

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

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Elizabeth A. Brown
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SHELDON FREEDMAN MD, PANKAJ
BHATANAGAR MD, and MATHEW
NG MD,

Petitioners,

vs.

THE HONORABLE JOSEPH HARDY,
District Court Judge, Eighth Judicial
District Court of the State of Nevada, in
and for County of Clark,

Respondent.

MARK J. GARDBERG, ESQ., in his
capacity as Receiver for and acting on
behalf of, FLAMINGO-PECOS
SURGERY CENTER, LLC a Nevada
limited liability company,

Real Party in Interest

Supreme Court Case No.:

**District Court Case No.
A-17-750926-B**

**JOINT PETITION FOR WRIT
OF MANDAMUS**

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DISCLOSURE STATEMENT

In accordance with NRAP 26.1(a), the Defendants represent to the Court that Sheldon Freeman, MD, Matthew Ng, MD, and Pankaj Bhatnagar, MD are individuals, and have been represented by the following firms in all proceedings related to the underlying Nevada District Court case:

Defendant, Sheldon Freedman, MD
Cook & Kelesis, Ltd. fka Bailus Cook & Kelesis, Ltd.

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I.

INTRODUCTION

Pursuant to NRAP 21, SHELDON FREEDMAN, M.D., PANKAJ BHATNAGAR, M.D., and MATHEW NG, M.D. (hereinafter “Individual Doctors” or “Defendants”), hereby petition this Court for a Writ of Mandamus, or, in the alternative, a Writ of Prohibition to vacate the portion of the Eighth Judicial District Court’s (hereinafter “District Court”) Order entered on December 6, 2017 (hereinafter “Order), in case number A-17-750926-B, by the Honorable Joseph Hardy, that denied the Individual Doctors’ Motions to Dismiss (“Motion”).¹ Mark J. Gardberg, Receiver, and Flamingo Pecos Surgery Center, LLC, are the real parties in interest.

This Petition is made pursuant to NRS 34.160, *et seq.*, 34.320 *et seq.*, and the supporting case law upon the following grounds.

1. The Order denying the Motion was entered in excess of the District

¹ The Petitioners are not seeking writ relief for the claims dismissed, which include grossly negligent hiring, grossly negligent supervision, grossly negligent retention, and breaches of NRS 86. These claims were properly dismissed by the District Court. Rather, the Petitioners are only seeking writ relief with respect to those claims that were not dismissed by the district court, which include:

1. Breaches of Fiduciary Duty of Care;
2. Breaches of Fiduciary Duty of Loyalty;
3. Breaches of the Operating Agreement;
4. Waste;
5. Imposition of a Constructive Trust.

Court's jurisdiction as to its authority, overlooked recent case law squarely on point, and ignored the specific guidance of this Court's recent decisions in *Gardner v. Henderson Water Park LLC*, 133 Nev. Adv. Op. 54 (2017), and *Gardner v. Eighth Judicial District Court*, 133 Nev. Adv. Op. 89 (2017).

2. The District Court's Order expands the principles of individual liability under NRS Chapter 86 beyond the statutory restrictions and the case law interpreting the same.
3. Alternately, assuming Plaintiff's argument could be framed to attempt to satisfy *Gardner, supra* and NRS 86, this would necessarily create a clear statute of limitations violation precluding the claims entirely.
4. The District Court has a duty to enforce and protect Nevada statutes, Rules and case law, and the District Court violated that duty by denying the Motion after erring in its application of Nevada law.
5. The District Court's Order was an arbitrary and/or capricious exercise of discretion.
6. The District Court could not have denied the motions to dismiss without violating either NRS Chapter 86 or 11 (or both).
7. There are existing circumstances of urgency and/or strong necessity

justifying the relief requested in the Writ including the wholly legally dispositive nature of this request. The denial of which would lead to expensive litigation and the discovery of individuals personal assets. Further, discovery would not only be costly, but result in discovery of private information, wherein no real cause of action has been pled. Moreover, even though this motion was denied without prejudice, there is no discernable, factual information pertinent to these legal issues.

8. Sound judicial economy and administration favor the granting of the Petition.
9. There are important issues of law that evidently need clarification.
10. An appeal is not a plain, speedy, and adequate legal remedy.

Currently, there has been no NRCP 16.1 Conference, no discovery schedule and no trial setting.

The relief requested herein is to address the fact that the Order issued in this Court is clearly contrary to two (2) recent Nevada Supreme Court Decisions. Further, the Nevada Supreme Court has recently issued decisions protecting the limitations of entities and trusts. The District Court's decision expands these principles beyond recent case law and/or alternatively, ignores long standing precedence regarding the laws of receivership, agency, and the statute of limitations.

As a consequence thereof, if this Writ is not granted, Defendants must wait until trial concludes before they can appeal the District Court's improper exercises of jurisdiction which is blatantly contrary to Nevada law. The District Court's Order would drive up costs, delay justice and potentially interfere in the performance of medical procedures, all causing irreparable harm to the Individual Doctors and potentially affecting patient care.

II.

STATEMENT OF JURISDICTION

The Nevada Supreme Court has original jurisdiction to issue extraordinary relief under the Nevada Constitution, Article 6, Section 4, *Employers Ins. Co. of Nevada v. State Bd. of Examiners*, 117 Nev. 249, 21 P.3d. 628 (2001).

III.

ROUTING STATEMENT

Matters raising as a principal issue a question of first impression or of statewide public importance are retained by the Supreme Court.

IV.

STATEMENT OF ISSUES PRESENTED

1. Does a third party creditor, by virtue of having a Receiver appointed for a defunct entity, in a default action, have a basis to sue individual LLC

members for its vendor debt as though the Receiver is a member itself?

2. If a receiver is appointed on behalf of a third party vendor in a default action, has an order which provides that the receiver may pay directly to the third party vendor any proceeds it receives through the receivership, can it be said that the receiver is acting as a member or entity under NRS Chapter 86.
3. If a receiver appointed for purposes of collection for a third-party vendor, sues the receivership LLC's members, is this a separate duty owed to the receivership entity under *Gardner, supra*.
4. If the receiver is held to the "standing in the shoes" of the entity for which it is a receivership, is it bound by the agency knowledge of its board and, therefore, imputed with that knowledge for purposes of the statute of limitations.

V.

FACTUAL BACKGROUND

A. The Receiver.

Flamingo Pecos Surgery Center ("FPSC") had a lease for its ambulatory surgery center with Patriot-Reading Associates, LLC ("Patriot"). (AA000395). On March 23, 2014, Patriot sued FPSC for breach of contract (*Patriot-Reading*

Associates LLC v. Flamingo-Pecos Surgery Center LLC, Case No. A-16-733627). (AA000396). Default was entered against FPSC, and default judgment was then entered in favor of Patriot. (AA000396). On August 10, 2016, Patriot moved for and was granted an appointment of receiver over FPSC. (the "Receivership Order"). (AA000396). In the September 13, 2016 order, Timothy R. Mulliner was appointed as receiver ("Mulliner"). (AA397).

The Receivership Order granted the receiver authority to take possession of and manage FPSC property, determine whether to make payments and whether to liquidate FPSC property, pursue claims which FPSC may have, and pursue claims related to FPSC's "former employee/office manager Robert W. Barnes." (AA000397). The receiver was also authorized to take any action deemed necessary to collect FPSC's accounts and debts owed to it (*id.* at 15), including actions against "Flamingo's directors and officers." (AA000397).

On or about July 21, 2017, Mark J. Gardberg replaced Mulliner as the receiver (AA000398).²

² From here on, any references to the "receiver" refer to Gardberg as the receiver.

B. Allegations Against All Defendants.

In its Complaint, Plaintiff FPSC alleges that Defendants were managers,³ directors, and/or officers of the FPSC. (AA000396, 000399). FPSC was an LLC operating an ambulatory surgery center with 27 practicing surgeons located in southwest Las Vegas, Clark County, Nevada. (AA000395, 000399, 000402). Robert J. Barnes ("Barnes") was FPSC's office manager. (AA000397, 000398, 000405, 000406, 000407, 000419, 000420, 000421) and he has since been sentenced to prison for his actions. (AA000403).

Plaintiff alleges that the Defendants hired Barnes on October 5, 2006 for the position of FPSC's office manager. (AA000495). Plaintiff concedes that Barnes' employer was the FPSC. (AA000397, 000398n 000405, 000406, 000419, 000420, 000421). Barnes' functions and responsibilities extended to FPSC's full financial workings, accounts, and books. (AA00406). Plaintiff alleges that Defendants failed to supervise, oversee and/or monitor Barnes for many years during Barnes' crime spree, allowing a criminal to effectuate and conduct his embezzlement and theft from FPSC. (AA000406).

Plaintiff further alleges that Defendants had authority to act on behalf of the

³ Notably, the Receivership Order permits actions against "directors and officers" and does not reference managers under that section. (AA000397).

entity and failed - for an unreasonably lengthy period of time - to remove Barnes from his position as office Manager, and to block Barnes' access to FPSC's funds and assets. (AA0004413). Plaintiff alleges that "Defendants individually and collectively damaged Flamingo through a series of actions and inactions occurring over the course of several years," related to the injury to FPSC caused by Barnes. (AA000401). Specifically, Plaintiff alleges Defendants acted, or failed to act, with "gross negligence, willful misconduct, and reckless/intentional disregard" regarding Barnes' actions, as well as their duties to FPSC. (AA000401-402).

Barnes admitted in subsequent criminal proceedings (brought by the U.S. Government) that he had embezzled at least \$1.3 million during the course of his crime spree over many years. (AA000409). Receiver further alleges that upon discovery of Barnes' embezzlement and theft, Defendants had the authority to act on behalf of the entity but failed to (a) demand that Barnes return FPSC's funds and assets; (b) pursue Barnes; and (c) file a civil complaint against Barnes, with such failures resulting in substantial damages against FPSC. (AA000413).

Plaintiff, therefore, went on to allege that Defendants are liable for:

- Grossly negligent hiring, supervision, and retention of Barnes, First - Third Causes of Action (AA000419, 000420);
- Breaches of fiduciary duties of care and loyalty to FPSC, Fourth and

Fifth (incorrectly labeled Fourth again) Causes of Action (AA000420, 000422);

- Breach of the operating agreement, Sixth (incorrectly labeled Fifth) Cause of Action (AA000423);
- Waste, Seventh (incorrectly labeled Sixth) Cause of Action (AA000423);
- Breaches of NRS Chapter 86, Eighth (incorrectly labeled Seventh) Cause of Action; and (AA000423).
- Imposition of a constructive trust, Ninth (incorrectly labeled Eighth) Cause of Action (AA000424).

Plaintiff claimed that Defendants' stories are inconsistent regarding Barnes' actions and the actions of FPSC, yet that all defendants "slept on their basic obligations for many years, [constituting] grossly, willfully and intentionally negligent conduct . . . and, a breach of" all defendants' fiduciary duties to FPSC. (AA000412). Essentially, Plaintiff alleged all defendants "were willfully blind to Barnes' criminality for several years, and that [all defendants] failed upon discovery to immediately stop Barnes and protect [FPSC]." (AA000412). Accordingly, the Receiver has brought suit alleging the Defendants had the authority to act on behalf of the company and the Receiver has the ability to sue these members. In fact, the

Receiver is pursuing this claim on behalf of the entity itself. (AA000700).

VI.

ARGUMENT

A. Introduction - Legal Standard for Writ of Mandamus or Prohibition

A writ of mandamus is available to “compel the performance of an act which the law. . . [requires] as a duty resulting from an office, trust or station” or to control a manifest abuse or an arbitrary or capricious exercise of discretion. *Westpark v. Eighth Judicial District Court*, 123 Nev. 349, 167 P.3d 421, 426 (2007). *See also*, *NRS 34.160*; *Cote H. v. Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008); *PERS v. Reno Newspaper, Inc.*, 313 P.3d 221, 223, 129 Nev. Adv. Op. 88 (2013); and *International Game Tech. v. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

NRS 34.320 defines a writ of prohibition as “the counterpart of a writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.” *See We The People Nevada, ex rel. Angel v. Miller*, 124 Nev. 874, 192 P.3d 1166, 1170 (2008); *Halverson v. Miller*, 124 Nev. 484, 186 P.3d 893, 896 (2008); *Cote H. v. Eighth Judicial District Court, supra*. A writ of prohibition does not serve to correct errors; its purpose is to prevent courts from transcending the limits of their jurisdiction in the

exercise of judicial, but not ministerial, power. *See Nevada Power Co. v. Eighth Judicial District Court, ex rel. County of Clark*, 120 Nev. 948, 953, 102 P.3d 578, 582-83 (2004) (“a writ of prohibition is available to ‘arrest the proceedings of an tribunal . . . when such proceedings are without or in excess of the jurisdiction of such tribunal’”).

This Court has discretion to treat a petition for a writ for mandamus as one for prohibition, or vice versa, or treat a notice of appeal interchangeably as a petition for a writ. *Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988); *In re Temporary Custody of Five Minors*, 105 Nev. 441, 777 P.2d 901 (1989).

A writ of mandamus or prohibition may only be issued when the petitioner has no plain, speedy, and adequate legal remedy. *NRS 34.170 and NRS 34.320*.

Although this Court has frequently held that an appeal is generally an adequate legal remedy that precludes writ relief (*Pan v. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004)), intervention has occurred when there were circumstances that included: (1) urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor granting the petition (*State of Nevada v. Dist. Ct. (Ducharm)*, 118 Nev. 609, 614, 55 P.3d 420, 423 (2002); *County of Clark v. Upchurch*, 114 Nev. 749, 752-53, 961 P.2d 754, 756-57 (1998)); (2) where the district court was legally required to act differently (*D.R.*

Horton v. Dist. Ct., 125 Nev. 449, 453, 215 P.3d 697, 700 (2009); *Smith v. District Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997); (3) when the underlying trial is not imminent (*Pan v. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 841 (2004); and (4) when the interest of judicial economy warrant intervention (*County of Clark v. Upchurch, Id.*).

Defendants understand that a writ of mandamus or, in the alternative prohibition, is an extraordinary remedy. However, the facts and rulings of this case are soundly within the meaning and purpose of granting such a writ.

B. A Writ is appropriate in this Matter

The District Court has failed to issue a ruling on what is clearly a legal issue with no factual disputes. The decision regarding this legal issue could determine the entirety of the claim as it relates to multiple parties. Moreover, if the Writ is not granted, the Defendants will be subject to great expenses, and subject to personal intrusions of discovery and then required to wait until the conclusion of the trial, which has not even been set yet, for a remedy. Without this Writ, a legal decision as to this issue would subject individuals to various discovery, intrusions and interference in medical practice schedules, none of which are necessary based on the law in the State of Nevada. Accordingly, extraordinary relief is the Defendants' only remedy as the District Court's Order fails to consider this Court's recent rulings on

the point.

Specifically, the question is not if the case should be dismissed but, based on mutually exclusive positions taken by the Receiver, should their case be dismissed based on a failure under *Gardner, supra* and NRS Chapter 86, for Plaintiff's inability to sue the individual members of a limited liability company or, alternatively, based on the statute of limitations.⁴

The Plaintiff in the District Court action is a Receiver appointed in a default action by a third party creditor. The Receiver is pursuing individual members of the now defunct and inoperational FPSC, seeking funds to pay back this third party vendor of the surgery center. Moreover, the specific language of the Receivership Order permits the Receiver to provide its collectibles directly to this third party vendor.⁵

The Receiver has brought this action against these individual members alleging that their office manager who scammed millions from the Defendant members and the company, resulting in the downfall of the company, was somehow able to do so

⁴ Defendants would note that there is an underlying basis to be dismissed under both, however, for the limited purpose of this Writ, that issue need not be discussed in detail.

⁵ See Receivership Order at Page 10, "the Receiver shall turn over possession, custody and control of the Receivership to either Patriots [Patriots is the third-party vendor], Flamingo or to the successful purchaser of the receivership property. . .".

through negligence of its members. The Receiver alleges that the members had knowledge of the office manager stealing from them, had the power to stop this theft and/or fire the culprit, but neglected to do so. The Receiver admits that this action is filed more than three (3) years after the officers and directors had knowledge of the negligent conduct complained of, but suggests the discovery rule provides them some type of exception.

Herein lies the difficulty for the Receiver. The law creates a problematic situation for which the only solution creates circumstances that would deny the claims under the law; i.e., a Catch-22 with two equally undesirable alternatives.

First, if the Receiver is a third party vendor, this action is precluded based on *Gardner, supra* and Chapter 86. The Points and Authorities providing this dismissal are clearly and solely legal issues demonstrating the necessity of dismissal under either one or both. If the court would somehow find that the Receiver was truly the entity pursuing its members in a manner permitted under Chapter 86 and *Gardner*,⁶ and the entity pursuing its members⁷ then the entity is impugned with the knowledge

⁶ Notably, alter ego is not alleged. In fact, the allegations are the opposite of an alter-ego case. Receiver does not claim the doctors ran the company as their own. In fact, they plead the reverse, i.d., that the doctors let the thieving office manager run the company for himself without supervision from the doctors.

⁷ As an additional basis as to why the Operating Agreement would otherwise preclude this, but the same is not necessary for this aspect of the Writ.

of its members⁸ and therefore, there is no basis to toll discovery for the statute of limitations.

Moreover, if the Receiver is the entity, and the entity is impugned with the knowledge of its agents who have the ability to make decisions on this issue, the Receiver is precluded from arguing to the contrary because if the Defendants did not have the authority to stop the thief, then the substance of the allegations against Defendants falls apart, i.e., they could not negligently, or in bad faith, fail to stop the thief if the Receiver's argument is that they do not have authority to do so. Thus, either the Receiver is the entity bound by the actions of its members and this matter must be dismissed as it has not been filed within the appropriate statute of limitations or, instead, it is not the entity and therefore is not bound by the members but is an outside vendor seeking to sue the members of an LLC in a manner that has just been specifically precluded in *Gardner, supra*. Under either scenario, the Receiver's case must be dismissed.

⁸ In any application of the discovery rule, a party steps into the shoes of the person on behalf of whom they are suing. This has applied even in circumstances of survivorship actions. *See e.g., 25 A.C.G.S. Death § 166 Discovery Rule, see also Department of Labor and Industries v. Estate of MacMillan*, 117 Wash. 2d 222, 814 P.2d 194 (1991). Moreover, it is obviously also the case in receivership actions. *See e.g., The Unpublished Decision of Schettler v. RalRon Capital Corporation*, 275 P.3d 933, 938, 128 Nev. Adv. Op. 20 (2012) (noting that the FDIC acting as a receiver stands in the shoes of its predecessor and takes all defenses and is subject to all claims as the prior receiver).

There is no discovery necessary to determine either of these issues. This is entirely a legal decision to which it is appropriate to be determined in this Writ rather than having years of litigation and discovery as well as schedules of practicing physicians being turned upside down on such a clear legal issue.

C. Defendants have No Plain, Speedy or Adequate Remedy at Law

Even where an appeal or other legal remedy exists, this Court may grant writ relief “under circumstances of urgency or strong necessity, or when an import issue of law needs clarification and sound judicial economy and administration favor granting of the Petition.” *Cote H*, 175 P.3d at 908; *Ducharm*, 55 P.3d at 423 (2002). Writ relief is appropriate here because the facts show there are circumstances of urgency, strong necessity, and that there is an important issue of law that needs clarification.

As was discussed hereinabove, various entities and individuals will be held in a lawsuit for an extensive period of time where the law is clear and the facts are clear that neither should occur. Accordingly, neither should be subject to extensive discovery up disruption of their medical practice, wherein the Supreme Court’s Orders on these issues are clear and based on the allegations of the Second Amended Complaint, none of them should remain in.

VII.

CONCLUSION

The Defendants respectfully request this Court to issue a writ of mandamus, of in the alternative a writ of prohibition, directing Respondent District Court to vacate its December 6, 2017 Order denying the Individual Doctors' Motion to Dismiss.

DATED this ____ day of December, 2017 DATED this ____ day of December, 2017.

COOK & KELESIS, LTD.

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VIII.

CERTIFICATE OF COMPLIANCE

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

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3,429 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for 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 ____ day of December, 2017.

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IX.

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Marc P. Cook, Esq., being first duly sworn an oath, deposes and states under the penalty of perjury that the following assertions are true and correct of my own personal knowledge:

1. I am an attorney at law duly licensed to practice law in the State of Nevada, and am a Partner with the law firm of Cook & Kelesis, Ltd., attorneys of record for Petitioners. This Affidavit is submitted in accordance with NRAP 21(a)(5) in support of Petitioner's Petition for Writ of Mandamus.

2. I have read this Petition and am familiar with the facts and circumstances set forth in the contents of this Petition and the facts contained herein are within my knowledge to be true, except as to those matters stated upon information and belief.

3. Petitioners have no plain, speedy or adequate remedy in the ordinary course of law as is hereinafter described in this Petition. As such, a Writ of

Mandamus or in the Alternative, Prohibition are the only available remedies for the improper denial of the Motion to Dismiss.

DATED this _____ day of December, 2017.

By: _____
Marc P. Cook, Esq.

SUBSCRIBED AND SWORN to before me
this _____ day of December, 2017 by Marc P. Cook.

A Notary Public in and for said
County and State

X.

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On December 22, 2017, I caused to be served a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS** by the method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☒ **BY EMAIL:** by emailing a PDF of the document(s) listed above to the email address(es) of the individual(s) listed below:

Todd E. Kennedy
BLACK AND LOBELLO PLLC
10777 West Twain Avenue
Suite 300
Las Vegas, Nevada 89135
tkennedy@blacklobellolaw.com

*Counsel for Mark J. Gardberg, Esq., in his capacity as Receiver for,
and acting on behalf of, Flamingo-Pecos Surgery Center, LLC*

Robert E. Schumacher, Esq.
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Dylan E. Houston
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300 South Fourth Street
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Las Vegas, Nevada 89101
Counsel for Defendant Daniel L. Burkhead, M.D.

- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY ELECTRONIC SUBMISSION:** submitted to the Supreme Court of Nevada for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☒ **BY HAND DELIVERY:** by hand delivering a copy of the document(s) listed above to the individual(s) listed below:

THE HONORABLE JOSEPH HARDY, District Court Judge
Eighth Judicial District Court
Department 15, Courtroom 3H

/s/ Sherrill Grotheer
An employee of Cook & Kelesis, Ltd.