

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

SUSAN DOLORFINO,

Appellant,

vs.

UNIVERSITY MEDICAL  
CENTER OF SOUTHERN  
NEVADA; AND ROBERT  
HARPER ODELL, JR.,

Respondents.

**SUPREME COURT NO.: 72443**

**DISTRICT COURT NO: A-16-735063-C**

**NRAP 26.1 DICLOSURE**

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

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Dated this 30<sup>th</sup> day of October, 2017.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of October, 2017, I served a true and correct copy of the foregoing **NRAP 26.1 DISCLOSURE**, addressed to the following counsel of records at the following address as follows:

- X VIA US MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicted on service list below in the United States mail at Las Vegas, Nevada.
- X VIA E-SERVICE: an electronic copy of the preceding document was concurrently served upon opposing counsel via the Court's electronic service system.

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

- I. STANDARD OF REVIEW**
- II. THE DISTRICT COURT’S DISMISSAL MUST BE AFFIRMED SINCE DOLORFINO FAILED TO ATTACH AN EXPERT AFFIDAVIT TO HER COMPLAINT AS REQUIRED UNDER NEVADA LAW.**
- III. NONE OF THE EXCEPTIONS TO THE EXPERT AFFIDAVIT REQUIREMENT APPLY.**
  - A. The Only Authority Dolorfino Relies Upon to Establish the Res Ipsa Loquitur Exception to the Expert Affidavit Requirement is Distinguishable and Nevertheless Moot.**
  - B. Since Dolorfino Has Failed to Provide a Medical Expert Affidavit For a Matter Involving a Medical Procedure, Her Appeal Must Fail.**
- IV. EACH AND EVERY ONE OF DOLORFINO’S CLAIMS ARE SUBJECT TO THE MEDICAL EXPERT AFFIDAVIT REQUIREMENT.**

## **STATEMENT OF THE CASE**

This Appeal resulted from the District Court’s grant of summary judgment in favor of Respondent University Medical Center of Southern Nevada (hereinafter “UMC”). Notice of Entry of order was entered on or about February 7, 2017. (*See* Appellant’s Appendix Volume 1 at 136-141).

The underlying action arises out of an alleged incident that occurred on April 13, 2015. (*See* Appellant’s Appendix Volume 1 at 2). Appellant, Susan Dolorfino (hereinafter, “Dolorfino”) sought treatment at Respondent’s facility, UMC, for

heavy vaginal bleeding. (*See* Appellant's Appendix Volume 1 at 2). An ultrasound showed a four (4) inch mass in the cervix which would go on to require a total abdominal hysterectomy. (*See* Appellant's Appendix Volume 1 at 2). Surgery was scheduled for April 14, 2015 at approximately 5:00 p.m. (*See* Appellant's Appendix Volume 1 at 2). During the procedure, Dr. Robert Odell (hereinafter, "Dr. Odell") administered general anesthesia to Dolorfino and performed an endotracheal intubation.<sup>1</sup> (*See* Appellant's Appendix Volume 1 at 32). The endotracheal intubation that Dr. Odell performed involved placing a plastic tube into Dolorfino's mouth and passing the tube past the teeth and down through Dolorfino's trachea to maintain an open airway while she was under general anesthesia. (*See* Appellant's Appendix Volume 1 at 32-33). In his affidavit in support of his motion for summary judgment, Dr. Odell avers that he struggled with the intubation procedure and the laryngoscope he used to intubate Dolorfino accidentally hit Dolorfino's number eight (#8) tooth. (*See* Appellant's Appendix Volume 1 at 32).

In her complaint, Dolorfino alleges that inadequacies in Respondent UMC's back-up power system caused the operating room to fall under darkness for longer than what was reasonable under the circumstances, thereby causing Dr. Odell to drop an instrument onto Dolorfino's mouth and injure Dolorfino. (*See* Appellant's

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<sup>1</sup> Dr. Odell did not perform a tracheotomy as alleged in Appellant's Complaint. (*See* Appellant's Appendix Volume 1 at 2-3).



Appendix Volume 1 at 2-3).

Prior to the procedure, Dr. Odell explained to Dolorfino that one of the risks of general anesthesia was injury to the teeth. (*See* Appellant's Appendix Volume 1 at 33). Dr. Odell and Dolorfino signed a consent form confirming that this risk was explained, and that Dolorfino agreed to receive general anesthesia with the understanding that her teeth could be injured. (*See* Appellant's Appendix Volume 1 at 33). The consent form is titled "CONSENT FOR ADMINISTRATION OF SEDATION/ANESTHESIA & THE RENDERING OF MEDICAL SERVICES." (*See* Appellant's Appendix Volume 1 at 42). The consent form explicitly states: "Some problems . . . include but are not limited to . . . [s]welling around the mouth and injury to the teeth/dental appliances." (*See* Appellant's Appendix Volume 1 at 42). The consent form is signed by Dolorfino and Dr. Odell. (*See* Appellant's Appendix Volume 1 at 43).

### **SUMMARY OF ARGUMENT**

Actions for medical malpractice or professional negligence must be filed with a medical expert affidavit that generally supports the allegations in the complaint. *See* NRS 41A.071. Here, Appellant, Susan Dolorfino failed to attach an expert medical affidavit to her complaint alleging professional negligence against Respondent, UMC. Thus, Dolorfino's complaint is *void ab initio*, meaning it is of no force and effect. *Washoe Med. Ctr. V. Second Judicial Dist. Court of State of*

*Nev. ex rel. Cty. Of Washoe*, 148 P.3d 790, 794 (2006) (citation omitted).

Rather than submit a medical expert affidavit, as required by Nevada law, Dolorfino has chosen to shoehorn conclusory facts derived from medical procedures under one of NRS 41A.071's exceptions to the affidavit requirement. *See* NRS 41A.100(1)(d). Dolorfino only cites to *Banks ex rel. Banks v. Sunrise Hosp.*, 102 P.3d 52 (2004) in support of her contention that she was not required to submit an expert affidavit along with her complaint against Respondent, UMC. Yet, *Banks ex rel. Banks* is highly distinguishable given that Dolorfino's teeth—the part of the body allegedly injured during the administration of general anesthesia and her abdominal hysterectomy procedure—were within close proximity to the intubation tubes in her mouth used to maintain her airways. Regardless, *Banks ex rel. Banks* is further distinguishable from the present case since the injured patient in *Banks ex rel. Banks*, in fact, submitted a medical expert affidavit, which Dolorfino has failed to do here.

Finally, the plain language of NRS 41A *et seq.* requires that each of Dolorfino's negligence claims asserted against UMC—a provider of health care—require a medical expert affidavit. Adherence to Dolorfino's reasoning that only her “medical malpractice” claim, but not her four other negligence claims against UMC, trigger the affidavit requirement would eviscerate NRS 41A.071. Dolorfino's proposed framework would encourage pleaders' gamesmanship by the mere use of

syntax when, in fact, the underlying cause of action stems from a medical provider's procurement of medical services. Thus, this Court must apply the NRS 41A.071 affidavit requirement to all of Dolorfino's claims against Respondent, UMC.

## **LEGAL ARGUMENT**

### **I. STANDARD OF REVIEW**

An order granting summary judgment is reviewed de novo. *Pressler v. City of Reno*, 50 P.3d 1096, 1098 (2002). Summary judgment is warranted when, after a review of the record viewed in a light most favorable to the non-moving party, there remain no genuine issues of material fact. NRCP 56(c); *Butler v. Bogdanovich*, 705 P.2d 662, 663 (1985). However, "[t]he non-moving party is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture . . . ." *Wood v. Safeway, Inc.* 121 P.3d 1026, 1031 (2005); *see also Michaels v. Sudeck*, 810 P.2d 1212, 1213 (1991) ("[C]onclusory statements along with general allegations do not create an issue of material fact.") (citation omitted).

### **II. THE DISTRICT COURT'S DISMISSAL MUST BE AFFIRMED SINCE DOLORFINO FAILED TO ATTACH AN EXPERT AFFIDAVIT TO HER COMPLAINT AS REQUIRED UNDER NEVADA LAW.**

Actions for medical malpractice or professional negligence must be filed with a medical expert affidavit that generally supports the allegations in the complaint. *See* NRS 41A.071. NRS 41A.071 was enacted "to lower costs, reduce frivolous

lawsuits, and ensure that medical malpractice actions are filed in good faith based upon competent expert medical opinion.” *Washoe Med. Ctr. V. Second Judicial Dist. Court of State of Nev. ex rel. Cty. Of Washoe*, 148 P.3d 790, 794 (2006) (citing *Szydel v. Markman*, 117 P.3d 200, 204 (2005)). “According to NRS 41A.071’s legislative history, the requirement that a complaint be filed with a medical expert affidavit was designed to streamline and expedite medical malpractice cases and lower overall costs . . . .” *Id.* (citing Minutes of the Meeting of the Assembly Comm. on Medical Malpractice Issues, 18th Special Sess. (Nev., July 29, 2002) (statement of Assemblywoman Buckley)). Accordingly, “a medical malpractice complaint filed without a supporting medical expert affidavit is *void ab initio*, meaning it is of no force and effect. *Washoe Med. Ctr.*, 148 P.3d at 794 (citation omitted).

Here, Dolorfino’s negligence claims against UMC stem from injuries sustained during medical procedures—the application of general anesthesia via endotracheal intubation and an abdominal hysterectomy. Hence, each of Dolorfino’s negligence claims fall within the purview of NRS 41A *et seq.*<sup>2</sup> As such, Dolorfino was required to attach a medical expert affidavit in support of each of her claims against UMC and failed to do so. *See* NRS 41A.071. Since the *res ipsa*

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<sup>2</sup> NRS 41A.015 defines “professional negligence” as “. . . the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.

loquitur exception to the medical expert affidavit requirement does not apply, as discussed below, UMC is entitled to judgment as a matter of law on each of Dolorfino's claims.

### **III. THE RES IPSA LOQUITUR EXCEPTION TO THE EXPERT AFFIDAVIT REQUIREMENT DOES NOT APPLY.**

Contrary to Dolorfino's assertion, the res ipsa loquitur exception to the expert affidavit requirement does not apply to the case at bar. Under NRS 41A.100(1)(d), an expert affidavit is not required if Plaintiff's alleged injury is "suffered during the course of treatment to a part of the body *not directly involved in the treatment or proximate thereto*." NRS 41A.100(1)(d) (emphasis added). In her complaint, Dolorfino wholly ignores the "*proximate thereto*" language of the Act and conclusively alleges, "an injury was suffered during the course of treatment to a part of the body, (the mouth), not directly involved in the treatment, (the uterus), and as such the presumption of negligence applies and an expert affidavit is not required." (See Appellant's Appendix Volume 1 at 4-5).

Yet, Dr. Odell administered general anesthesia to Dolorfino during her hysterectomy procedure and performed an endotracheal intubation. (See Appellant's Appendix Volume 1 at 32). The endotracheal intubation that Dr. Odell performed involved placing a plastic tube into Dolorfino's mouth and passing the tube past the teeth and down through Dolorfino's trachea to maintain an open airway while she

was under general anesthesia. (*See* Appellant’s Appendix Volume 1 at 32-33). Dr. Odell struggled with the intubation and the laryngoscope he was using to intubate Dolorfino hit her number eight (#8) tooth. (*See* Appellant’s Appendix Volume 1 at 32). Hence the exception to the expert affidavit requirement under NRS 41A.100(1)(d) does not apply since the injury to Dolorfino’s tooth was directly related or proximate to the endotracheal intubation that Dr. Odell performed during the course of the hysterectomy.

**A. The Only Authority Dolorfino Relies Upon to Establish the Res Ipsa Loquitur Exception to the Expert Affidavit Requirement is Distinguishable and Nevertheless Moot.**

Dolorfino’s significant reliance on *Banks ex rel. Banks v. Sunrise Hosp.*, 102 P.3d 52 (2004) is misguided given the clear factual distinctions present in the case at bar. In *Banks ex rel. Banks*, the plaintiff underwent surgery for treatment to his shoulder but suffered an injury to his brain, causing him to fall into a vegetative state. *Id.* at 56. The court held the res ipsa loquitur exception to the expert affidavit requirement applied since the brain is not directly or proximately related to the rotator cuff surgery. *Id.* at 60.

Unlike James Banks Jr.’s brain, which the court found was “not directly involved in the treatment or proximate thereto” to rotator cuff surgery, here, Dr. Odell’s intubation tube must necessarily come into close proximity to Dolorfino’s teeth during the administration of anesthesia. As averred by Dr. Odell, the

endotracheal intubation he performed involved placing a plastic tube into Dolorfino's mouth and *passing the tube past the teeth* and down through Dolorfino's trachea to maintain an open airway while she was under general anesthesia. (See Appellant's Appendix Volume 1 at 32-33). The consent form Dolorfino signed prior to her anesthesia and hysterectomy specifically warning her of the potential for tooth injury demonstrates the proximity between the procedure's necessary equipment (intubation tube) and Dolorfino's teeth. (See Appellant's Appendix Volume 1 at 42). Thus, the key distinction between *Banks* and Dolorfino's operation lies in the fact that Banks' surgery did not require any surgical equipment to come into contact, or within close proximity thereto, with Banks' brain, whereas here, the anesthesiology necessitated contact or near contact with Dolorfino's teeth.

Regardless, Dolorfino's reliance on *Banks ex rel. Banks* is moot since the plaintiff in *Banks* had in fact met the medical malpractice pleading requirements under Nevada law. As the *Banks* court notes in its factual summary: "Banks relied upon an affidavit of anesthesiologist Dr. Casey Blitt, who stated that Dr. Kinsman's care fell below the standard of care." See *Banks ex rel. Banks*, 102 p.3d at 57. It is critical to note that, regardless of the catastrophic nature of the brain injury, the plaintiff in *Banks* still relied on the affidavit of a medical professional to determine that the anesthesiologist's care fell below the standard of care. Thus, Dolorfino's use of the holding in *Banks* to assert that a medical expert affidavit is not required

under NRS 41A.100(1)(d) is moot.

In sum, Dolorfino bases her negligence claims against UMC on injuries allegedly sustained when equipment used to administer general anesthesia—a necessary medical procedure prior to the hysterectomy procedure—collided with Dolorfino’s teeth. Therefore, NRS 41A.100(1)(d) does not apply and Dolorfino was required to attach a medical expert affidavit to her complaint. Without the affidavit, the court must dismiss any claims related to, or arising out of UMC’s alleged medical malpractice. *Humboldt Gen. Hosp. v. Sixth Jud. Dist. Ct.*, --- P.3d ---, 2016 WL 4046914, 132 Nev. Adv. Op. 53 (2016) (citing NRS 41A.071).

**B. Since Dolorfino Has Failed to Provide a Medical Expert Affidavit For a Matter Involving a Medical Procedure, Her Appeal Must Fail.**

UMC is entitled to judgment as a matter of law since Dolorfino failed to supplement her complaint based on a medical procedure with a medical expert affidavit as required under NRS 41A.071. Dolorfino’s claims against UMC are based on Dr. Odell’s failure to properly secure anesthesia instruments in his hands during her hysterectomy operation. The two following excerpts from Dolorfino’s complaint and Opening Brief make clear that her case is entirely based on Dr. Odell’s negligent act of dropping a medical instrument on her mouth during her operation:



The anesthesiologist, DR. ODELL, was performing a tracheotomy<sup>3</sup> when UMC experienced a total black-out of around 6 seconds. DR. ODELL dropped an instrument believed to be a “blade” used to perform the tracheotomy on [Appellant’s] mouth, causing injury to her tooth.

(See Appellant’s Appendix Volume 1 at 2-3).

Appellant would argue that the injury did not even occur during the anesthesiology procedure, as Dr. Odell later tried to claim, but while he was stood [sic] over her and the lights went out and he dropped an instrument on her mouth.

(Appellant’s Opening Brief at 8).

Since this is not a *res ipsa loquitur* case as discussed above, Dolorfino was required to attach a medical expert affidavit to connect her injury to Dr. Odell’s negligent act of dropping his anesthesia instrument on her mouth. Dr. Odell owed a duty to Dolorfino to safely intubate Dolorfino and Dr. Odell admits he caused injury to Dolorfino during the intubation. (See Appellant’s Appendix Volume 1 at 32). Accepting Dolorfino’s unsubstantiated assertion that UMC’s blackout caused Dr. Odell to drop an instrument onto Dolorfino’s mouth as true, Dolorfino was required to support her complaint with an affidavit establishing Dr. Odell’s duty to properly secure the instruments during the blackout and his breach of that duty. Yet, Dolorfino failed to provide an expert affidavit addressing Dr. Odell’s duty to secure medical instruments. Thus, UMC is entitled to judgment as a matter of law.

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<sup>3</sup> As previously established, Dr. Odell performed an endotracheal intubation, not a tracheotomy. (See Appellant’s Appendix Volume 1 at 32).

**IV. EACH AND EVERY ONE OF DOLORFINO'S CLAIMS ARE SUBJECT TO THE MEDICAL EXPERT AFFIDAVIT REQUIREMENT.**

The plain language of NRS 41A *et seq.* reflects that each and every one of Dolorfino's claims in her complaint require support from a medical expert affidavit. Dolorfino attempts to circumvent the medical expert affidavit requirement under NRS 40A.071 by characterizing her claims as claims other than medical malpractice, which as Dolorfino claims, are not subject to NRS 41A.071. However, the gravamen of each of Dolorfino's claims in her complaint stem from the alleged professional negligence of Respondent, UMC in relation to its procurement of medical services to Dolorfino—namely its performance of general anesthesia and an abdominal hysterectomy.

This Court has set out the following rules regarding statutory interpretation:

When a statute is clear on its face, we will not look beyond the statute's plain language. 1996) However, when a statute is susceptible to more than one interpretation, it is ambiguous, and we must look beyond its plain meaning. When construing an ambiguous statute, legislative intent is controlling, and we look to legislative history for guidance. Finally, we consider “the policy and spirit of the law and will seek to avoid an interpretation that leads to an absurd result.

*Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. Cty. of Washoe*, 148 P.3d 790, 792–93 (2006) (citations omitted).

The operative provision of the Nevada Revised Statutes reads as follows:

If an action for ***professional negligence*** is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit that:

1. Supports the allegations contained in the action;
2. Is submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence;
3. Identifies by name, or describes by conduct, each provider of health care who is alleged to be negligent; and
4. Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.

NRS 41A.071 (emphasis added). Thus, any claim for “professional negligence” against a provider of health care triggers the expert affidavit requirement. NRS 41A.015 defines “professional negligence” as follows:

“Professional negligence” means the failure of ***a provider of health care***, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.

NRS 41A.015. Finally, NRS 41A.017 defines “Provider of health care” as follows:

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

NRS 41A.017 (emphasis added).

Each of these provisions read together require Dolorfino to provide an expert affidavit as to all of her claims against Respondent, UMC since each claim stems from Dolorfino's alleged injury during Dr. Odell's administration of general anesthesia. In addition to her medical malpractice claim, Dolorfino brought the following claims against UMC: negligence, vicarious liability and ostensible agency, negligent hiring, and negligent supervision and retention. (*See Appellant's Appendix Volume 1 at 1-6*). These four additional professional negligence claims against UMC—a provider of health care—allege UMC's failure to render services using reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care. As such, this Court must find that an expert affidavit was required for each of Dolorfino's claims.

If Dolorfino were able to move forward with her four purportedly non-medical malpractice claims, Dolorfino's case would eviscerate NRS 41A.071 and encourage future plaintiffs to plead around the expert affidavit requirement. Such a ruling would destroy NRS 41A.071's "legislative shield that protects doctors from frivolous lawsuits and keep doctors practicing medicine in this state." *See Fierle v. Perez*, 219 P.3d 906, 912 (2009) (abrogated on other grounds by *Egan v. Chambers*, 299 P.3d 364 (2013)).

In order to determine liability for Dolorfino's purported-non medical malpractice claims, Dolorfino must demonstrate that UMC deviated from the professional standard of care applied to medical providers and that such deviation was the proximate cause of her injuries.<sup>4</sup> *See Tam v. Eighth Jud. Dist. Ct.*, 358 P.3d 234, 241 (2015) (citing Hearing on S.B. 97 Before the Senate Judiciary Comm. 72d Leg. (Nev., March 5, 2003) (testimony of Dr. Robert W. Shreck, President, Nevada Medical Association) ("Professional negligence means a negligent act, or omission to act, by a provider of health care *that is the proximate cause of a personal injury* . . .") (emphasis added)). Since, as alleged by Dolorfino, each and every one of her claims against UMC were the proximate cause of her injury sustained during the administration of general anesthesia or the hysterectomy procedure, each claim requires an expert affidavit in support thereof.<sup>5</sup>

In order to protect the expert affidavit requirement against pleaders' gamesmanship, this Court should adopt California's test as to what type of claim

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<sup>4</sup> Notably, Dolorfino bases her negligence claim against UMC on a deviation from Joint Commission standards—invariably requiring the opinions of a medical expert. (*See* Appellant's Appendix Volume 1 at 3).

<sup>5</sup> (*See* Appellant's Appendix Volume 1 at 3 (¶13), 4 (¶¶17 and 18), 5 (¶28), and 6 (¶33)).

falls under medical malpractice or, as amended in the Nevada Revised Statutes<sup>6</sup>, professional negligence:

[T]he test is whether the negligent act occurred in the rendering of services for which the health care provider is licensed....[T]he professional duty of a hospital is primarily to provide a safe environment within which diagnosis, treatment, and recovery can be carried out. Thus if an unsafe condition of the hospital's premises causes injury to a patient, as a result of the hospital's negligence, there is a breach of the hospital's duty qua hospital.

*Bellamy v. Appellate Department*, 50 Cal.App.4th 797, 808 (1996). Nevada's Eighth Judicial District Court acknowledged the sound reasoning in *Bellamy* in quoting the following:

Trying to categorize each individual act or omission, all of which may occur within a space of a few minutes, into 'ordinary' or 'professional' would add confusion in determining what legal procedures apply if the patient seeks damages for injuries suffered at some point during the course of the examination or therapy. We do not see any need for such confusion or any indication the Legislature intended MICRA's applicability to depend on such fine distinctions."

*Grimaldi v. Valley Health Services Systems, LLC*, 2014 WL 7773136 (Nev. Dist. Ct.) (quoting *Bellamy*, 50 Cal.App.4th at 808). By subscribing to Dolorfino's theory that some claims relating to personal injuries suffered during a medical procedure are medical malpractice and others are not, Plaintiffs would be able to subvert the expert affidavit requirement by the mere use of syntax in their complaints.

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<sup>6</sup> See ACTIONS AND PROCEEDINGS—IMMUNITY—SCHOOLS AND SCHOOL DISTRICTS, 2015 Nevada Laws Ch. 439 (S.B. 292).

Accordingly, this Court should give full effect to     by requiring an expert affidavit to each and every one of Dolorfino's claims.

### **CONCLUSION**

For the reasons set forth herein, Respondent, UMC respectfully requests that this Court affirm the District Court's ruling that Appellant, Dolorfino's claims must be substantiated by an expert medical affidavit as required under NRS 41A.071.

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 14 pt. Times New Roman type style.

I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7)(C), it is proportionately spaced, has a type face of 14 points or more and contains 3987 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada rules of Appellate Procedure.

DATED this 30<sup>th</sup> day of October, 2017.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of October, 2017, I served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF**, via U.S. Mail and E-Service to the following counsel of record:

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