein mentioned, Defendant,  
26 ROBERT HARPER ODELL, JR., M.D., (hereinafter "DR. ODELL") is a Doctor specializing in  
27 Anesthesiology practicing in Las Vegas, Nevada.  
28

1           4.     The true names or capacities, whether individual, corporate, associate, alter ego or  
2 otherwise of the Defendants DOES I through 100, are unknown to Plaintiff at the time of filing this  
3 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave of  
4 Court to amend this Complaint to show their true names or capacities when the same have been  
5 ascertained or discovered.

6           5.     The true names of the Defendants ROE CORPORATIONS 1 through 100 are unknown  
7 to Plaintiff at the time of filing this Complaint and Plaintiff, therefore, sues said Defendants by such  
8 fictitious names and will ask leave of Court to amend this Complaint to show their true names when  
9 the same have been ascertained or discovered.

10           6.     At all times herein mentioned, each Defendant was the agent, servant and employee of  
11 its remaining Co-Defendants and was at all times herein acting within the course and scope of their  
12 agency and employment.

13           7.     That prior to April 13, 2015, Defendants, and each of them, held themselves out as  
14 being capable and qualified to treat patients. Plaintiff employed Defendants, and each of them, to  
15 carry out an emergency hysterectomy and to do all things necessary and proper for the care and  
16 treatment of said individual; that said Defendants, and each of them, undertook said employment, and  
17 undertook and agreed to provide proper treatment relating to any and all of Plaintiff's treatment, and to  
18 care for and treat Plaintiff and to do all things necessary and proper in connection therewith, and that  
19 said Defendants, and each of them, entered into such employment individually, by and through their  
20 employees as agents and servants.

21           8.     That on or about April 13, 2015, SUSAN DOLORFINO presented to UMC for  
22 treatment for heavy vaginal bleeding. An ultrasound showed a four (4) inch mass in the cervix which  
23 would require a total abdominal hysterectomy.

24           9.     That on or about April 14, 2015, SUSAN DOLORFINO was taken to surgery at  
25 approximately 5:00 p.m. for the abdominal hysterectomy. The anesthesiologist, DR. ODELL, was  
26  
27  
28

1 performing a tracheotomy when UMC experienced a total black-out of around 6 seconds. DR. ODELL  
2 dropped an instrument believed to be a "blade" used to perform the tracheotomy on SUSAN  
3 DOLORFINO'S mouth, causing injury to her tooth.

#### 4 FIRST CAUSE OF ACTION

##### 5 (Negligence - UMC)

6 10. Plaintiff incorporates by reference paragraphs 1 through 9 of her Complaint as though  
7 fully set forth herein.

8 11. Defendant, UMC had a duty to provide proper care and treatment to all patients,  
9 including Plaintiff and to provide a continuous stream of power. Further UMC owed a duty to install  
10 an emergency electrical power source and to adhere to JCAHO standards to prevent emergency  
11 electrical power system failures and power outages generally.

12 12. Defendants breached their duties and were negligent by *inter alia* failing to use an  
13 adequate emergency power system such as a battery backup or Uninterrupted Power Supply, (UPS)  
14 system and instead relied on a generator for power outages thus allowing the lights to go out in the  
15 theater where Plaintiff's surgery was being conducted for at least 6 seconds.

16 13. That as a direct and proximate result of Defendants' negligence, carelessness, and/or  
17 recklessness, Plaintiff sustained special and general damages in excess of \$10,000.  
18

#### 19 SECOND CAUSE OF ACTION

##### 20 (Negligence – DR. ODELL)

21 14. Plaintiff incorporates by reference paragraphs 1 through 13 of her Complaint as though  
22 fully set forth herein.

23 15. Defendant, DR. ODELL had a duty to provide proper care and treatment to all patients,  
24 including Plaintiff.

25 16. Defendant breached his duties and was negligent by *inter alia* not properly handling an  
26 instrument used for tracheotomies and dropping it on Plaintiff's mouth during surgery.  
27  
28

1 17. That as a direct and proximate result of Defendants' negligence, carelessness, and/or  
2 recklessness, Plaintiff sustained special and general damages in excess of \$10,000.

3 **THIRD CAUSE OF ACTION**

4 **(Vicarious Liability & Ostensible Agency - UMC)**

5 18. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 17 as  
6 though said paragraphs were set forth herein in full.

7  
8 19. That the errors and omissions of Defendants' agents, servants and employees are  
9 imputed to Defendant pursuant to N.R.S. 41.130 and ostensible agency theories under RENOWN  
10 HEALTH, INC. v. VANDERFORD, 126 Nev. Adv. Op. No. 24, (2010); that Plaintiff looked to UMC  
11 for proper care and treatment and that Plaintiff believed DR. ODELL and/or others were employees of  
12 UMC.

13  
14 20. That as a result of the negligence of Defendants and DOE and ROE Defendants and  
15 their agents, servants and employees, the Defendants, and each of them, are liable to Plaintiff for  
16 damages in excess of \$10,000.

17 21. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
18 are liable therefrom for Plaintiffs' attorneys' fees and costs.

19 **FOURTH CAUSE OF ACTION**

20 **(Medical Malpractice – NRS41A.100)**

21 22. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 21 as  
22 though said paragraphs were set forth herein in full.

23 23. That Defendants had a duty to provide competent medical care to Plaintiff. In breach of  
24 this duty, Defendant, DR. ODELL improperly handled surgical tools and Defendant, UMC did not  
25 have proper back-up generators in case of power outages, which injured Plaintiff and will render it  
26 necessary for Plaintiff to undergo further dental treatment. The doctrine of res ipsa loquitur applies, in  
27 that pursuant to NRS 41A.100(d) an injury was suffered during the course of treatment to a part of the  
28

000004

1 body, (the mouth), not directly involved in the treatment, (the uterus), and as such the presumption of  
2 negligence automatically applies and an expert affidavit is not required.

3 24. As a direct and proximate result of the Defendants' negligence, carelessness and breach  
4 of the applicable standard of care, Plaintiff has sustained special and general damage in an amount in  
5 excess of \$10,000.

6  
7 **FIFTH CAUSE OF ACTION**  
8 **(Negligent Hiring – UMC)**

9 25. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 24 as  
10 though said paragraphs were set forth herein in full.

11 26. That Defendants owed Plaintiff a duty to hire competent staff, personnel, agents,  
12 servants and employees.

13 27. That Defendants were negligent in failing to determine the proper qualifications of their  
14 staff, personnel, agents, servants and employees, and that Defendants failed in their duty to hire  
15 competent staff, personnel, agents, servants and employees.

16 28. That as a direct and proximate result of the negligence and carelessness of Defendants,  
17 and each of them, Plaintiff sustained damages in an amount in excess of \$10,000.

18 29. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
19 are liable therefrom for Plaintiff's attorneys' fees and costs.

20 **SIXTH CAUSE OF ACTION**  
21 **(Negligent Supervision and Retention – UMC)**

22 30. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 31 as  
23 though said paragraphs were set forth herein in full.

24 31. That Defendants had a duty to protect Plaintiff from harm and had a duty to act with  
25 reasonable prudence by properly supervising and retaining their staff, personal agents, servants and  
26 employees.  
27  
28

1           32.     That Defendants failed in their duty to protect Plaintiff from harm and failed in their  
2 duty to act with reasonable prudence by failing to properly supervise and properly retain their staff,  
3 personnel, agents, servants and employees.

4           33.     That as a direct and proximate result of the negligence and carelessness of Defendants,  
5 Plaintiff has sustained damage in an amount in excess of \$10,000.

6           34.     That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
7 are liable therefrom for Plaintiff's attorneys' fees and costs.

8           WHEREFORE, Plaintiff prays that the Court award relief as follows:  
9

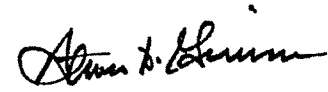
- 10           1.     Compensatory damages in an amount exceeding \$10,000;  
11           2.     Past and future medical/dental expenses;  
12           3.     A judicial determination that Defendants are jointly and severally liable to each  
13 Plaintiff;  
14           4.     Costs of suit;  
15           5.     Attorney fees;  
16           6.     Prejudgment interest; and  
17           7.     Such other relief as the Court deems equitable.

18           DATED this 14<sup>th</sup> day of April, 2016.  
19

20           TERRY LAW GROUP, PC

21           Z Terry  
22           ZOE TERRY, ESQ.  
23           Nevada Bar No. 10900  
24           410 S Rampart Blvd., Suite 390  
25           Las Vegas, NV 89145  
26           Attorneys for Plaintiff  
27  
28

## EXHIBIT 2

  
CLERK OF THE COURT

1 ANS  
2 JOHN H. COTTON, ESQ.  
3 Nevada Bar Number 5268  
4 JHCotton@jhcottonlaw.com  
5 JOHN J. SAVAGE, ESQ.  
6 Nevada Bar Number 11455  
7 JSavage@jhcottonlaw.com  
8 JOHN H. COTTON & ASSOCIATES, LTD.  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendant*  
14 *Robert Harper Odell, Jr., M.D.*

DISTRICT COURT  
\* \* \*  
CLARK COUNTY, NEVADA

11 SUSAN DOLORFINO;  
12  
13 Plaintiffs,

14 vs.

15 UNIVERSITY MEDICAL CENTER OF  
16 SOUTHERN NEVADA; ROBERT HARPER  
17 ODELL, JR., M.D.; DOES 1 through 100,  
18 inclusive; and ROE CORPORATIONS 1  
19 through 100, inclusive

20 Defendants.

CASE NO.: A-16-735063-C  
DEPT. NO: X

ROBERT HARPER ODELL, JR.,  
M.D.'S ANSWER TO PLAINTIFF'S  
COMPLAINT

21 Defendant Robert Harper Odell, Jr., M.D. (hereinafter "Defendant"), by and through his  
22 attorneys of record, John H. Cotton, Esq. and John J. Savage, Esq., of John H. Cotton &  
23 Associates, hereby Answers Plaintiff's Complaint as follows:

24 1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant responds that he lacks  
25 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
26 alleged therein and therefore denies them on that basis.

27 2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant responds that he lacks  
28 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
alleged therein and therefore denies them on that basis.

John H. Cotton & Associates, Ltd.  
7900 West Sahara, Suite 200  
Las Vegas, Nevada 89117

1           3.     Answering Paragraph 3 of Plaintiff's Complaint, Defendant admits the statement  
2 made therein.

3           4.     Answering Paragraph 4 of Plaintiff's Complaint, Defendant responds that he lacks  
4 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
5 alleged therein and therefore denies them on that basis.

6           5.     Answering Paragraph 5 of Plaintiff's Complaint, Defendant responds that he lacks  
7 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
8 alleged therein and therefore denies them on that basis.

9           6.     Answering Paragraph 6 of Plaintiff's Complaint, Defendant denies the statement  
10 made therein.

11           7.     Answering Paragraph 7 of Plaintiff's Complaint, Defendant responds that he lacks  
12 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
13 alleged therein and therefore denies them on that basis.

14           8.     Answering Paragraph 8 of Plaintiff's Complaint, Defendant responds that he lacks  
15 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
16 alleged therein and therefore denies them on that basis.

17           9.     Answering Paragraph 9 of Plaintiff's Complaint, Defendant responds that he lacks  
18 sufficient information and/or knowledge to form a belief about the truth or falsity of the facts  
19 alleged therein and therefore denies them on that basis.

20  
21  
22  
23                   **FIRST CAUSE OF ACTION**

24                   **(Negligence – UMC)**

25           10.     Answering Paragraph 10 of Plaintiff's Complaint, Defendant refers to Paragraphs  
26 1 through 11 of this Answer, and by reference, incorporates the same herein as if fully set forth.

27           11.     Answering Paragraph 11 of Plaintiff's Complaint, Defendant responds that he  
28

1 lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the  
2 facts alleged therein and therefore denies them on that basis.

3 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant responds that he  
4 lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the  
5 facts alleged therein and therefore denies them on that basis.

6 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant responds that he  
7 lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the  
8 facts alleged therein and therefore denies them on that basis.

10 **SECOND CAUSE OF ACTION**

11 **(Negligence – DR. ODELL)**

12 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant refers to Paragraphs  
13 1 through 13 of this Answer, and by reference, incorporates the same herein as if fully set forth.

14 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant denies the statement  
15 made therein.

16 16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant denies the statement  
17 made therein.

18 17. Answering Paragraph 17 of Plaintiff's Complaint, Defendant denies the statement  
19 made therein.

20 **THIRD CAUSE OF ACTION**

21 **(Vicarious Liability & Ostensible Agency – UMC)**

22 18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant refers to Paragraphs  
23 1 through 17 of this Answer, and by reference, incorporates the same herein as if fully set forth.

24 19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant responds that he  
25 lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the  
26  
27  
28

1 facts alleged therein and therefore denies them on that basis.

2 20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant denies the statement  
3 made therein.

4 21. Answering Paragraph 21 of Plaintiff's Complaint, Defendant denies the statement  
5 made therein.  
6

7 **FOURTH CAUSE OF ACTION**

8 **(Medical Malpractice – NRS41A.100)**

9 22. Answering Paragraph 22 of Plaintiff's Complaint, Defendant refers to Paragraphs  
10 1 through 21 of this Answer, and by reference, incorporates the same herein as if fully set forth.

11 23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant denies the statement  
12 made therein.

13 24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant denies the statement  
14 made therein.  
15

16 **FIFTH CAUSE OF ACTION**

17 **(Negligent Hiring – UMC)**

18 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant refers to Paragraphs  
19 1 through 24 of this Answer, and by reference, incorporates the same herein as if fully set forth.

20 26. Answering Paragraph 26 of Plaintiff's Complaint, Defendant denies the statement  
21 made therein.

22 27. Answering Paragraph 27 of Plaintiff's Complaint, Defendant denies the statement  
23 made therein.  
24

25 28. Answering Paragraph 28 of Plaintiff's Complaint, Defendant denies the statement  
26 made therein.

27 29. Answering Paragraph 29 of Plaintiff's Complaint, Defendant denies the statement  
28

1 made therein.

2 **SIXTH CAUSE OF ACTION**

3 **(Negligent Supervision and Retention – UMC)**

4 30. Answering Paragraph 30 of Plaintiff's Complaint, Defendant refers to Paragraphs  
5 1 through 29 of this Answer, and by reference, incorporates the same herein as if fully set forth.

6 31. Answering Paragraph 31 of Plaintiff's Complaint, Defendant denies the statement  
7 made therein.

8 32. Answering Paragraph 32 of Plaintiff's Complaint, Defendant denies the statement  
9 made therein.

10 33. Answering Paragraph 33 of Plaintiff's Complaint, Defendant denies the statement  
11 made therein.

12 34. Answering Paragraph 34 of Plaintiff's Complaint, Defendant denies the statement  
13 made therein.

14 **AFFIRMATIVE DEFENSES**

15 1. Defendant has performed and fully discharged all medical and legal obligations to  
16 Plaintiff, including meeting the requisite standard of care to which Susan Dolorfino was entitled.

17 2. In all of the treatment provided and rendered to Susan Dolorfino by Defendant,  
18 Plaintiff was fully informed of the risks inherent in such medical procedures and the risks  
19 inherent in her own failure to comply with instructions, and did voluntarily assume all risks  
20 attendant thereto.

21 3. Plaintiff's damages, if any, were caused by the disease process and/or medical  
22 condition of Susan Dolorfino, and not by any act and/or omission by Defendant.

23 4. Defendant alleges that Plaintiff's Complaint fails to state a compensable claim for  
24 relief as against this Defendant.  
25  
26  
27  
28

1           5.     This answering Defendant hereby incorporates by reference those affirmative  
2 defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein.  
3 In the event further investigation or discovery reveals the applicability of any such defenses, this  
4 answering Defendant reserves the right to seek leave of court to amend this Answer to  
5 specifically assert any such defenses. Such defenses are herein incorporated by reference for the  
6 specific purpose of not waiving any such defenses.  
7

8           6.     Defendant was required to retain the services of an attorney to defend this action  
9 and are entitled to an award of reasonable attorney's fees and costs of suit.

10          7.     Plaintiff failed to take reasonable efforts to mitigate damages, if any, and is  
11 therefore barred from recovering any damages from this answering Defendant.

12          8.     Plaintiff failed to join a party pursuant to N.R.C.P. 19 necessary for the just  
13 adjudication of the claims at issue in this action.

14          9.     This answering Defendant denies each and every allegation of Plaintiff's  
15 Complaint not specifically admitted or otherwise pled herein.

16          10.    Defendant asserts that Plaintiff's injuries, if any, were caused by the actions or  
17 inactions of persons over whom Defendant had neither control nor right of control and for whom  
18 this answering Defendant is not liable or responsible.  
19

20          11.    Plaintiff is barred from asserting any claims against this answering Defendant  
21 because the applicable statute of limitations expired prior to Plaintiff filing their Complaint.  
22

23          12.    Pursuant to N.R.C.P. 11, Defendant reserves the right to amend this Answer to  
24 include any and all affirmative defenses which have a reasonable basis in both law and fact and  
25 which are heretofore unknown.

26          13.    Defendant avails himself of all affirmative defenses as set forth in N.R.S.  
27 41A.031, 41A.035, 41A.045, 41A.071, 41A.097, 41A.100, 42.020, and 41A.021.  
28

John H. Cotton & Associates  
7900 W. Sahara, Suite 200  
Las Vegas, NV 89117

1 WHEREFORE, Defendant prays for judgment as follows:

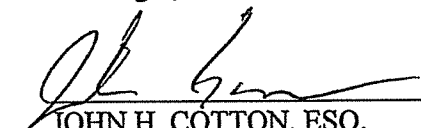
2 1. That Plaintiff takes nothing by way of the Complaint and that the Complaint be  
3 dismissed with prejudice;

4 2. That Defendant be awarded the costs and attorney's fees incurred in defending  
5 this action; and

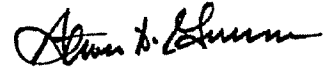
6 3. That the Court award any other and additional relief it deems appropriate under  
7 the circumstances.  
8

9 Dated this 1st day of June 2016.

10 JOHN H. COTTON & ASSOCIATES, LTD.  
11 7900 West Sahara Avenue, Suite 200  
12 Las Vegas, Nevada 89117

13   
14 JOHN H. COTTON, ESQ.  
15 JOHN J. SAVAGE, ESQ.  
16 *Attorneys for Defendants*  
17 *Robert Harper Odell, Jr., M.D.*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## EXHIBIT 3



CLERK OF THE COURT

1 ANSW  
JEFFREY I. PITEGOFF, ESQ.  
2 Nevada Bar No. 005458  
MORRIS, SULLIVAN, LEMKUL & PITEGOFF  
3 3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
4 Telephone No.: (702) 405-8100  
Fax No.: (702) 405-8101  
5 [pitegoff@morrissullivanlaw.com](mailto:pitegoff@morrissullivanlaw.com)  
[cereghino@morrissullivanlaw.com](mailto:cereghino@morrissullivanlaw.com)  
6 *Attorneys for Defendant,*  
*University Medical Center of Southern Nevada*

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 SUSAN DOLORFINO,

11 Plaintiff,

12 vs.

13 UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA; ROBERT  
14 HARPER ODELL, JR., M.D., DOES I  
through 100, inclusive; and ROE  
15 CORPORATIONS 1 through 100, inclusive,

16 Defendants.

CASE NO: A-16-735063-C  
DEPT NO.: VI

**ANSWER TO COMPLAINT**

17 **ANSWER TO COMPLAINT**

18 COMES NOW Defendant, UNIVERSITY MEDICAL CENTER OF SOUTHERN  
19 NEVADA (hereinafter the "Answering Defendant"), by and through its counsel of record,  
20 MORRIS, SULLIVAN, LEMKUL & PITEGOFF and hereby Answers Plaintiff's Complaint  
21 on file herein by admitting, denying and alleging as follows:

22 **COMMON ALLEGATIONS**

23 1. Answering Paragraph 1 of Plaintiff's Complaint, this Answering Defendant is  
24 without knowledge or information sufficient to form a belief as to the truth of the allegation  
25 and, on that basis, deny the same.

26 2. Answering Paragraph 2 of Plaintiff's Complaint, this Answering Defendant  
27 admits the allegations contained within.

28 ///

1           3.       Answering Paragraph 3 of Plaintiff's Complaint, this Answering Defendant is  
2 without knowledge or information sufficient to form a belief as to the truth of the allegation  
3 and, on that basis, deny the same.

4           4.       Answering Paragraph 4 of Plaintiff's Complaint, this Answering Defendant is  
5 without knowledge or information sufficient to form a belief as to the truth of the allegation  
6 and, on that basis, deny the same.

7           5.       Answering Paragraph 5 of Plaintiff's Complaint, this Answering Defendant is  
8 without knowledge or information sufficient to form a belief as to the truth of the allegation  
9 and, on that basis, deny the same.

10          6.       Answering Paragraph 6 of Plaintiff's Complaint, this Answering Defendant  
11 denies the allegations contained within.

12          7.       Answering Paragraph 7 of Plaintiff's Complaint, this Answering Defendant is  
13 without knowledge or information sufficient to form a belief as to the truth of the allegation  
14 and, on that basis, deny the same.

15          8.       Answering Paragraph 8 of Plaintiff's Complaint, this Answering Defendant is  
16 without knowledge or information sufficient to form a belief as to the truth of the allegation  
17 and, on that basis, deny the same.

18          9.       Answering Paragraph 9 of Plaintiff's Complaint, this Answering Defendant is  
19 without knowledge or information sufficient to form a belief as to the truth of the allegation  
20 and, on that basis, deny the same.

21                               **FIRST CAUSE OF ACTION**

22                               **(Negligence – UMC)**

23          10.       This Answering Defendant repeats and re-alleges its answers as set forth in  
24 Paragraphs 1 through 9 above with the same force and effect as though fully set forth herein.

25          11.       The allegations contained in Paragraph 11 of the Complaint merely assert a  
26 legal conclusion to which no response is required. To the extent a response is required,  
27 Answering Defendant denies the allegations contained in Paragraph 11 as stated.

28       ///

1           12. The allegations contained in Paragraph 12 of the Complaint merely assert a  
2 legal conclusion to which no response is required. To the extent a response is required,  
3 Answering Defendant denies the allegations contained in Paragraph 12 as stated.

4           13. Answering Paragraph 13 of Plaintiff's Complaint, this Answering Defendant  
5 denies the allegations contained within.

6                                   **SECOND CAUSE OF ACTION**

7                                   **(Negligence – DR. ODELL)**

8           14. This Answering Defendant repeats and re-alleges its answers as set forth in  
9 Paragraphs 1 through 13 above with the same force and effect as though fully set forth herein.

10          15. Answering Paragraph 15 of Plaintiff's Complaint, this Answering Defendant is  
11 without knowledge or information sufficient to form a belief as to the truth of the allegation  
12 and, on that basis, deny the same.

13          16. Answering Paragraph 16 of Plaintiff's Complaint, this Answering Defendant is  
14 without knowledge or information sufficient to form a belief as to the truth of the allegation  
15 and, on that basis, deny the same.

16          17. Answering Paragraph 17 of Plaintiff's Complaint, this Answering Defendant is  
17 without knowledge or information sufficient to form a belief as to the truth of the allegation  
18 and, on that basis, deny the same.

19                                   **THIRD CAUSE OF ACTION**

20                                   **(Vicarious Liability & Ostensible Agency – UMC)**

21          18. This Answering Defendant repeats and re-alleges its answers as set forth in  
22 Paragraphs 1 through 17 above with the same force and effect as though fully set forth herein.

23          19. The allegations contained in Paragraph 19 of the Complaint merely assert a  
24 legal conclusion to which no response is required. To the extent a response is required,  
25 Answering Defendant denies the allegations contained in Paragraph 19 as stated.

26          20. Answering Paragraph 20 of Plaintiff's Complaint, this Answering Defendant  
27 denies the allegations contained within.

28       ///

1           21.     Answering Paragraph 21 of Plaintiff's Complaint, this Answering Defendant  
2 denies the allegations contained within.

3                                   **FOURTH CAUSE OF ACTION**

4                                   **(Medical Malpractice – NRS41A.100)**

5           22.     This Answering Defendant repeats and re-alleges its answers as set forth in  
6 Paragraphs 1 through 21 above with the same force and effect as though fully set forth herein.

7           23.     Answering Paragraph 23 of Plaintiff's Complaint, this Answering Defendant  
8 denies the allegations contained within.

9           24.     Answering Paragraph 24 of Plaintiff's Complaint, this Answering Defendant  
10 denies the allegations contained within.

11                                   **FIFTH CAUSE OF ACTION**

12                                   **(Negligent Hiring – UMC)**

13           25.     This Answering Defendant repeats and re-alleges its answers as set forth in  
14 Paragraphs 1 through 24 above with the same force and effect as though fully set forth herein.

15           26.     The allegations contained in Paragraph 26 of the Complaint merely assert a  
16 legal conclusion to which no response is required. To the extent a response is required,  
17 Answering Defendant denies the allegations contained in Paragraph 26 as stated.

18           27.     Answering Paragraph 27 of Plaintiff's Complaint, this Answering Defendant  
19 denies the allegations contained within.

20           28.     Answering Paragraph 28 of Plaintiff's Complaint, this Answering Defendant  
21 denies the allegations contained within.

22           29.     Answering Paragraph 29 of Plaintiff's Complaint, this Answering Defendant  
23 denies the allegations contained within.

24                                   **SIXTH CAUSE OF ACTION**

25                                   **(Negligent Supervisions and Retention – UMC)**

26           30.     This Answering Defendant repeats and re-alleges its answers as set forth in  
27 Paragraphs 1 through 29 above with the same force and effect as though fully set forth herein.

28     ///

1           31. The allegations contained in Paragraph 31 of the Complaint merely assert a  
2 legal conclusion to which no response is required. To the extent a response is required,  
3 Answering Defendant denies the allegations contained in Paragraph 31 as stated.

4           32. Answering Paragraph 32 of Plaintiff's Complaint, this Answering Defendant  
5 denies the allegations contained within.

6           33. Answering Paragraph 33 of Plaintiff's Complaint, this Answering Defendant  
7 denies the allegations contained within.

8           34. Answering Paragraph 34 of Plaintiff's Complaint, this Answering Defendant  
9 denies the allegations contained within.

10                           **AFFIRMATIVE DEFENSES**

11                           **FIRST AFFIRMATIVE DEFENSE**

12           Defendant has performed and fully discharged all medical and legal obligations to  
13 Plaintiff, including meeting the requisite standard of care which Susan Dolorfino was entitled.

14                           **SECOND AFFIRMATIVE DEFENSE**

15           In all of the treatment provided and rendered to Susan Dolorfino by Defendant, Plaintiff  
16 was fully informed of the risks inherent in such medical procedures and the risks inherent in  
17 her own failure to comply with instructions, and did voluntarily assume all risks.

18                           **THIRD AFFIRMATIVE DEFENSE**

19           Plaintiff's damages, if any, were caused by the disease process and/or medical  
20 condition of Susan Dolorfino, and not by any act and/or omission by Defendant.

21                           **FOURTH AFFIRMATIVE DEFENSE**

22           Defendant alleges that Plaintiff's Complaint fails to state a compensable claim for the  
23 relief as against this Defendant.

24                           **FIFTH AFFIRMATIVE DEFENSE**

25           This answering Defendant hereby incorporates by reference those affirmative defenses  
26 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the  
27 vent further investigation or discovery reveals the applicability of any such defense, this  
28 answering Defendant reserves the right to seek leave of court to amend this Answer to

1 specifically assert any such defenses. Such defenses are herein incorporated by reference for  
2 the specific purpose of not waiving any such defenses.

3 SIXTH AFFIRMATIVE DEFENSE

4 Defendant was required to retain the services of an attorney to defend this action and is  
5 entitled to an award of reasonable attorney's fees and costs of suit.

6 SEVENTH AFFIRMATIVE DEFENSE

7 This Answering Defendant alleges that the damages, if any, suffered by the Plaintiff  
8 were caused in whole, or in part, by any independent intervening cause over which this  
9 Answering Defendant had no control and said independent intervening cause was not the result  
10 of negligence on the part of this Answering Defendant.

11 EIGHTH AFFIRMATIVE DEFENSE

12 Plaintiff has failed to plead with sufficient specificity any violation codes, ordinances,  
13 regulations, statutes or other laws.

14 NINTH AFFIRMATIVE DEFENSE

15 Plaintiff failed to make a reasonable effort to mitigate damages, if any, and is therefore  
16 barred from recovering any damages from this answering Defendant.

17 TENTH AFFIRMATIVE DEFENSE

18 This Answering Defendant alleges that all of its products, materials and services, if any  
19 were involved, complied with all applicable codes and/or governmental regulations enacted by  
20 the State of Nevada, any applicable political subdivision of the State of Nevada, and/or the  
21 United States of America.

22 ELEVENTH AFFIRMATIVE DEFENSE

23 Plaintiff failed to join a party pursuant to N.R.C.P. 19 necessary for the just  
24 adjudication of the claims at issue in this action.

25 TWELFTH AFFIRMATIVE DEFENSE

26 This answering Defendant denies each and every allegation of Plaintiff Complaint not  
27 specifically admitted or otherwise pled herein.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant asserts that Plaintiff's injuries, if any, were caused by the actions or inactions of persons over whom Defendant had neither control nor right of control and for whom this answering Defendant is not liable or responsible.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against this answering Defendant because the applicable statute of limitation expired prior to Plaintiff filing their Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, Defendant reserves the right to amend this Answer to include any and all affirmative defenses which have a reasonable basis in both law and fact and which are heretofore unknown.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant avails itself of all affirmative defenses as set forth in N.R.S. 41A.031, 41A.035, 41A.045, 41A.71, 41A.097, 41A.100, 42.020, and 41A.021.

SEVENTEENTH AFFIRMATIVE DEFENSE

The damages alleged by Plaintiff were caused by the acts of third persons who are not agents, servants, or employees of Defendant and who were not acting on its behalf. Accordingly, this Answering Defendant is not liable in any manner to Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

The injuries or damages, if any, complained of by the Plaintiff in the Complaint for damages were caused by the forces of nature and not by any acts or omission of this Answering Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

Any award arriving out of an act or omission by or on behalf of this answering Defendant, if any, may not exceed the statutory limits set forth in NRS §41.035.

///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TWENTIETH AFFIRMATIVE DEFENSE

Any duty the Answering Defendant owed to Plaintiff herein was owed to the general public and the Plaintiff, therefore, no claim exists against the Answering Defendant upon which relief could be granted as the claims are prohibited under the Public Duty Doctrine.

TWENTY-FIRST AFFIRMATIVE DEFENSE

At all times, all this Answering Defendants' staff was acting appropriately pursuant to the appropriate medical standards in their care and treatment of Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

All material facts and dangers were explained to Plaintiff in clear and concise language.

TWENTY-THIRD AFFIRMATIVE DEFENSE

This Answering Defendant alleges that it made, consistent with good medical practice, a full and complete disclosure to Plaintiff of all material facts known to it or reasonably believed by it to be true concerning Plaintiff's physical conditions and the appropriate alternative procedures available for treatment of such condition. Further, each and every service rendered to the Plaintiff by the Answering Defendant was expressly and impliedly consented to and authorized by the Plaintiff on the basis of said full and complete disclosures.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This Answering Defendant alleges that it is entitled to a conclusive presumption of informed consent pursuant to NRS §41A.110.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This Answering Defendant alleges that Plaintiff assumed the risks of the procedures, if any, performed.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to provide the required Affidavit of Merit as required by Nevada Statute including but not limited to NRS 41A.071.

*[NOTE: Some or all of the affirmative defenses above pled may have been pled for purposes of non-waiver pending discovery.]*

///

WHEREFORE, this Answering Defendant requests judgment against Plaintiff as follows:

1. Plaintiff take nothing by way of the Complaint;
2. Plaintiff's claims be dismissed with prejudice;
3. Answering Defendant be awarded its costs and attorneys' fees; and
4. For such other relief, legal or equitable, which the Court deems appropriate.

DATED this 5<sup>th</sup> day of August, 2016.

**MORRIS, SULLIVAN, LEMKUL &  
PITEGOFF**

/s/ Jeffrey I. Pitegoff  
JEFFREY I. PITEGOFF, ESQ.  
NEVADA BAR NO. 005458  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
*Attorney for Defendant*  
*University Medical Center of Southern Nevada*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 5<sup>th</sup> day of August, 2016, I served a true and correct copy of the foregoing **ANSWER TO COMPLAINT** on all parties in this action by Electronic Mail through the District Court's CM/ECF Filing System.

Zoe Terry, Esq.  
TERRY LAW GROUP, PC  
410 S. Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff*

/s/ Allyson Lodwick  
An Employee of MORRIS, SULLIVAN, LEMKUL & PITEGOFF

## EXHIBIT 4

  
CLERK OF THE COURT

1 **MSJ**  
2 JOHN H. COTTON, ESQ.  
3 Nevada Bar Number 5268  
4 JHCotton@jhcottonlaw.com  
5 JOHN J. SAVAGE, ESQ.  
6 Nevada Bar Number 11455  
7 JSavage@jhcottonlaw.com  
8 **JOHN H. COTTON & ASSOCIATES, LTD.**  
9 7900 West Sahara Avenue, Suite 200  
10 Las Vegas, Nevada 89117  
11 Telephone: (702) 832-5909  
12 Facsimile: (702) 832-5910  
13 *Attorneys for Defendant*  
14 *Robert Harper Odell, Jr., M.D.*

15 **DISTRICT COURT**  
16 \* \* \*  
17 **CLARK COUNTY, NEVADA**

18 SUSAN DOLORFINO;

19 Plaintiffs,

20 vs.

21 UNIVERSITY MEDICAL CENTER OF  
22 SOUTHERN NEVADA; ROBERT HARPER  
23 ODELL, JR., M.D.; DOES 1 through 100,  
24 inclusive; and ROE CORPORATIONS 1  
25 through 100, inclusive

26 Defendants.

CASE NO.: A-16-735063-C  
DEPT. NO: X

**DEFENDANT ROBERT HARPER  
ODELL, JR., M.D.'S MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: 08/30/16

Hearing Time: 8:30 AM

27 Defendant Robert Harper Odell, Jr., M.D. (hereinafter "Defendant"), by and through his  
28 attorneys of record, John H. Cotton, Esq. and John J. Savage, Esq., of John H. Cotton &  
Associates, hereby moves this Court, pursuant to NRCP 56, NRS 41A.071, and NRS 41A.100,  
for an Order of Summary Judgment.

This Motion is made and based upon the papers and pleadings on file herein, the  
affidavits and exhibits attached hereto, as well as the following points and authorities submitted  
in support hereof.

...

...


John H. Cotton & Associates, Ltd.  
7900 West Sahara, Suite 200  
Las Vegas, Nevada 89117

**NOTICE OF MOTION**

YOU AND EACH OF YOU WILL TAKE NOTICE that **DEFENDANT ROBERT HARPER ODELL, JR., M.D.'S MOTION FOR SUMMARY JUDGMENT** will come on for hearing before the entitled Court at an hour of 8:30 a.m., on the 30 day of August, 2016 or as soon thereafter as counsel can be heard.

Dated this 26<sup>th</sup> day of July 2016.

**JOHN H. COTTON & ASSOCIATES, LTD.**  
7900 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117

  
JOHN H. COTTON, ESQ.  
JOHN J. SAVAGE, ESQ.  
*Attorneys for Defendant  
Robert Harper Odell, Jr., M.D.*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Dr. Odell is entitled to summary judgment because: (1) Plaintiff failed to attach an expert affidavit to her Complaint pursuant NRS 41A.071, and (2) the facts here do not fall within any of NRS 41A.100's five enumerated exceptions to NRS 41A.071's expert affidavit requirement. The treatment that Dr. Odell provided to Plaintiff was general anesthesia and intubation to maintain Plaintiff's airway while Plaintiff was under general anesthesia. Plaintiff's allegations against Dr. Odell are that he was "negligent by *inter alia* not properly handling an instrument used for tracheotomies and dropping it on Plaintiff's mouth during surgery" and that Dr. Odell's conduct caused injury to Plaintiff's tooth. As will be discussed in more detail below, Plaintiff's alleged tooth injury occurred while Dr. Odell was intubating Plaintiff, which directly involved Plaintiff's mouth.

Therefore, Dr. Odell is entitled to summary judgment.

II. SUMMARY OF FACTS SUPPORTING SUMMARY JUDGMENT

1. Dr. Odell is an anesthesiologist. *See Affidavit of Robert Harper Odell, Jr., attached hereto as Exhibit A.*

2. Plaintiff's Complaint was filed without a supporting expert affidavit. *See Plaintiff's Complaint, attached hereto as Exhibit B.*

3. Plaintiff's Complaint alleges that Dr. Odell performed a tracheotomy. *See id. at 2:27 – 3:1.*

4. A tracheotomy involves making an incision through a patient's throat into the patient's trachea to relieve an obstruction to breathing. *See Exhibit A.*

5. Plaintiff's Complaint alleges that Dr. Odell was "negligent by *inter alia* not properly handling an instrument used for tracheotomies and dropping it on Plaintiff's mouth during surgery." *See Exhibit B at 3:26-27.*

6. Plaintiff's Complaint alleges that she suffered an injury to her tooth as a result of Dr. Odell's conduct. *See id. at 2:27 – 3:3.*

7. Dr. Odell never performed a tracheotomy on Plaintiff. *See Exhibit A.*

8. Dr. Odell administered general anesthesia to Plaintiff during her hysterectomy procedure on April 14, 2015 and performed an endotracheal intubation to maintain Plaintiff's airway while she was under general anesthesia. *See id. See also Plaintiff's Medical Records at TLG 00205-207, attached hereto as Exhibit C.*

9. The endotracheal intubation that Dr. Odell performed involved placing a plastic tube into Plaintiff's mouth and passing the tube past the teeth and down through Plaintiff's trachea to maintain an open airway while Plaintiff was under general anesthesia. *See Exhibit A.*

10. Prior to the procedure, Dr. Odell explained to Plaintiff that one of the risks of general anesthesia is injury to her teeth. *See id. See also Exhibit C at TLG 0032-33.*

11. Plaintiff and Dr. Odell both signed an informed consent document confirming that this risk, in addition to other risks, was explained and that Plaintiff agreed to receive general anesthesia with the understanding that her teeth could be injured as a result. *See id.*

...

### III. LAW AND ARGUMENT

#### A. Standard for Summary Judgment

"A defendant may move for summary judgment at any time." Cummings v. Las Vegas Mun. Corp., 88 Nev. 479, 481 (1972) (citing NRCP 56(b)) (emphasis added).<sup>1</sup> "[S]ummary judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 Nev. 73, 121 P.3d 1026, 1029 (2005); NRCP 56(c).

In Wood, the Nevada Supreme Court expressly adopted the summary judgment standard established by the United States Supreme Court in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986); and Matsushita Electric Indus. Co. v. Zenith Radio, 475 U.S. 574 (1986). Furthermore, the Court abrogated the "slightest doubt" standard from Nevada's summary judgment law.<sup>2</sup> Wood, 121 P.3d at 1031.

"The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 1030. Where only one interpretation can be made from the facts of a case, "the issue before the court is a pure question of law and therefore properly subject to summary judgment." Univ. of Nevada, Reno v. Stacey, 116 Nev. 428, 433, 997 P.2d 812, 814 (2000).

Moreover, the Nevada Supreme Court explicitly stated in Wood:

While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving

<sup>1</sup> The summary judgment motion at issue in Cummings was filed on the same day and only a few minutes after the answer was filed. Cummings, 88 Nev. at 481. That motion was deemed proper, granted, and upheld on appeal. Id. at 481-482.

<sup>2</sup> Under the "slightest doubt" standard, summary judgment is precluded when there is the "slightest doubt as to the operative facts." Parman v. Petricciani, 70 Nev. 427, 272 P.2d 492 (1954). The Nevada Supreme Court abrogated this standard from Nevada law after finding it incompatible with the intended purposes of summary judgment as determined by the United States Supreme Court in Liberty Lobby, Celotex, and Matsushita. Wood, 121 P.3d at 1029-31.

1 party must . . . set forth specific facts demonstrating the existence of a genuine  
2 issue for trial or have summary judgment entered against him. The nonmoving  
3 party is not entitled to build a case on the gossamer threads of whimsy,  
speculation, and conjecture.

4 Wood, 121 P.3d at 1031.

5 **B. Dr. Odell is Entitled to Summary Judgment Because Plaintiff's**  
6 **Complaint was Filed Without an Expert Affidavit**

7 Actions for medical malpractice generally must be filed with an expert affidavit that  
8 supports the allegations in the complaint. See NRS 41A.071. There are only five narrowly  
9 tailored exceptions to this requirement and those exceptions are enumerated in NRS 41A.100.  
10 See Johnson v. Egtedar, 112 Nev. 428, 433 (1996) (explaining that "the legislature intended NRS  
11 41A.100 to replace, rather than supplement, the classic res ipsa loquitur formulation in medical  
12 malpractice cases where it is factually applicable"). See also Banks v. Sunrise Hosp., 120 Nev.  
13 822, 832 (2004) ("NRS 41A.100 has replaced the doctrine of res ipsa loquitur in medical  
14 malpractice cases").

15 Under NRS 41A.100(d), an expert affidavit would not be required if Plaintiff's alleged  
16 injury "was suffered during the course of treatment to a part of the body not directly involved in  
17 the treatment or proximate thereto." See NRS 41A.100(d). Plaintiff believed an expert affidavit  
18 was not required pursuant to NRS 41A.100(d) because, allegedly, "an injury was suffered during  
19 the course of treatment to a part of the body, (the mouth), not directly involved in the treatment,  
20 (the uterus), and as such the presumption of negligence automatically applies." See *Exhibit B* at  
21 4:27-5:2. This belief was wrong.

22 Dr. Odell is an anesthesiologist. See *Exhibit A*. He did not provide any treatment to  
23 Plaintiff's uterus. See *id.* He also did not perform a tracheotomy as alleged in Plaintiff's  
24 Complaint. See *id.* The treatment that Dr. Odell did provide was administering general  
25 anesthesia to Plaintiff and performing an endotracheal intubation to maintain Plaintiff's airway  
26 while she was under general anesthesia. See *id.* See also *Exhibit C* at TLG 00205-207.

27 To perform the endotracheal intubation, Dr. Odell had to place a plastic tube into  
28

1 Plaintiff's mouth and pass the tube past Plaintiff's teeth and down through her trachea. *See*  
2 *Exhibit A*. NRS 41A.100(d) therefore cannot apply here because Plaintiff's tooth was directly  
3 involved in the endotracheal intubation that Dr. Odell performed.

4 Dr. Odell even warned Plaintiff prior to the procedure that injury to her teeth was one of  
5 the risks of general anesthesia. *See id.* *See also Exhibit C at TLG 0032-33.* They both signed an  
6 informed consent document confirming that this risk, in addition to other risks, was explained  
7 and that Plaintiff agreed to receive general anesthesia with the understanding that her teeth could  
8 be injured as a result. *See id.*


9  
10 Therefore, NRS 41A.071 required Plaintiff to file her Complaint with an expert affidavit  
11 that supported the allegations in her Complaint, and Plaintiff's failure to do so entitles Dr. Odell  
12 to summary judgment.

13  
14 **III. CONCLUSION**

15 Based on the foregoing, Defendant respectfully moves this Court, pursuant to NRCP 56,  
16 NRS 41A.071, and NRS 41A.100, for an Order of Summary Judgment.

17  
18 Dated this 26<sup>th</sup> day of July 2016.

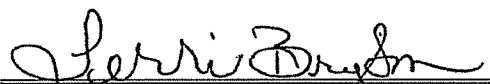
19 **JOHN H. COTTON & ASSOCIATES, LTD.**  
20 7900 West Sahara Avenue, Suite 200  
21 Las Vegas, Nevada 89117

22   
23 \_\_\_\_\_  
24 JOHN H. COTTON, ESQ.  
25 JOHN J. SAVAGE, ESQ.  
26 Attorneys for Defendants  
27 Robert Harper Odell, Jr., M.D.  
28

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 26<sup>th</sup> day of July 2016, I served a true and correct copy of the foregoing **DEFENDANT ROBERT HARPER ODELL, JR., M.D.'S MOTION FOR SUMMARY JUDGMENT** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Zoe Terry, Esq.  
**TERRY LAW GROUP, P.C.**  
410 South Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiffs*

  
An Employee of John H. Cotton & Associates

# Exhibit A

To: Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment

# Exhibit A

To: Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment

Odell adv. Dolorfino: A-16-735063-C

1                    **AFFIDAVIT OF ROBERT HARPER ODELL, JR., M.D. IN SUPPORT OF**  
2                    **MOTION FOR SUMMARY JUDGMENT**

3       STATE OF NEVADA                    )  
4       COUNTY OF CLARK                ) ss.

5       Robert Harper Odell, Jr., M.D., being first duly sworn, under oath, deposes and says:

6               1.       I am a Defendant in the Eighth Judicial District Court case number A-16-735063-  
7       C.

8               2.       I make this affidavit in support of Defendant Robert Harper Odell, Jr., M.D.'s  
9       Motion for Summary Judgment.

10              3.       All facts set forth herein are based upon my own personal knowledge, are true and  
11       correct to the best of my knowledge, and if called upon to testify to them, I could and would do  
12       so competently.

13              4.       I am a medical doctor licensed to practice medicine in the State of Nevada and I  
14       am board-certified in Anesthesiology.

15              5.       On April 14, 2015, I administered general anesthesia to Plaintiff Susan Dolorfino  
16       during her hysterectomy procedure and performed an endotracheal intubation to maintain Ms.  
17       Dolorfino's airway while she was under general anesthesia.

18              6.       The intubation was difficult and the laryngoscope I was using to intubate Ms.  
19       Dolorfino hit her #8 tooth.

20              7.       I never performed a tracheotomy as alleged in Ms. Dolorfino's Complaint at 2:27  
21       - 3:1.

22              8.       A tracheotomy involves making an incision through a patient's throat into the  
23       patient's trachea to relieve an obstruction to breathing; it does not involve the mouth.

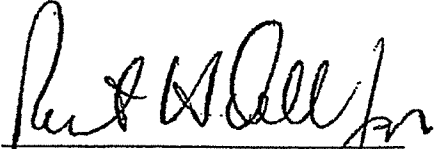
24              9.       The endotracheal intubation that I performed involves placing a plastic tube into a  
25       patient's mouth and passing the tube past the teeth and down through the patient's trachea to  
26       27  
28

1 maintain an open airway while the patient is under general anesthesia.

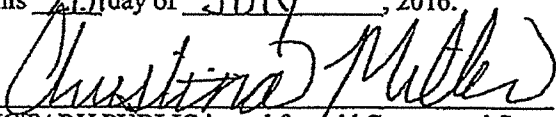
2 10. Prior to the procedure, I explained to Ms. Dolorfino that one of the risks of  
3 general anesthesia is injury to her teeth.

4 11. Ms. Dolorfino and I both signed an informed consent document confirming that  
5 this risk, in addition to other risks, was explained and that Ms. Dolorfino agreed to receive  
6 general anesthesia with the understanding that her teeth could be injured as a result.  
7

8 Further you affiant sayeth naught.

9  
10   
11 ROBERT HARPER ODELL, JR., M.D.  
12

13 SUBSCRIBED AND SWORN to before me on  
14 this 21<sup>st</sup> day of July, 2016.

15   
16 NOTARY PUBLIC in and for said County and State  
17



# Exhibit B

To: Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment

# Exhibit B

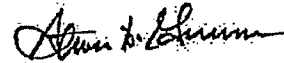
To: Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment

Odell adv. Dolorfino: A-16-735063-C

1 COMP  
2 ZOE TERRY, ESQ.  
3 Nevada Bar No. 0010900  
4 TERRY LAW GROUP, PC  
5 410 S Rampart Blvd, Ste 390  
6 Las Vegas, NV 89145  
7 Attorneys for Plaintiff  
8 (702) 726-6797

COPY

Electronically Filed  
04/14/2016 12:19:03 PM

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 SUSAN DOLORFINO,  
10 Plaintiff,

11 vs.

CASE NO.: A-16-735063-C  
DEPT. NO.: VI

12 UNIVERSITY MEDICAL CENTER OF  
13 SOUTHERN NEVADA; ROBERT HARPER  
14 ODELL, Jr, M.D.; DOES 1 through 100,  
15 inclusive; and ROE CORPORATIONS 1  
16 through 100, inclusive  
17 Defendants.

18 COMPLAINT

19 COMES NOW, Plaintiff, SUSAN DOLORFINO, by and through her counsel of record, ZOE  
20 TERRY, ESQ. of the law firm of Terry Law Group, PC and complains as follows:

21 COMMON ALLEGATIONS

22 1. At all times relevant herein, Plaintiff, SUSAN DOLORFINO was and still is a resident  
23 of Clark County, State of Nevada.

24 2. Plaintiff alleges on information and belief that at all times herein mentioned, Defendant,  
25 UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA, (hereinafter "UMC") is a Hospital  
26 in Nevada with its principal place of business in the State of Nevada.

27 3. Plaintiff alleges on information and belief that at all times herein mentioned, Defendant,  
28 ROBERT HARPER ODELL, JR., M.D., (hereinafter "DR. ODELL") is a Doctor specializing in  
Anesthesiology practicing in Las Vegas, Nevada.

1           4.     The true names or capacities, whether individual, corporate, associate, alter ego or  
2 otherwise of the Defendants DOES I through 100, are unknown to Plaintiff at the time of filing this  
3 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave of  
4 Court to amend this Complaint to show their true names or capacities when the same have been  
5 ascertained or discovered.

6           5.     The true names of the Defendants ROE CORPORATIONS 1 through 100 are unknown  
7 to Plaintiff at the time of filing this Complaint and Plaintiff, therefore, sues said Defendants by such  
8 fictitious names and will ask leave of Court to amend this Complaint to show their true names when  
9 the same have been ascertained or discovered.

11          6.     At all times herein mentioned, each Defendant was the agent, servant and employee of  
12 its remaining Co-Defendants and was at all times herein acting within the course and scope of their  
13 agency and employment.

14          7.     That prior to April 13, 2015, Defendants, and each of them, held themselves out as  
15 being capable and qualified to treat patients. Plaintiff employed Defendants, and each of them, to  
16 carry out an emergency hysterectomy and to do all things necessary and proper for the care and  
17 treatment of said individual; that said Defendants, and each of them, undertook said employment, and  
18 undertook and agreed to provide proper treatment relating to any and all of Plaintiff's treatment, and to  
19 care for and treat Plaintiff and to do all things necessary and proper in connection therewith, and that  
20 said Defendants, and each of them, entered into such employment individually, by and through their  
21 employees as agents and servants.

23          8.     That on or about April 13, 2015, SUSAN DOLORFINO presented to UMC for  
24 treatment for heavy vaginal bleeding. An ultrasound showed a four (4)-inch mass in the cervix which  
25 would require a total abdominal hysterectomy.

26          9.     That on or about April 14, 2015, SUSAN DOLORFINO was taken to surgery at  
27 approximately 5:00 p.m. for the abdominal hysterectomy. The anesthesiologist, DR. ODELL, was  
28

1 performing a tracheotomy when UMC experienced a total black-out of around 6 seconds, DR. ODELL  
2 dropped an instrument believed to be a "blade" used to perform the tracheotomy on SUSAN  
3 DOLORFINO'S mouth, causing injury to her tooth.

#### 4 FIRST CAUSE OF ACTION

##### 5 (Negligence - UMC)

6 10. Plaintiff incorporates by reference paragraphs 1 through 9 of her Complaint as though  
7 fully set forth herein.

8 11. Defendant, UMC had a duty to provide proper care and treatment to all patients,  
9 including Plaintiff and to provide a continuous stream of power. Further UMC owed a duty to install  
10 an emergency electrical power source and to adhere to JCAHO standards to prevent emergency  
11 electrical power system failures and power outages generally.

12 12. Defendants breached their duties and were negligent by *inter alia* failing to use an  
13 adequate emergency power system such as a battery backup or Uninterrupted Power Supply, (UPS)  
14 system and instead relied on a generator for power outages thus allowing the lights to go out in the  
15 theater where Plaintiff's surgery was being conducted for at least 6 seconds.

16 13. That as a direct and proximate result of Defendants' negligence, carelessness, and/or  
17 recklessness, Plaintiff sustained special and general damages in excess of \$10,000.

#### 18 SECOND CAUSE OF ACTION

##### 19 (Negligence - DR. ODELL)

20 14. Plaintiff incorporates by reference paragraphs 1 through 13 of her Complaint as though  
21 fully set forth herein.

22 15. Defendant, DR. ODELL had a duty to provide proper care and treatment to all patients,  
23 including Plaintiff.

24 16. Defendant breached his duties and was negligent by *inter alia* not properly handling an  
25 instrument used for tracheotomies and dropping it on Plaintiff's mouth during surgery.  
26  
27  
28

1 17. That as a direct and proximate result of Defendants' negligence, carelessness, and/or  
2 recklessness, Plaintiff sustained special and general damages in excess of \$10,000.

3 **THIRD CAUSE OF ACTION**

4 **(Vicarious Liability & Ostensible Agency - UMC)**

5 18. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 17 as  
6 though said paragraphs were set forth herein in full.

7  
8 19. That the errors and omissions of Defendants' agents, servants and employees are  
9 imputed to Defendant pursuant to N.R.S. 41.130 and ostensible agency theories under RENOWN  
10 HEALTH INC. v. VANDERFORD, 126 Nev. Adv. Op. No. 24, (2010); that Plaintiff looked to UMC  
11 for proper care and treatment and that Plaintiff believed DR. ODELL and/or others were employees of  
12 UMC.

13 20. That as a result of the negligence of Defendants and DOE and ROE Defendants and  
14 their agents, servants and employees, the Defendants, and each of them, are liable to Plaintiff for  
15 damages in excess of \$10,000.

16  
17 21. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
18 are liable therefrom for Plaintiffs' attorneys' fees and costs.

19 **FOURTH CAUSE OF ACTION**

20 **(Medical Malpractice - NRS41A.100)**

21 22. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 21 as  
22 though said paragraphs were set forth herein in full.

23 23. That Defendants had a duty to provide competent medical care to Plaintiff. In breach of  
24 this duty, Defendant, DR. ODELL improperly handled surgical tools and Defendant, UMC did not  
25 have proper back-up generators in case of power outages, which injured Plaintiff and will render it  
26 necessary for Plaintiff to undergo further dental treatment. The doctrine of res ipsa loquitur applies, in  
27 that pursuant to NRS 41A.100(d) an injury was suffered during the course of treatment to a part of the  
28

1 body, (the mouth), not directly involved in the treatment, (the uterus), and as such the presumption of  
2 negligence automatically applies and an expert affidavit is not required.

3 24. As a direct and proximate result of the Defendants' negligence, carelessness and breach  
4 of the applicable standard of care, Plaintiff has sustained special and general damage in an amount in  
5 excess of \$10,000.

6 **FIFTH CAUSE OF ACTION**  
7 **(Negligent Hiring - UMC)**

8 25. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 24 as  
9 though said paragraphs were set forth herein in full.

10 26. That Defendants owed Plaintiff a duty to hire competent staff, personnel, agents,  
11 servants and employees.

12 27. That Defendants were negligent in failing to determine the proper qualifications of their  
13 staff, personnel, agents, servants and employees, and that Defendants failed in their duty to hire  
14 competent staff, personnel, agents, servants and employees.

15 28. That as a direct and proximate result of the negligence and carelessness of Defendants,  
16 and each of them, Plaintiff sustained damages in an amount in excess of \$10,000.

17 29. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
18 are liable therefrom for Plaintiff's attorneys' fees and costs.

19 **SIXTH CAUSE OF ACTION**  
20 **(Negligent Supervision and Retention - UMC)**

21 30. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 31 as  
22 though said paragraphs were set forth herein in full.

23 31. That Defendants had a duty to protect Plaintiff from harm and had a duty to act with  
24 reasonable prudence by properly supervising and retaining their staff, personal agents, servants and  
25 employees.  
26  
27  
28

1           32. That Defendants failed in their duty to protect Plaintiff from harm and failed in their  
2 duty to act with reasonable prudence by failing to properly supervise and properly retain their staff,  
3 personnel, agents, servants and employees.

4           33. That as a direct and proximate result of the negligence and carelessness of Defendants,  
5 Plaintiff has sustained damage in an amount in excess of \$10,000.

6           34. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
7 are liable therefrom for Plaintiff's attorneys' fees and costs.

8           WHEREFORE, Plaintiff prays that the Court award relief as follows:

- 9
- 10       1. Compensatory damages in an amount exceeding \$10,000;
  - 11       2. Past and future medical/dental expenses;
  - 12       3. A judicial determination that Defendants are jointly and severally liable to each  
13 Plaintiff;
  - 14       4. Costs of suit;
  - 15       5. Attorney fees;
  - 16       6. Prejudgment interest; and
  - 17       7. Such other relief as the Court deems equitable.

18           DATED this 14<sup>th</sup> day of April, 2016.

19  
20           TERRY LAW GROUP, PC

21           Z Terry  
22           ZOE TERRY, ESQ.  
23           Nevada Bar No. 10900  
24           410 S Rampart Blvd., Suite 390  
25           Las Vegas, NV 89145  
26           Attorneys for Plaintiff  
27  
28

# Exhibit C

To: Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment

# Exhibit C

To: Defendant Robert Harper Odell, Jr., M.D.'s Motion for Summary Judgment

Odell adv. Dolorfino: A-16-735063-C



ACCT: 1510300271 DOB: 05/15/1960  
 DOLORFINO  
 SUSAN 54Y F  
 MR# 0002632381 ADM: 04/13/15

**CONSENT FOR ADMINISTRATION OF SEDATION /  
 ANESTHESIA & THE RENDERING OF MEDICAL SERVICES  
 CONSENTIMIENTO PARA LA ADMINISTRACIÓN DE SEDACIÓN /  
 ANESTESIA Y LA PRESTACIÓN DE SERVICIOS MÉDICOS**

MRU01690 (05/05/13)

Page: 1 of 2

1. I (Yo), \_\_\_\_\_, am scheduled for (tengo programada una cirugía de) laparoscopic hysterectomy, dilation of cervix, possible hysterectomy, possible hysterectomy
2. I understand anesthesia services are needed so my doctor can perform the surgery or treatment. No guarantees or promises were made to me regarding the results of my surgery or treatment.  
 Comprendo que se necesitan servicios de anestesia para que mi médico pueda efectuar la cirugía o tratamiento. No se me brindaron garantías o promesas con respecto a los resultados de mi cirugía o tratamiento.
3. I authorize Dr. \_\_\_\_\_ or one of his/her associates selected by him/her (in keeping with UMC's policies), to administer anesthesia.  
 Autorizo al Dr./Dra. \_\_\_\_\_ o uno de sus asociados seleccionados por él/ella (de conformidad con las políticas de UMC), a administrar anestesia.
4. I understand the following type of anesthesia is planned for my procedure:  
 Comprendo que se planifica el siguiente tipo de anestesia para mi procedimiento:  
☒ General    ☐ Local    ☐ Regional    ☐ Sedation  
 General    Local    Regional    Sedación
5. I consent to a different type of anesthesia, if necessary, as determined by my anesthesiologist. I understand the following type used is determined by many factors including:  
 Doy mi consentimiento para un tipo diferente de anestesia, si es necesario, según lo determine mi anestesiólogo. Comprendo que el tipo a utilizar es determinado por muchos factores incluyendo:  
   ▶ My physical condition    ▶ The procedure/treatment    ▶ My choice    ▶ My doctors choice  
   Mi estado físico    El procedimiento/tratamiento    Mi elección    La elección de mi médico
6. I understand sometimes an anesthesia technique using local anesthetics, with or without sedation, may not succeed completely and another technique using general anesthesia may then have to be used. I understand all forms of anesthesia involve risks. These risks have been explained to my satisfaction. I accept these risks.  
 Comprendo que a veces una técnica de anestesia que utiliza anestesia local, con o sin sedación, puede no resultar del todo exitosa. Entonces tal vez sea necesario utilizar otra técnica con anestesia general. Comprendo que todas las formas de anestesia implican riesgos. Comprendo que estos riesgos se aplican a todos los tipos de anestesia. Estos riesgos me han sido explicados en forma satisfactoria. Acepto estos riesgos.
7. The informed consent process includes a discussion about potential benefits, risks and side effects of the patient's proposed care, treatment, and services the likelihood of the patient achieving his or her goals; and any potential problems that might occur during recuperation.  
 El consentimiento informado incluye información sobre los posibles beneficios, riesgos y los efectos secundarios relacionados a la atención y al tratamiento que se le propone al paciente, así como de las posibilidades que el paciente logre sus objetivos y de cualquier problema potencial que pudiera ocurrir durante la recuperación.
8. Although rare, severe, unexpected complications can occur with each type of anesthesia, including the possibility of:  
 Aunque raras, se pueden producir severas complicaciones inesperadas con cada tipo de anestesia, incluyendo la posibilidad de:  
   ▶ Infection    ▶ Loss Of Vision    ▶ Stroke    ▶ Loss Of Limb Function  
   Infección    Pérdida de Visión    Ataque Cerebral    Pérdida de Función en Extremidades  
   ▶ Bleeding    ▶ Drug Reactions    ▶ Death    ▶ Loss Of Sensation  
   Sangrado    Reacciones a la Droga    Muerte    Pérdida de Sensación  
   ▶ Paralysis    ▶ Blood Clots    ▶ Heart Attack    ▶ Brain Damage  
   Parálisis    Coágulos de Sangre    Ataque Cardíaco    Daño Cerebral
9. Some problems I may experience as a result of my anesthetic include, but are not limited to:  
 Algunos problemas que puedo experimentar como resultado de mi anestesia incluyen, entre otros:  
   ▶ Temporary decrease in concentration    ▶ Temporary confusion    ▶ Nausea/vomiting  
   Reducción temporal en la concentración    Confusión temporal    Náuseas/vómitos  
   ▶ Dreams/memories of events during surgery    ▶ Temporary muscle aches    ▶ Headache  
   Sueños/recuerdos de hechos durante la cirugía    Dolores musculares temporarios    Dolor de cabeza  
   ▶ Injury related to my position during surgery    ▶ Loss of coordination    ▶ Sore throat  
   Lesión relacionada con mi posición durante la cirugía    Pérdida de coordinación    Dolor de garganta  
   ▶ Bruises/tenderness at blood vessel sites    ▶ Swelling around the mouth and injury to teeth/dental appliances  
   Moretones/sensibilidad en los vasos sanguíneos    Inflamación alrededor de la boca y lesión en los dientes/piezas dentales

Patient's Initials: \_\_\_\_\_  
 Iniciales del Paciente

DOLORFINO, SUSAN ROSE

TLG 000032

000042

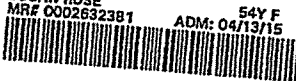


**CONSENT FOR ADMINISTRATION OF SEDATION /  
ANESTHESIA & THE RENDERING OF MEDICAL SERVICES  
CONSENTIMIENTO PARA LA ADMINISTRACIÓN DE SEDACIÓN /  
ANESTESIA Y LA PRESTACIÓN DE SERVICIOS MÉDICOS**

MRU01690 (05/06/13)

Page 2 of 2

ACCT: 1510300271 DOB: 06/15/1960  
DOLORFINO  
SUSAN ROSE  
MR# 0002632381 ADM: 04/13/15 54Y F



- 10. FOR PATIENTS WITH DNR ORDERS:** I understand that DNR ("do not resuscitate") orders will be suspended while I am in surgery and until I completely recover from the effects of anesthesia.  
**PARA PACIENTES CON ORDENES DNR:** Comprendo que las órdenes DNR ("de no resucitar") serán suspendidas mientras me encuentro en cirugía y hasta que me recupere completamente de los efectos de la anestesia.

- 11.** I had the opportunity to ask my anesthesiologist questions. All of my questions were answered to my satisfaction.  
*Tuve la oportunidad de hacer preguntas a mi anestesiólogo. Todas mis preguntas fueron respondidas en forma satisfactoria.*

- 12.** I have read this document completely and I fully understand the anesthesia plan, risks and alternatives.  
*He leído este documento en su totalidad y comprendo plenamente el plan de anestesia, los riesgos y alternativas.*

Patient Signature: \_\_\_\_\_ Time: 1728 Date: 04/14/15  
*Firma del Paciente* Hora Fecha  
Witness Signature: \_\_\_\_\_ Time: 1728 Date: 04/14/15  
*Firma del Testigo* Hora Fecha  
2nd Witness Signature\*: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma del 2º Testigo\** Hora Fecha

\* (Necessary for telephone consent only / Necesario únicamente para el consentimiento telefónico.)

- ☐ Patient is a Minor / El paciente es menor de edad:

Father's Signature: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma del Padre* Hora Fecha  
Mother's Signature: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma de la Madre* Hora Fecha  
Court-Appointed Advocate for Minor: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Defensor designado por el tribunal* Hora Fecha

- ☐ Patient has a Legal Guardian or Durable Power of Attorney for Healthcare  
*El paciente tiene un tutor legal o poder duradero para atención médica*

Signature of Legal Guardian / Durable  
Power of Attorney for Healthcare: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Tutor o Poder Duradero para atención médica* Hora Fecha

☐ Guardianship document on chart  
*Documento de tutoría en hoja clínica*

☐ Durable Power of Attorney for Healthcare document on chart  
*Documento de poder duradero para atención médica en hoja clínica*

- ☐ Physician has explained the patient's plan of care to family and/or friends in absence of Legal Guardian or Durable Power of Attorney for Healthcare.

*El médico ha explicado el plan de atención del paciente a la familia y/o amigos en ausencia de un Tutor Legal o Poder duradero para atención médica.*

Signature of Other Person: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma del otra persona* Hora Fecha  
Relationship with Patient: \_\_\_\_\_  
*Relación al paciente*

- ☒ I, the Anesthesiologist, certify that I have discussed the procedures described above with the patient (or his/her authorized representative).

*Yo, el Anestesiólogo, certifico que he conversado sobre los procedimientos que se describen arriba con el paciente (o su representante autorizado).*

Physician's Name: \_\_\_\_\_ Time: 1728 Date: 4/14/15  
*Nombre del Médico* Hora Fecha  
Physician's Signature: \_\_\_\_\_  
*Firma del Médico*

**Interpreter Used:**

- ☐ Contracted Language Line ▶ Name of Interpreter: \_\_\_\_\_ Interpreter #: \_\_\_\_\_  
☐ UMC Interpreter (in person) ▶ Signature of Interpreter: \_\_\_\_\_ Stamp: \_\_\_\_\_  
☐ UMC Telephone Interpreter ▶ Interpreter Name: \_\_\_\_\_

DOLORFINO, SUSAN ROSE

TLG 000033

000043

UNIVERSITY MEDICAL CENTER  
1800 West Charleston Boulevard  
Las Vegas, Nevada 89102

DATE OF SERVICE: 04/14/2015

SURGEON: Carissa Richardson, MD

ASSISTANT SURGEON: Vani Dandolu, MD

PARTICIPATING SURGEON: Jyoti V Desai, MD (RESIDENT). Lannah L. Lua, MD (RESIDENT)

ANESTHESIOLOGIST: Robert H Odell Jr, MD

PREOPERATIVE DIAGNOSIS: A 54-year-old gravida 2, para 1-1-0-2 with heavy vaginal bleeding, large cervical 13-centimeter fibroid and symptomatic anemia.

POSTOPERATIVE DIAGNOSIS: A 54-year-old gravida 2, para 1-1-0-2 with heavy vaginal bleeding, large cervical 13-centimeter fibroid and symptomatic anemia.

PROCEDURE: Exam under anesthesia, hysteroscopy, curettage, total abdominal hysterectomy, bilateral salpingectomy and cystoscopy.

ANESTHESIA: Initially LMA, then was converted to endotracheal under general.

FINDINGS:

1. A 13-centimeter large bleeding cervical fibroid.
2. A 6-centimeter uterus with a 4-centimeter posterior pedunculated fibroid.
3. Normal-appearing tubes and ovaries bilaterally.
4. Positive ureteral flow seen on cystoscopy bilaterally with methylene blue.

COMPLICATIONS: None.

ESTIMATED BLOOD LOSS: 400 cubic centimeters.

SPECIMENS: Uterus, tubes, and cervix sent to Pathology.

DRAINS: Foley to gravity.

INDICATIONS AND CONSENT: This is a 54-year-old female who presented on 04/13 with vaginal bleeding of 3 days and symptomatic anemia. She was found to have a prolapsing myoma versus a fibroid uterus. She was admitted, placed on Provera and scheduled for exam under anesthesia the following day. The initial intent was to see if this fibroid was prolapsing enough to be able to remove it vaginally, otherwise proceed with hysteroscopy, D and C to rule out cancer. However, the patient did desire hysterectomy and wanted definitive treatment if we were able to do so.

DOLORFINO, SUSAN ROSE

TLG 000205

000044

PROCEDURE IN DETAIL: The patient taken to the operating room with IV fluid running and SCDS placed to lower extremities and turned on. She was initially placed in dorsal lithotomy position in the Allen stirrups with the knees bent at 30 degrees. Exam showed a dilated cervix about 5 centimeters with a fibroid on the patient's right hand side which was growing from the right side of the cervix, and the actual cervical tissue was indistinguishable from the fibroid tissue. This seemed to track very high anteriorly, did not have an easily identifiable stalk. We were unable to get an endo-loop or any other device around it. There were significant bleeding vessels superficially on this fibroid which were suture ligated. The oozing continued and therefore the decision was then made to proceed with abdominal hysterectomy. Dr. Vani Dandolu was called in to assist as well. The patient was then re-prepped and draped. Anesthesia was then converted to general endotracheal. At this time it was noted that one of her teeth had become loose during intubation, however was not free, and therefore was left in place. Once anesthesia was adequate and airway secured, a vertical midline skin incision was then made from 2 centimeters above the pubic symphysis up to just underneath the belly button. This was then carried down to the underlying layer of fascia using the Bovie. The fascia was incised in the midline. This incision was then extended superiorly and inferiorly. The left side of the fascia was grabbed with the Kocher clamps, elevated, and the underlying rectus muscles were dissected off. The midline was identified. The peritoneum was entered bluntly. This incision was then extended using sharp dissection. The uterus was identified and had a small pedunculated posterior fibroid. The bowel was packed back and a large cervical fibroid was larger than expected. Therefore, vaginally, we did remove part of the cervical fibroid, paying careful attention to stay within the cervix. However, due to the size and extent, this was very limited. We only got about 4 centimeters of the fibroid removed this way. We therefore then proceeded with a total abdominal hysterectomy from above. The round ligaments on either side were suture ligated. The round was transected and the anterior leaf of the broad ligament was then dissected and created a bladder flap. This was repeated on both sides. Due to the emergent nature of this hysterectomy, the discussion about taking ovaries was not had with the patient and therefore were left in place. We then started removing the fallopian tubes using clamp, cutting and suture ligating. Next, an avascular space was identified in the posterior leaf of the broad ligament. The utero-ovarian ligament was then clamped, cut, and suture ligated followed by the remainder of the broad ligament. The uterine arteries were somewhat identified however obscured due to the large cervical fibroid at the level of the uterus and cervix. The vessels were clamped cut and suture ligated. This was then repeated on the left side. At this time the bladder flap was then created digitally and this time it was hard to identify any lateral structures and differentiate them from the cervix in this large fibroid. Therefore we initially started by shelling out the fibroid and dissecting off inferiorly towards the vagina. Eventually we were able to free the fibroid and the dilated cervix from the vagina. At the level of the vagina multiple Heaney clamps were placed in a circumferential fashion around the fibroid and the edges were suture ligated. The uterus with the cervical fibroid was then removed and sent to Pathology along with the pieces of the fibroid that were removed vaginally and the tubes. At this time the vaginal cuff was then closed with 0 Vicryl interrupted sutures. There was significant oozing coming from the right side of the cuff and seen that the uterine artery was not well ligated. This was then suture ligated an additional 2 times for hemostasis, and there was some significant oozing coming from the posterior peritoneum as well. This was likely from all the blunt dissection that needed to be done to remove the fibroid. Therefore the posterior peritoneum was then closed incorporated into the vaginal

DOLORFINO, SUSAN ROSE

TLG 000206

000045

cuff, making sure not to go too laterally. At this point, good hemostasis was noted. The abdomen was then packed and cystoscopy was performed using a 30-degree scope under the usual fashion. Methylene blue was also given prior to this and we saw an intact bladder with blue flow from both ureteral jets. Therefore attention was then turned back to the abdomen. Hemostasis again was confirmed. SNow was placed in the bilateral retroperitoneal areas next to the cuff. Two layers of Seprafilm was then placed over the bowel. The fascia was then closed with looped PDS anteriorly and posteriorly and tied together in the middle. The subcutaneous layer was closed with 2-0 vicryl. The skin was then closed with staples. The patient was given preop antibiotics. She was taken to the recovery room in stable condition and the dental team had been called to evaluate her loose tooth. All sponge, lap, and needle counts were correct.

Dr. Carissa Richardson was present for the entire procedure and Dr. Vani Dandolu for the removal of the uterus and tubes.

JVD/MedQ

DD: 04/14/2015 23:27:36

DT: 04/15/2015 01:34:25

JYOTI V DESAI, MD (RESIDENT)

CARISSA RICHARDSON, MD

PATIENT: DOLORFINO, SUSAN

ACCOUNT#: 1510300271

MR#: 0002632381

ADM DATE: 04/13/2015

JOB#: 831898/651446348

PHYSICIAN: CARISSA RICHARDSON, MD

Dictated by: JYOTI V DESAI, MD (RESIDENT)

#### OPERATIVE REPORT

Electronically Authenticated and Edited by:

Carissa Richardson, MD On 04/23/2015 09:59 AM PDT

Electronically Authenticated and Edited by:

Jyoti V Desai, MD On 04/24/2015 11:30 AM PDT

Electronically Authenticated by:

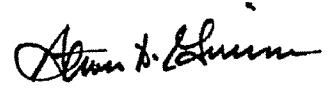
Carissa Richardson, MD On 05/06/2015 04:07 PM PDT

DOLORFINO, SUSAN ROSE

TLG 000207

000046

## EXHIBIT 5

  
CLERK OF THE COURT

1 **MSJD**  
JEFFREY I. PITEGOFF, ESQ.  
2 Nevada Bar No. 005458  
MORRIS, SULLIVAN, LEMKUL & PITEGOFF  
3 3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
4 Telephone No.: (702) 405-8100  
Fax No.: (702) 405-8101  
5 [pitegoff@morrissullivanlaw.com](mailto:pitegoff@morrissullivanlaw.com)  
*Attorneys for Defendant,*  
6 *University Medical Center of Southern Nevada*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 SUSAN DOLORFINO,

10 Plaintiff,

11 vs.

12 UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA; ROBERT  
13 HARPER ODELL, JR., M.D., DOES I  
14 through 100, inclusive; and ROE  
CORPORATIONS 1 through 100, inclusive,

15 Defendants.  
16

CASE NO: A-16-735063-C  
DEPT NO.: VI

**DEFENDANT UNIVERSITY  
MEDICAL CENTER OF SOUTHERN  
NEVADA'S MOTION FOR  
SUMMARY JUDGMENT**

17 NOW APPEARS Defendant UNIVERSITY MEDICAL CENTER OF SOUTHERN  
18 NEVADA (hereinafter "UMC"), by and through its attorneys at the law firm of MORRIS,  
19 SULLIVAN & LEMKUL & PITEGOFF, LLP, and hereby requests this Honorable Court to  
20 grant its Motion for Summary Judgment against Defendant SUSAN DOLORFINO (hereinafter  
21 "Plaintiff") pursuant to NRCP 56, NRS 41A.071, and NRS 41A.100, for an Order of Summary  
22 Judgment.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 This Motion is made and based upon the attached points and authorities and all exhibits  
2 attached thereto, all pleadings and papers on file, and upon any and all oral argument that may  
3 be entertained at the time of the hearing on this matter.

4  
5 DATED this 5<sup>th</sup> day of August, 2016.

6 MORRIS, SULLIVAN, LEMKUL &  
7 PITEGOFF

8 /s/ Jeffrey I. Pitegoff  
9 JEFFREY I. PITEGOFF, ESQ.  
10 NEVADA BAR NO. 005458  
11 3770 Howard Hughes Parkway, Suite 170  
12 Las Vegas, Nevada 89169  
13 *Attorney for Defendant*  
14 *University Medical Center of Southern Nevada*

15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE THAT Defendant UNIVERSITY MEDICAL CENTER OF  
17 SOUTHERN NEVADA will bring its MOTION FOR SUMMARY JUDGMENT  
18 AGAINST PLAINTIFF SUSAN DOLORFINO for hearing on the 6<sup>th</sup> day of  
19 September, 2016 at 8:30 a.m., or soon thereafter as counsel may be heard, in  
20 Department X of the Eighth Judicial District Court, which is located on 200 Lewis Avenue,  
21 Las Vegas, Nevada 89155.

22  
23 DATED this 5<sup>th</sup> day of August, 2016.

24 MORRIS, SULLIVAN, LEMKUL &  
25 PITEGOFF

26 /s/ Jeffrey I. Pitegoff  
27 JEFFREY I. PITEGOFF, ESQ.  
28 NEVADA BAR NO. 005458  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
*Attorney for Defendant*  
*University Medical Center of Southern Nevada*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Defendant UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
5 (hereinafter "UMC") is entitled to summary judgment because: (1) Plaintiff failed to attach an  
6 expert affidavit to her complaint pursuant to NRS 41A.071; and (2) the facts here do not fall  
7 within any of NRS 41A.100's five enumerated exceptions to NRS 41A.071's expert affidavit  
8 requirement.

9 The procedure UMC provided to Plaintiff Susan Dolorfino (hereinafter "Plaintiff") was  
10 a hysterectomy. This procedure required general anesthesia and intubation to maintain  
11 Plaintiff's airway while Plaintiff was under general anesthesia. Plaintiff's allegations against  
12 UMC are negligence, vicarious liability, medical malpractice, negligent hiring, and negligent  
13 supervision. Plaintiff's negligence claim against UMC is that UMC failed to provide  
14 electricity for six (6) seconds. The harm that resulted from this alleged breach is unclear. The  
15 remainder of Plaintiff's causes of action stem from the assertion that co-defendant ROBERT  
16 HARPER ODELL, JR., M.D. (hereinafter "Dr. Odell") "was negligent by *inter alia* not  
17 properly handling an instrument used for tracheotomies and dropping it on Plaintiff's mouth  
18 during surgery," causing damages to Plaintiff's tooth. As will be discussed in more detail  
19 below, Plaintiff's alleged tooth injury occurred while Dr. Odell was intubating Plaintiff, which  
20 directly involved Plaintiff mouth. Additionally, Plaintiff signed a consent form for the  
21 administration of anesthesia, which included "swelling around the mouth and injury to teeth"  
22 as a possible side effect of the procedure.

23 Therefore, this Court must enter summary judgment in favor of UMC.

24 ///

25 ///

26 ///

27 ///

28 ///

1 II.

2 SUMMARY OF FACTS

3 On or around April 13, 2015 Plaintiff presented to UMC for heavy vaginal bleeding.<sup>1</sup>  
4 An ultrasound showed a four (4) inch mass in the cervix which would require a total abdominal  
5 hysterectomy.<sup>2</sup> On or about April 14, 2015, Plaintiff was taken to surgery for the  
6 hysterectomy.<sup>3</sup>

7 During the procedure, Dr. Odell administered a general anesthesia to Plaintiff and  
8 performed a endotracheal intubation.<sup>4</sup> The endotracheal intubation that Dr. Odell performed  
9 involved placing a plastic tube into Plaintiff's mouth and passing the tube past the teeth and  
10 down through the Plaintiff's trachea to maintain an open airway while she was under general  
11 anesthesia.<sup>5</sup> Dr. Odell had difficulty with the intubation and the laryngoscope he was using to  
12 intubate the Plaintiff hit her eight (#8) tooth.<sup>6</sup> Dr. Odell never performed a tracheotomy.<sup>7</sup>

13 Prior to the procedure, Dr. Odell explained to Plaintiff that one of the risks of general  
14 anesthesia was injury to the teeth.<sup>8</sup> Dr. Odell and Plaintiff signed a consent form confirming  
15 that this risk was explained, and that Plaintiff agreed to receive general anesthesia with the  
16 understanding that her teeth could be injured.<sup>9</sup> The consent form is titled "CONSENT FOR  
17 ADMINISTRATION OF SEDATION/ANESTHESIA & THE RENDERING OF MEDICAL  
18 SERVICES."<sup>10</sup> The consent from explicitly states: "Some problems . . . include but are not

19 \_\_\_\_\_  
20 <sup>1</sup> See Plaintiff's Complaint at 2, attached as **Exhibit "A."**

21 <sup>2</sup> See Complaint at 2.

22 <sup>3</sup> See Complaint at 2.

23 <sup>4</sup> See Affidavit of Robert Harper Odell Jr., M.D. in Support of Motion for Summary Judgment ("Affidavit of Odell")  
24 at paragraph 5, attached as **Exhibit "B."**

25 <sup>5</sup> See Affidavit of Odell at paragraph 9.

26 <sup>6</sup> See Affidavit of Odell at paragraph 6.

27 <sup>7</sup> See Affidavit of Odell at paragraph 7.

28 <sup>8</sup> See Affidavit of Odell at paragraph 10.

<sup>9</sup> See Affidavit of Odell at paragraph 11.

<sup>10</sup> See University Medical Center Consent Form ("Consent Form") at 1 (bates no. TLG 000032), attached as **Exhibit**  
"C."

1 limited to . . . [s]welling around the mouth and injury to the teeth/dental appliances.”<sup>11</sup> The  
2 consent form is signed by the Plaintiff and Dr. Odell.<sup>12</sup>

3 **III.**

4 **LEGAL ARGUMENT**

5 **A. Legal Authority**

6 “A defendant may move for summary judgment at any time.” *Cummings v. Las Vegas*  
7 *Mun. Corp.*, 88 Nev. 479, 481 (1972) (emphasis added). NRCP 56(c) provides that summary  
8 judgment is appropriate “if the pleadings, depositions, answers to interrogatories, admissions,  
9 and affidavits, if any, that are properly before the court demonstrate that no genuine issue of  
10 material fact exists, and that the moving party is entitled to judgment as a matter of law.”  
11 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The substantive law  
12 controls which factual disputes are material and will preclude summary judgment; other factual  
13 disputes are irrelevant. *Id.* A factual dispute is genuine when the evidence is such that a  
14 rational trier of fact could return a verdict for the nonmoving party. *Id.* Where the facts of a  
15 case are reasonably susceptible to only one interpretation, the issue before the court is a pure  
16 question of law and therefore properly subject to summary judgment. *Univ. of Nevada, Reno*  
17 *v. Stacey*, 116 Nev. 428, 433, 997 P.2d 812, 814 (2000).

18 The Court must view all evidence, facts, and inferences in light most favorable to the  
19 nonmoving party. *See Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev.  
20 212, 214, 984 P.2d 164, 165 (1999). While the moving party bears the initial burden of  
21 demonstrating the absence of a disputed material fact, the nonmoving party must respond by  
22 demonstrating the existence of a disputed material fact. *Id.* If the nonmoving party fails to do  
23 so, a court must enter summary judgment and avoid needless trial. *Id.*

24 As set forth below, the undisputed evidence shows that UMC is entitled to summary  
25 judgment on Plaintiff’s claims for two reasons: (1) Plaintiff’s complaint was filed without an  
26 expert affidavit which was required because oral intubation was directly and proximately

27 <sup>11</sup> See Consent Form at 1 (bates no. TLG 000032).

28 <sup>12</sup> See Consent Form at 2 (bates no. TLG 000033).

1 related to the hysterectomy that UMC performed; and (2) even if Plaintiff met the pleading  
2 requirements, she gave informed, written consent to the injury she is alleging.

3 ***B. UMC is Entitled to Summary Judgment Because Plaintiff's Complaint Was***  
4 ***Filed Without an Expert Affidavit Which was Required Because Oral***  
5 ***Intubation was Directly and Proximately Related to the Hysterectomy that***  
6 ***UMC Performed***

7 Actions for medical malpractice generally must be filed with an expert affidavit that  
8 generally supports the allegations in the complaint. See NRS 41A.071. There are only five  
9 narrowly tailored exceptions to this requirement and those exceptions are enumerated in NRS  
10 41A.100. See *Johnson v. Egtegar*, 112 Nev. 428, 433 (1996) (explaining that "the legislature  
11 intended NRS 41A.100 to replace, rather than supplement, the classic *res ipsa loquitur*  
12 formulation in medical malpractice cases where it is factually applicable"); see also *Banks v.*  
13 *Sunrise Hosp.*, 120 Nev. 822, 832 (2004) ("NRS 41A.100 has replaced the doctrine of *res ipsa*  
14 *loquitur* in medical malpractice cases").

15 Under NRS 41A.100(d), an expert affidavit is not required if Plaintiff's alleged injury  
16 is "suffered during the course of treatment to a part of the body not directly involved in the  
17 treatment or proximate thereto." NRS 41A.100(d) (emphasis added). Plaintiff believes an  
18 expert affidavit is not required in this case, alleging that "an injury was suffered during the  
19 course of treatment to a part of the body, (the mouth), not directly involved in the treatment,  
20 (the uterus), and as such the presumption of negligence automatically applies."<sup>13</sup> This belief is  
21 wrong.

22 Dr. Odell never performed a tracheotomy as Plaintiff alleges in her complaint.<sup>14</sup>  
23 Instead, Dr. Odell administered general anesthesia to Plaintiff during her hysterectomy  
24 procedure and performed an endotracheal intubation.<sup>15</sup> The endotracheal intubation that Dr.  
25 Odell performed involved placing a plastic tube into Plaintiff's mouth and passing the tube past  
26 the teeth and down through the Plaintiff's trachea to maintain an open airway while she was

27 <sup>13</sup> See Complaint at 4-5.

28 <sup>14</sup> See Affidavit of Odell at paragraph 7.

<sup>15</sup> See Affidavit of Odell at paragraph 5.

1 under general anesthesia.<sup>16</sup> Dr. Odell had difficulty with the intubation and the laryngoscope  
2 he was using to intubate Plaintiff hit her number eight (#8) tooth.<sup>17</sup>

3 Prior to the procedure, Dr. Odell explained to Plaintiff that one of the risks of general  
4 anesthesia was injury to the teeth.<sup>18</sup> Dr. Odell and Plaintiff signed a consent form confirming  
5 that this risk was explained, and that Plaintiff agreed to receive general anesthesia with the  
6 understanding that her teeth could be injured.<sup>19</sup> The consent form is titled "CONSENT FOR  
7 ADMINISTRATION OF SEDATION/ANESTHESIA & THE RENDERING OF MEDICAL  
8 SERVICES."<sup>20</sup> The consent form explicitly states: "Some problems . . . include but are not  
9 limited to . . . [s]welling around the mouth and injury to the teeth/dental appliances."<sup>21</sup> The  
10 consent form is signed by the Plaintiff and Dr. Odell.<sup>22</sup>

11 Because the injury alleged was caused by the administration of general anesthesia  
12 during Plaintiff's hysterectomy procedure, Plaintiff was required to file an expert affidavit that  
13 generally supports the allegations in her medical malpractice complaint. NRS 41A.100.  
14 Plaintiff failed to file such an affidavit. Additionally, Plaintiff's belief that NRS 41A.100(d)  
15 applies to this case is misguided. The injury to Plaintiff's tooth was directly related to the  
16 endotracheal intubation that Dr. Odell performed during the course of the hysterectomy, and  
17 thus, NRS 41A.100(d) does not apply. As such, this Court must dismiss the action without  
18 prejudice. See NRS 41A.071 ("If an action for medical malpractice . . . is filed in the district  
19 court, the district court shall dismiss the action, without prejudice, if the action is filed without  
20 an affidavit[.]").

21 ///

22 ///

23 ///

---

24 <sup>16</sup> See Affidavit of Odell at paragraph 9.

25 <sup>17</sup> See Affidavit of Odell at paragraph 6.

26 <sup>18</sup> See Affidavit of Odell at paragraph 10.

27 <sup>19</sup> See Affidavit of Odell at paragraph 11.

28 <sup>20</sup> See Consent Form at 1 (bates no. TLG 000032).

<sup>21</sup> See Consent Form at 1 (bates no. TLG 000032).

<sup>22</sup> See Consent Form at 2 (bates no. TLG 000033).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IV.

CONCLUSION

Based on the foregoing, Defendant UMC respectfully moves this Court, pursuant to NRCp 56, NRS 41A.071, and NRS41A.100 for an Order of Summary Judgment.

DATED this 5<sup>th</sup> day of August, 2016.

**MORRIS, SULLIVAN, LEMKUL &  
PITEGOFF**

/s/ Jeffrey I. Pitegoff  
JEFFREY I. PITEGOFF, ESQ.  
NEVADA BAR NO. 005458  
3770 Howard Hughes Parkway, Suite 170  
Las Vegas, Nevada 89169  
*Attorney for Defendant*  
*University Medical Center of Southern Nevada*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this 5<sup>th</sup> day of August, 2016, I served a true and correct copy of the foregoing **DEFENDANT UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA'S MOTION FOR SUMMARY JUDGMENT** on all parties in this action by Electronic Mail through the District Court's CM/ECF Filing System.

Zoe Terry, Esq.  
TERRY LAW GROUP, PC  
410 S. Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
*Attorneys for Plaintiff*

/s/ Allyson Lodwick  
An Employee of MORRIS, SULLIVAN, LEMKUL & PITEGOFF

# Exhibit A

# Exhibit A

1 **COMP**  
2 ZOE TERRY, ESQ.  
3 Nevada Bar No. 0010900  
4 TERRY LAW GROUP, PC  
5 410 S Rampart Blvd, Ste 390  
6 Las Vegas, NV 89145  
7 Attorneys for Plaintiff  
8 (702) 726-6797

Electronically Filed  
04/14/2016 12:19:03 PM

  
CLERK OF THE COURT

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 SUSAN DOLORFINO,  
9 Plaintiff,

10 vs.

CASE NO. : A- 16- 735063- C  
DEPT. NO. : VI

11 UNIVERSITY MEDICAL CENTER OF  
12 SOUTHERN NEVADA; ROBERT HARPER  
13 ODELL, Jr, M.D.; DOES 1 through 100,  
14 inclusive; and ROE CORPORATIONS 1  
15 through 100, inclusive

Defendants.

16 **COMPLAINT**

17 COMES NOW, Plaintiff, SUSAN DOLORFINO, by and through her counsel of record, ZOE  
18 TERRY, ESQ. of the law firm of Terry Law Group, PC and complains as follows:

19 **COMMON ALLEGATIONS**

- 20 1. At all times relevant herein, Plaintiff, SUSAN DOLORFINO was and still is a resident  
21 of Clark County, State of Nevada.
- 22 2. Plaintiff alleges on information and belief that at all times herein mentioned, Defendant,  
23 UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA, (hereinafter "UMC") is a Hospital  
24 in Nevada with its principal place of business in the State of Nevada.
- 25 3. Plaintiff alleges on information and belief that at all times herein mentioned, Defendant,  
26 ROBERT HARPER ODELL, JR., M.D., (hereinafter "DR. ODELL") is a Doctor specializing in  
27 Anesthesiology practicing in Las Vegas, Nevada.  
28

1           4.     The true names or capacities, whether individual, corporate, associate, alter ego or  
2 otherwise of the Defendants DOES I through 100, are unknown to Plaintiff at the time of filing this  
3 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave of  
4 Court to amend this Complaint to show their true names or capacities when the same have been  
5 ascertained or discovered.

6           5.     The true names of the Defendants ROE CORPORATIONS 1 through 100 are unknown  
7 to Plaintiff at the time of filing this Complaint and Plaintiff, therefore, sues said Defendants by such  
8 fictitious names and will ask leave of Court to amend this Complaint to show their true names when  
9 the same have been ascertained or discovered.

11          6.     At all times herein mentioned, each Defendant was the agent, servant and employee of  
12 its remaining Co-Defendants and was at all times herein acting within the course and scope of their  
13 agency and employment.

14          7.     That prior to April 13, 2015, Defendants, and each of them, held themselves out as  
15 being capable and qualified to treat patients. Plaintiff employed Defendants, and each of them, to  
16 carry out an emergency hysterectomy and to do all things necessary and proper for the care and  
17 treatment of said individual; that said Defendants, and each of them, undertook said employment, and  
18 undertook and agreed to provide proper treatment relating to any and all of Plaintiff's treatment, and to  
19 care for and treat Plaintiff and to do all things necessary and proper in connection therewith, and that  
20 said Defendants, and each of them, entered into such employment individually, by and through their  
21 employees as agents and servants.

23          8.     That on or about April 13, 2015, SUSAN DOLORFINO presented to UMC for  
24 treatment for heavy vaginal bleeding. An ultrasound showed a four (4) inch mass in the cervix which  
25 would require a total abdominal hysterectomy.

26          9.     That on or about April 14, 2015, SUSAN DOLORFINO was taken to surgery at  
27 approximately 5:00 p.m. for the abdominal hysterectomy. The anesthesiologist, DR. ODELL, was  
28

1 performing a tracheotomy when UMC experienced a total black-out of around 6 seconds. DR. ODELL  
2 dropped an instrument believed to be a "blade" used to perform the tracheotomy on SUSAN  
3 DOLORFINO'S mouth, causing injury to her tooth.

4 **FIRST CAUSE OF ACTION**

5 **(Negligence - UMC)**

6 10. Plaintiff incorporates by reference paragraphs 1 through 9 of her Complaint as though  
7 fully set forth herein.

8 11. Defendant, UMC had a duty to provide proper care and treatment to all patients,  
9 including Plaintiff and to provide a continuous stream of power. Further UMC owed a duty to install  
10 an emergency electrical power source and to adhere to JCAHO standards to prevent emergency  
11 electrical power system failures and power outages generally.

12 12. Defendants breached their duties and were negligent by *inter alia* failing to use an  
13 adequate emergency power system such as a battery backup or Uninterrupted Power Supply, (UPS)  
14 system and instead relied on a generator for power outages thus allowing the lights to go out in the  
15 theater where Plaintiff's surgery was being conducted for at least 6 seconds.

16 13. That as a direct and proximate result of Defendants' negligence, carelessness, and/or  
17 recklessness, Plaintiff sustained special and general damages in excess of \$10,000.

18 **SECOND CAUSE OF ACTION**

19 **(Negligence - DR. ODELL)**

20 14. Plaintiff incorporates by reference paragraphs 1 through 13 of her Complaint as though  
21 fully set forth herein.

22 15. Defendant, DR. ODELL had a duty to provide proper care and treatment to all patients,  
23 including Plaintiff.

24 16. Defendant breached his duties and was negligent by *inter alia* not properly handling an  
25 instrument used for tracheotomies and dropping it on Plaintiff's mouth during surgery.  
26  
27  
28

1 17. That as a direct and proximate result of Defendants' negligence, carelessness, and/or  
2 recklessness, Plaintiff sustained special and general damages in excess of \$10,000.

3 **THIRD CAUSE OF ACTION**

4 **(Vicarious Liability & Ostensible Agency - UMC)**

5 18. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 17 as  
6 though said paragraphs were set forth herein in full.

7  
8 19. That the errors and omissions of Defendants' agents, servants and employees are  
9 imputed to Defendant pursuant to N.R.S. 41.130 and ostensible agency theories under RENOWN  
10 HEALTH, INC. v. VANDERFORD, 126 Nev. Adv. Op. No. 24, (2010); that Plaintiff looked to UMC  
11 for proper care and treatment and that Plaintiff believed DR. ODELL and/or others were employees of  
12 UMC.

13 20. That as a result of the negligence of Defendants and DOE and ROE Defendants and  
14 their agents, servants and employees, the Defendants, and each of them, are liable to Plaintiff for  
15 damages in excess of \$10,000.

16  
17 21. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
18 are liable therefrom for Plaintiffs' attorneys' fees and costs.

19 **FOURTH CAUSE OF ACTION**

20 **(Medical Malpractice – NRS41A.100)**

21 22. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 21 as  
22 though said paragraphs were set forth herein in full.

23 23. That Defendants had a duty to provide competent medical care to Plaintiff. In breach of  
24 this duty, Defendant, DR. ODELL improperly handled surgical tools and Defendant, UMC did not  
25 have proper back-up generators in case of power outages, which injured Plaintiff and will render it  
26 necessary for Plaintiff to undergo further dental treatment. The doctrine of res ipsa loquitur applies, in  
27 that pursuant to NRS 41A.100(d) an injury was suffered during the course of treatment to a part of the  
28

1 body, (the mouth), not directly involved in the treatment, (the uterus), and as such the presumption of  
2 negligence automatically applies and an expert affidavit is not required.

3 24. As a direct and proximate result of the Defendants' negligence, carelessness and breach  
4 of the applicable standard of care, Plaintiff has sustained special and general damage in an amount in  
5 excess of \$10,000.

6  
7 **FIFTH CAUSE OF ACTION**  
**(Negligent Hiring – UMC)**

8 25. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 24 as  
9 though said paragraphs were set forth herein in full.

10 26. That Defendants owed Plaintiff a duty to hire competent staff, personnel, agents,  
11 servants and employees.

12 27. That Defendants were negligent in failing to determine the proper qualifications of their  
13 staff, personnel, agents, servants and employees, and that Defendants failed in their duty to hire  
14 competent staff, personnel, agents, servants and employees.

15 28. That as a direct and proximate result of the negligence and carelessness of Defendants,  
16 and each of them, Plaintiff sustained damages in an amount in excess of \$10,000.

17 29. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
18 are liable therefrom for Plaintiff's attorneys' fees and costs.

19  
20 **SIXTH CAUSE OF ACTION**  
21 **(Negligent Supervision and Retention – UMC)**

22 30. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 31 as  
23 though said paragraphs were set forth herein in full.

24 31. That Defendants had a duty to protect Plaintiff from harm and had a duty to act with  
25 reasonable prudence by properly supervising and retaining their staff, personal agents, servants and  
26 employees.

1           32. That Defendants failed in their duty to protect Plaintiff from harm and failed in their  
2 duty to act with reasonable prudence by failing to properly supervise and properly retain their staff,  
3 personnel, agents, servants and employees.

4           33. That as a direct and proximate result of the negligence and carelessness of Defendants,  
5 Plaintiff has sustained damage in an amount in excess of \$10,000.

6           34. That Plaintiff was required to retain an attorney to prosecute her case and Defendants  
7 are liable therefrom for Plaintiff's attorneys' fees and costs.

8           WHEREFORE, Plaintiff prays that the Court award relief as follows:

- 9
- 10           1. Compensatory damages in an amount exceeding \$10,000;
  - 11           2. Past and future medical/dental expenses;
  - 12           3. A judicial determination that Defendants are jointly and severally liable to each  
13 Plaintiff;
  - 14           4. Costs of suit;
  - 15           5. Attorney fees;
  - 16           6. Prejudgment interest; and
  - 17           7. Such other relief as the Court deems equitable.

18           DATED this 14<sup>th</sup> day of April, 2016.

19  
20           TERRY LAW GROUP, PC

21           Z Terry  
22           ZOE TERRY, ESQ.  
23           Nevada Bar No. 10900  
24           410 S Rampart Blvd., Suite 390  
25           Las Vegas, NV 89145  
26           Attorneys for Plaintiff  
27  
28

# Exhibit B

Exhibit B

1                    AFFIDAVIT OF ROBERT HARPER ODELL, JR., M.D. IN SUPPORT OF  
2                    MOTION FOR SUMMARY JUDGMENT

3                    STATE OF NEVADA                    )  
4                    COUNTY OF CLARK                    ) ss.

5                    Robert Harper Odell, Jr., M.D., being first duly sworn, under oath, deposes and says:

6                    1.        I am a Defendant in the Eighth Judicial District Court case number A-16-735063-  
7                    C.

8                    2.        I make this affidavit in support of Defendant Robert Harper Odell, Jr., M.D.'s  
9                    Motion for Summary Judgment.

10                    3.        All facts set forth herein are based upon my own personal knowledge, are true and  
11                    correct to the best of my knowledge, and if called upon to testify to them, I could and would do  
12                    so competently.

13                    4.        I am a medical doctor licensed to practice medicine in the State of Nevada and I  
14                    am board-certified in Anesthesiology.

15                    5.        On April 14, 2015, I administered general anesthesia to Plaintiff Susan Dolorfino  
16                    during her hysterectomy procedure and performed an endotracheal intubation to maintain Ms.  
17                    Dolorfino's airway while she was under general anesthesia.

18                    6.        The intubation was difficult and the laryngoscope I was using to intubate Ms.  
19                    Dolorfino hit her #8 tooth.

20                    7.        I never performed a tracheotomy as alleged in Ms. Dolorfino's Complaint at 2:27  
21                    - 3:1.

22                    8.        A tracheotomy involves making an incision through a patient's throat into the  
23                    patient's trachea to relieve an obstruction to breathing; it does not involve the mouth.

24                    9.        The endotracheal intubation that I performed involves placing a plastic tube into a  
25                    patient's mouth and passing the tube past the teeth and down through the patient's trachea to  
26                    27  
27                    28

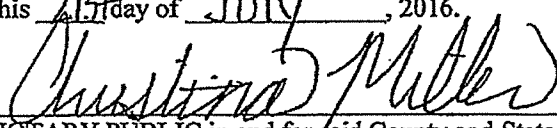
1 maintain an open airway while the patient is under general anesthesia.

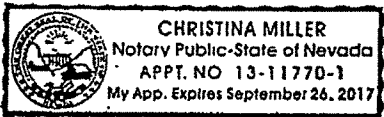
2 10. Prior to the procedure, I explained to Ms. Dolorfino that one of the risks of  
3 general anesthesia is injury to her teeth.

4 11. Ms. Dolorfino and I both signed an informed consent document confirming that  
5 this risk, in addition to other risks, was explained and that Ms. Dolorfino agreed to receive  
6 general anesthesia with the understanding that her teeth could be injured as a result.  
7

8 Further you affiant sayeth naught.

9  
10  
11   
12 ROBERT HARPER ODELL, JR., M.D.

13 SUBSCRIBED AND SWORN to before me on  
14 this 21<sup>st</sup> day of JULY, 2016.  
15   
16 NOTARY PUBLIC in and for said County and State

17  
18   
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit C

# Exhibit C



\* 3 C N S E N T \*

ACCT: 1610300271 DOB: 06/15/1960  
 DOLORFINO  
 SUSAN 54Y F  
 MR# 0002632381 ADM: 04/13/15



**CONSENT FOR ADMINISTRATION OF SEDATION /  
 ANESTHESIA & THE RENDERING OF MEDICAL SERVICES  
 CONSENTIMIENTO PARA LA ADMINISTRACIÓN DE SEDACIÓN /  
 ANESTESIA Y LA PRESTACIÓN DE SERVICIOS MÉDICOS**

MRU01690 (05/06/13)

Page 1 of 2

1. I [Yo], \_\_\_\_\_, am scheduled for [tengo programada una cirugía de]

*apendicitis under anesthesia, hysterectomy, dilation and curettage, possible hysterectomy, possible hysterectomy, hysterectomy*

2. I understand anesthesia services are needed so my doctor can perform the surgery or treatment. No guarantees or promises were made to me regarding the results of my surgery or treatment.

*possible hysterectomy*  
 Comprendo que se necesitan servicios de anestesia para que mi médico pueda efectuar la cirugía o tratamiento. No se me brindaron garantías o promesas con respecto a los resultados de mi cirugía o tratamiento.

3. I authorize Dr. \_\_\_\_\_ or one of his/her associates selected by him/her (in keeping with UMC's policies), to administer anesthesia.

Autorizo al Dr./Dra. \_\_\_\_\_ o uno de sus asociados seleccionados por él/ella (de conformidad con las políticas de UMC), a administrar anestesia.

4. I understand the following type of anesthesia is planned for my procedure:

Comprendo que se planifica el siguiente tipo de anestesia para mi procedimiento:

☒ General ☐ Local ☐ Regional ☐ Sedation  
 General Local Regional Sedación

5. I consent to a different type of anesthesia, if necessary, as determined by my anesthesiologist. I understand the following type used is determined by many factors including:

Doy mi consentimiento para un tipo diferente de anestesia, si es necesario, según lo determine mi anestesiólogo. Comprendo que el tipo a utilizar es determinado por muchos factores incluyendo:

► My physical condition    ► The procedure/treatment    ► My choice    ► My doctors choice  
 Mi estado físico    El procedimiento/tratamiento    Mi elección    La elección de mi médico

6. I understand sometimes an anesthesia technique using local anesthetics, with or without sedation, may not succeed completely and another technique using general anesthesia may then have to be used. I understand all forms of anesthesia involve risks. These risks have been explained to my satisfaction. I accept these risks.

Comprendo que a veces una técnica de anestesia que utiliza anestesia local, con o sin sedación, puede no resultar del todo exitosa. Entonces tal vez sea necesario utilizar otra técnica con anestesia general. Comprendo que todas las formas de anestesia implican riesgos. Comprendo que estos riesgos se aplican a todos los tipos de anestesia. Estos riesgos me han sido explicados en forma satisfactoria. Acepto estos riesgos.

7. The informed consent process includes a discussion about potential benefits, risks and side effects of the patient's proposed care, treatment, and services the likelihood of the patient achieving his or her goals; and any potential problems that might occur during recuperation.

El consentimiento informado incluye información sobre los posibles beneficios, riesgos y los efectos secundarios relacionados a la atención y al tratamiento que se le propone al paciente, así como de las posibilidades que el paciente logre sus objetivos y de cualquier problema potencial que pudiera ocurrir durante la recuperación.

8. Although rare, severe, unexpected complications can occur with each type of anesthesia, including the possibility of:

Aunque raras, se pueden producir severas complicaciones inesperadas con cada tipo de anestesia, incluyendo la posibilidad de:

► Infection Infección	► Loss Of Vision Pérdida de Visión	► Stroke Ataque Cerebral	► Loss Of Limb Function Pérdida de Función en Extremidades
► Bleeding Sangrado	► Drug Reactions Reacciones a la Droga	► Death Muerte	► Loss Of Sensation Pérdida de Sensación
► Paralysis Parálisis	► Blood Clots Coágulos de Sangre	► Heart Attack Ataque Cardíaco	► Brain Damage Daño Cerebral

9. Some problems I may experience as a result of my anesthetic include, but are not limited to:

Algunos problemas que puedo experimentar como resultado de mi anestesia incluyen, entre otros:

► Temporary decrease in concentration Reducción temporal en la concentración	► Temporary confusion Confusión temporal	► Nausea/vomiting Náuseas/vómitos
► Dreams/memories of events during surgery Sueños/recuerdos de hechos durante la cirugía	► Temporary muscle aches Dolores musculares temporarios	► Headache Dolor de cabeza
► Injury related to my position during surgery Lesión relacionada con mi posición durante la cirugía	► Loss of coordination Pérdida de coordinación	► Sore throat Dolor de garganta
► Bruises/tenderness at blood vessel sites Magullones/sensibilidad en los vasos sanguíneos	► Swelling around the mouth and injury to teeth/dental appliances Inflamación alrededor de la boca y lesión en los dientes/piezas dentales	

Patient's Initials: \_\_\_\_\_  
 Iniciales del Paciente

DOLORFINO, SUSAN ROSE

TLG 000032

000067

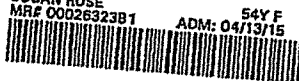


**CONSENT FOR ADMINISTRATION OF SEDATION /  
ANESTHESIA & THE RENDERING OF MEDICAL SERVICES  
CONSENTIMIENTO PARA LA ADMINISTRACIÓN DE SEDACIÓN /  
ANESTESIA Y LA PRESTACIÓN DE SERVICIOS MÉDICOS**

MRU01690 (05/06/13)

Page 2 of 2

ACCT: 1510300271 DOB: 06/15/1960  
DOLORFINO  
SUSAN ROSE  
MR# 0002632381 ADM: 04/13/15 54Y F



**10. FOR PATIENTS WITH DNR ORDERS:** I understand that DNR ("do not resuscitate") orders will be suspended while I am in surgery and until I completely recover from the effects of anesthesia.  
**PARA PACIENTES CON ÓRDENES DNR:** Comprendo que las órdenes DNR ("de no resucitar") serán suspendidas mientras me encuentre en cirugía y hasta que me recupere completamente de los efectos de la anestesia.

**11.** I had the opportunity to ask my anesthesiologist questions. All of my questions were answered to my satisfaction.  
*Tuve la oportunidad de hacer preguntas a mi anestesiólogo. Todas mis preguntas fueron respondidas en forma satisfactoria.*

**12.** I have read this document completely and I fully understand the anesthesia plan, risks and alternatives.  
*He leído este documento en su totalidad y comprendo plenamente el plan de anestesia, los riesgos y alternativas.*

Patient Signature: \_\_\_\_\_ Time: 1728 Date: 04/14/15  
*Firma del Paciente* Hora Fecha  
Witness Signature: \_\_\_\_\_ Time: 1728 Date: 04/14/15  
*Firma del Testigo* Hora Fecha  
2nd Witness Signature\*: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma del 2º Testigo\** Hora Fecha

\* (Necessary for telephone consent only / Necesario únicamente para el consentimiento telefónico.)

☐ Patient is a Minor / El paciente es menor de edad:

Father's Signature: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma del Padre* Hora Fecha  
Mother's Signature: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma de la Madre* Hora Fecha  
Court-Appointed Advocate for Minor: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Defensor designado por el tribunal* Hora Fecha

☐ Patient has a Legal Guardian or Durable Power of Attorney for Healthcare  
*El paciente tiene un tutor legal o poder duradero para atención médica*

Signature of Legal Guardian / Durable  
Power of Attorney for Healthcare: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Tutor o Poder Duradero para atención médica* Hora Fecha

☐ Guardianship document on chart  
*Documento de tutoría en hoja clínica*

☐ Durable Power of Attorney for Healthcare document on chart  
*Documento de poder duradero para atención médica en hoja clínica*

☐ Physician has explained the patient's plan of care to family and/or friends in absence of Legal Guardian or Durable Power of Attorney for Healthcare.

*El médico ha explicado el plan de atención del paciente a la familia y/o amigos en ausencia de un Tutor Legal o Poder duradero para atención médica.*

Signature of Other Person: \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_  
*Firma del otra persona* Hora Fecha  
Relationship with Patient: \_\_\_\_\_  
*Relación al paciente*

► I, the Anesthesiologist, certify that I have discussed the procedures described above with the patient (or his/her authorized representative).

*Yo, el Anestesiólogo, certifico que he conversado sobre los procedimientos que se describen arriba con el paciente (o su representante autorizado).*

Physician's Name: \_\_\_\_\_ Time: 1715 Date: 4/14/15  
*Nombre del Médico* Hora Fecha  
Physician's Signature: \_\_\_\_\_  
*Firma del Médico*

**Interpreter Used:**

☐ Contracted Language Line ► Name of Interpreter: \_\_\_\_\_ Interpreter #: \_\_\_\_\_  
☐ UMC Interpreter (in person) ► Signature of Interpreter: \_\_\_\_\_ Stamp: \_\_\_\_\_  
☐ UMC Telephone Interpreter ► Interpreter Name: \_\_\_\_\_

DOLORFINO, SUSAN ROSE

TLG 000033

000068