

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 01 2018 08:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

TERESA RENITA BURWELL,
Appellant(s),

vs.

NEVADA ORTHOPEDIC AND SPINE
CENTER LLP; AND ARTHUR TAYLOR,
M.D.,
Respondent(s),

Case No: A-18-770532-C

Docket No: 76958

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
TERESA BURWELL, PROPER PERSON
1015 TIMBERLINE CT.
HENDERSON, NV 89015

ATTORNEY FOR RESPONDENT
ROBERT C. MCBRIDE, ESQ.
8329 W. SUNSET RD., STE 260
LAS VEGAS, NV 89113

A-18-770532-C

TERESA BURWELL vs. NEVADA ORTHOPEDIC AND SPINE
CENTER LLP

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 240
2	241 - 257

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	04/26/2018	AFFIDAVIT OF SERVICE	13 - 13
1	02/09/2018	APPLICATION TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	1 - 3
2	09/12/2018	CASE APPEAL STATEMENT	251 - 253
2	11/01/2018	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	03/06/2018	COMPLAINT	6 - 12
1	04/30/2018	DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071	17 - 24
1	05/29/2018	DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071	109 - 114
1	04/30/2018	DEFENDANTS, NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S INITIAL APPEARANCE FEE DISCLOSURE	14 - 16
2	11/01/2018	DISTRICT COURT MINUTES	254 - 257
1	08/06/2018	MOTION FOR SUMMARY JUDGMENT	119 - 232
1	09/10/2018	NOTICE OF APPEAL	233 - 237
1	06/14/2018	NOTICE OF DEPARTMENT REASSIGNMENT	115 - 115
2	09/11/2018	NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071	243 - 250
1	06/25/2018	NOTICE OF MOTION HEARING AND NOTICE OF DEPARTMENT REASSIGNMENT	116 - 118

A-18-770532-C

Teresa Burwell, Plaintiff(s)

vs.

**Nevada Orthopedic And Spine Center LLP,
Defendant(s)**

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	09/10/2018	ORDER GRANTING DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071 (CONTINUED)	238 - 240
2	09/10/2018	ORDER GRANTING DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071 (CONTINUATION)	241 - 242
1	03/06/2018	ORDER TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	4 - 5
1	05/25/2018	PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071	25 - 108

1 Based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that
2 Defendants, NEVADA ORTHOPEDIC & SPINE CENTER, LLP and ARTHUR TAYLOR,
3 M.D.'s Motion to Dismiss Plaintiff's Complaint for Failure to Comply with NRS 41A.097 and
4 NRS 41A.071 is **GRANTED**.

5
6 IT IS FURTHER HEREBY ORDERED THAT Plaintiff's Complaint against Defendants
7 Nevada Orthopedic & Spine Center, LLP and Arthur Taylor, M.D. is **DISMISSED**.

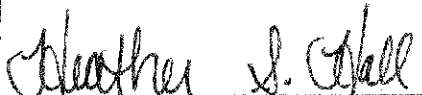
8 **IT IS SO ORDERED.**

9 DATED this 6th day of September 2018.

10
11 
12 HONORABLE ADRIANA ESCOBAR

13 Respectfully Submitted By:

14 CARROLL, KELLY, TROTTER,
15 FRANZEN, McBRIDE & PEABODY

16 
17 ROBERT C. McBRIDE, ESQ.
18 Nevada Bar No.: 7082
19 HEATHER S. HALL, ESQ.
20 Nevada Bar No.: 10608
21 8329 West Sunset Road, Suite 260
22 Las Vegas, Nevada 89113
23 Attorneys For Defendants,
24 Nevada Orthopedic & Spine Center, LLP
25 and Arthur Taylor, M.D.

26 Approved as to form and content by:

27 DATED: ____ day of August, 2018

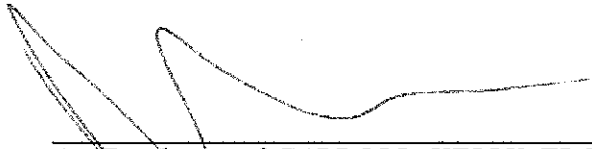
28 By _____
Teresa R. Burwell
1015 Timberline Court
Henderson, Nevada 89015
Plaintiff in Pro Per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of August 2018, I served a true and correct copy of the foregoing **ORDER GRANTING DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'s MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071** addressed to the following counsel of record at the following address(es):

- ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or
- ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the 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.

Teresa R. Burwell
1015 Timberline Court
Henderson, Nevada 89015
Plaintiff in Pro Per



An Employee of **CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY**



1 **NEO**
2 ROBERT C. McBRIDE, ESQ.
3 Nevada Bar No. 7082
4 HEATHER S. HALL, ESQ.
5 Nevada Bar No. 10608
6 CARROLL, KELLY, TROTTER,
7 FRANZEN, McBRIDE & PRABODY
8 8329 W. Sunset Road, Suite 260
9 Las Vegas, Nevada 89113
10 Telephone No. (702) 792-5855
11 Facsimile No. (702) 796-5855
12 E-mail: rcmcbride@cktfmlaw.com
13 E-mail: hshall@cktfmlaw.com
14 Attorneys for Defendants,
15 *Nevada Orthopedic & Spine Center, LLP*
16 *and Arthur Taylor, M.D.*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 TERESA R. BURWELL,

13 Plaintiff,

14 v.

15 NEVADA ORTHOPEDIC AND SPINE
16 CENTER LLP, ARTHUR TAYLOR, MD,
17 TINA WELLS, ESQ

18 Defendants.

CASE NO.: A-18-770532-C
DEPT: XIV

20 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS NEVADA**
21 **ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S MOTION**
22 **TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS**
23 **41A.097 AND NRS 41A.071**

24 PLEASE TAKE NOTICE that an Order Granting Defendants Nevada Orthopedic &
25 Spine Center, LLP and Arthur Taylor, M.D.'s Motion to Dismiss Plaintiff's Complaint for

26 ///

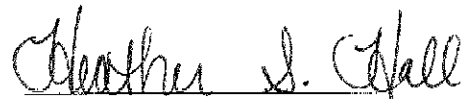
27 ///

28 ///

1 Failure to Comply with NRS 41A.097 And NRS 41A.071 was entered in the above-entitled
2 action on September 10, 2018, a copy of which is attached hereto.

3
4 DATED this 11th day of September, 2018.

CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

6
7 

8 ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

9 HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

10 8329 W. Sunset Road, Suite 260

11 Las Vegas, Nevada 89113

12 Attorneys for Defendants,

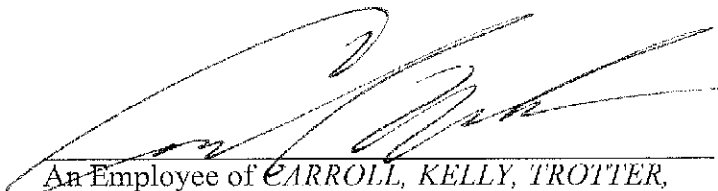
13 *Nevada Orthopedic & Spine Center, LLP*
14 *and Arthur Taylor, M.D.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of September, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS NEVADA ORTHOPEDIC & SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND NRS 41A.071** addressed to the following counsel of record at the following address(es):

- ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or
- ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the 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.

Teresa R. Burwell
1015 Timberline Court
Henderson, Nevada 89015
Plaintiff in Pro Per


An Employee of CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

Steven D. Grierson

ORDR

ROBERT C. McBRIDE, ESQ.
Nevada Bar No. 7082
HEATHER S. HALL, ESQ.
Nevada Bar No. 10608
CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Telephone No. (702) 792-5855
Facsimile No. (702) 796-5855
E-mail: rmcbride@cktfmlaw.com
E-mail: hshall@cktfmlaw.com
Attorneys for Defendants,
Nevada Orthopedic & Spine Center, LLP
and Arthur Taylor, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA R. BURWELL,

Plaintiff,

v.

NEVADA ORTHOPEDIC AND SPINE
CENTER LLP, ARTHUR TAYLOR, MD,
TINA WELLS, ESQ

Defendants.

CASE NO.: A-18-770532-C
DEPT: XIV

**ORDER GRANTING DEFENDANTS
NEVADA ORTHOPEDIC & SPINE
CENTER, LLP AND ARTHUR TAYLOR,
M.D.'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR
FAILURE TO COMPLY WITH NRS
41A.097 AND NRS 41A.071**

Defendants, NEVADA ORTHOPEDIC & SPINE CENTER, LLP and ARTHUR
TAYLOR, M.D., came before the court on August 7, 2018 for hearing on Defendants Nevada
Orthopedic & Spine Center, LLP and Arthur Taylor, M.D.'s Motion to Dismiss Plaintiff's
Complaint for Failure to Comply with NRS 41A.097 and NRS 41A.071. Having reviewed all
submitted briefs, no oral argument being necessary, and for good cause showing, the Court finds
as follows:

///

////

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 I.

2 FINDINGS OF FACT

3 1. On March 6, 2018, Plaintiff filed her Complaint against Nevada Orthopedic and
4 Spine Center and Arthur Taylor, M.D. relating to care and treatment provided to Plaintiff from
5 December 2015 to January 2016.

6
7 2. Plaintiff admits in her complaint, and reiterated at the hearing, that Defendant's
8 treatment of her ceased on January 6, 2016, and that Dr. Taylor's last act as her physician
9 occurred at the time of his January 29, 2016 written evaluation of her condition.

10 3. Plaintiff admits in her complaint, and reiterated at the hearing, that she was aware
11 of the injury caused by the alleged negligence of Defendants on or about February 2016.

12 II.

13 CONCLUSIONS OF LAW

14
15 1. The entirety of Plaintiff's complaint sounds in professional negligence of a
16 medical professional, as all alleged acts of the Defendants were alleged to be committed in the
17 process of rendering medical services and involve medical diagnosis, treatment, and judgment.
18 NRS 41A.015.

19 2. Because the complaint alleges only professional negligence under NRS Chapter
20 41A, the requirements of NRS 41A.071 and NRS 41A.097 apply to the entire complaint.

21 3. While not all allegations of unlawful conduct are necessarily professional
22 negligence merely because they are committed by a healthcare provider, Plaintiff does not allege
23 any wrongdoing by Defendants that occurred during performance of nonmedical services, and
24 thus this complaint sounds in professional negligence. *See Szymborski v. Spring Mountain*
25 *Treatment Ctr.*, 403 P.3d 1280, 1284–85 (Nev. 2017).
26

27 4. Plaintiff's claim filed in February of 2018 is time-barred under NRS 41A.097(2),
28

1 making **dismissal mandatory.**

2 5. Additionally, because NRS 41A.071 applies, the complaint was void ab initio for
3 lack of a concurrently filed medical expert affidavit, and the complaint **must be automatically**
4 **dismissed.**

5 6. Because the complaint alleges only professional negligence under NRS Chapter
6 41A, the requirements of NRS 41A.071 and NRS 41A.097 apply to the entire complaint. NRS
7 41A.097(2) states that an action for professional negligence must be filed no more than three
8 years after the date of injury or one year after the Plaintiff discovers the injury, whichever occurs
9 first. Plaintiff admits in her complaint, and reiterated at the hearing, that she was aware of the
10 injury caused by the alleged negligence of Dr. Taylor on or about February 2016. Thus, under
11 NRS 41A.097(2), the one-year limitations period is applicable because it would expire before the
12 three-year limitations period, in February 2017. For statute of limitations purposes, the
13 complaint is considered filed upon receipt by the court, which was on February 9, 2018, with
14 Plaintiff's application to proceed in forma pauperis. Because February 9, 2018 was more than
15 one year after Plaintiff discovered the injury, the claim is time-barred under NRS 41A.097(2),
16 and thus must be dismissed with prejudice.

17 7. Additionally, because NRS 41A.071 applies, the complaint was void ab initio for
18 lack of a concurrently filed medical expert affidavit, and the complaint "must be automatically
19 dismissed." Washoe Med. Ctr. v. Second Judicial Dist. Ct., 122 Nev. 1298, 1304 (2006).

20 ///

21 ///

22 ///

23 ///

24 ///

1 Based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that
2 Defendants, NEVADA ORTHOPEDIC & SPINE CENTER, LLP and ARTHUR TAYLOR,
3 M.D.'s Motion to Dismiss Plaintiff's Complaint for Failure to Comply with NRS 41A.097 and
4 NRS 41A.071 is **GRANTED**.

5
6 IT IS FURTHER HEREBY ORDERED THAT Plaintiff's Complaint against Defendants
7 Nevada Orthopedic & Spine Center, LLP and Arthur Taylor, M.D. is **DISMISSED**.

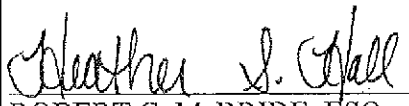
8 **IT IS SO ORDERED.**

9 DATED this 6th day of September 2018.

10
11 
12 HONORABLE ADRIANA ESCOBAR *xl*

13 Respectfully Submitted By:

14 CARROLL, KELLY, TROTTER,
15 FRANZEN, McBRIDE & PEABODY

16 
17 ROBERT C. McBRIDE, ESQ.
18 Nevada Bar No.: 7082
19 HEATHER S. HALL, ESQ.
20 Nevada Bar No.: 10608
21 8329 West Sunset Road, Suite 260
22 Las Vegas, Nevada 89113
23 Attorneys For Defendants,
24 Nevada Orthopedic & Spine Center, LLP
25 and Arthur Taylor, M.D.

26 Approved as to form and content by:

27 DATED: ____ day of August, 2018

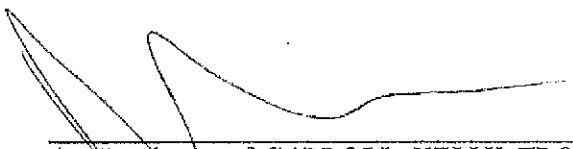
28 By _____
Teresa R. Burwell
1015 Timberline Court
Henderson, Nevada 89015
Plaintiff in Pro Per

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10 day of August 2018, I served a true and correct
3 copy of the foregoing **ORDER GRANTING DEFENDANTS NEVADA ORTHOPEDIC &**
4 **SPINE CENTER, LLP AND ARTHUR TAYLOR, M.D.'s MOTION TO DISMISS**
5 **PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH NRS 41A.097 AND**
6 **NRS 41A.071** addressed to the following counsel of record at the following address(es):

- 7 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of
8 e-service attached to any copy filed with the Court; or
9 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
10 postage thereon fully prepaid, addressed as indicated on the service list below in the
11 United States mail at Las Vegas, Nevada
12 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
13 indicated on the service list below.

14 Teresa R. Burwell
15 1015 Timberline Court
16 Henderson, Nevada 89015
17 *Plaintiff in Pro Per*

18 
19 _____
20 An Employee of **CARROLL, KELLY, TROTTER,**
21 **FRANZEN, McBRIDE & PEABODY**



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 TERESA R. BURWELL,

10 Plaintiff(s),

11 vs.

12
13 NEVADA ORTHOPEDIC AND SPINE CENTER
14 LLP; ARTHUR TAYLOR, MD; TINA WELLS,
ESQ.,

15 Defendant(s),

Case No: A-18-770532-C

Dept No: XIV

16
17
18 **CASE APPEAL STATEMENT**

19 1. Appellant(s): Teresa R. Burwell

20 2. Judge: Adriana Escobar

21 3. Appellant(s): Teresa R. Burwell

22 Counsel:

23 Teresa R. Burwell
24 1015 Timberline Ct.
25 Henderson, NV 89015

26 4. Respondent (s): Nevada Orthopedic and Spine Center LLP; Arthur Taylor, MD

27 Counsel:

28 Robert C. McBride, Esq.

8329 W. Sunset Rd., Suite 260
Las Vegas, NV 89113

Respondent (s): Tina Wells, Esq.

Counsel:

Tina Wells, Esq.
8861 W. Sahara Ave., Suite 220
Las Vegas, NV 89117

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, March 6, 2018
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

9. Date Commenced in District Court: March 6, 2018

10. Brief Description of the Nature of the Action: Unknown

Type of Judgment or Order Being Appealed: Dismissal

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 12 day of September 2018.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601

(702) 671-0512

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

cc: Teresa R. Burwell

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

June 05, 2018

A-18-770532-C

Teresa Burwell, Plaintiff(s)

vs.

Nevada Orthopedic And Spine Center LLP, Defendant(s)

June 05, 2018

8:00 AM

Motion to Dismiss

**Defendants Nevada
Orthopedic & Spine
Center, LLP and
Arthur Taylor, M.D.'s
Motion to Dismiss
Plaintiff's Complaint
for Failure to Comply
with NRS 41A.097
and NRS 41A.071**

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES**PRESENT:**

Burwell, Teresa R

Plaintiff

Plumadore, Dustin J.

Attorney

JOURNAL ENTRIES

- Plaintiff, Teresa Burwell, appearing telephonically.

This is the time set for hearing on Defendants Nevada Orthopedic & Spine Center, LLP and Arthur Taylor, M.D.'s Motion to Dismiss Plaintiff's Complaint for Failure to Comply with NRS 41A.097 and NRS 41A.071. Court called case and inquired as to why Ms. Burwell could not be personally present. Ms. Burwell stated that she has health issues and has a doctor's appointment; she is going to have surgery. Ms. Burwell represented that she contacted this Court's staff yesterday and requested a continuance but the Court denied her request. Court noted that Ms. Burwell was supposed to retain an attorney; she stated that she was still in the process of trying to find one.

PRINT DATE:

11/01/2018

Page 1 of 4

Minutes Date:

June 05, 2018

Court then informed the parties that Dr Taylor performed his hand surgery three (3) years ago. Although this Court is comfortable fairly adjudicating the merits of this case if either side wants the Court to recuse itself it will. Ms. Burwell stated she would like this matter to be reassigned. Therefore, in order to avoid the appearance of impropriety and implied bias and pursuant to Rule 2.11 of the Nevada Code of Judicial Conduct, this Court RECUSES itself and ORDERS, this case referred to Master Calendar and REASSIGNED at random.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters**COURT MINUTES****August 07, 2018**

A-18-770532-C Teresa Burwell, Plaintiff(s)
 vs.
 Nevada Orthopedic And Spine Center LLP, Defendant(s)

August 07, 2018 9:30 AM Motion to Dismiss

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Burwell, Teresa R Plaintiff
 Plumadore, Dustin J. Attorney

JOURNAL ENTRIES

- Defendants motion to dismiss came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on August 7, 2018.

After considering the pleadings and argument of the parties, the Court GRANTS Defendants motion. The Court finds that the entirety of Plaintiff s complaint sounds in professional negligence of a medical professional, as all acts of the Defendants were alleged to be committed in the process of rendering medical services and involve medical diagnosis, treatment, and judgment. NRS 41A.015. While not all allegations of unlawful conduct are necessarily professional negligence merely because they are committed by a healthcare provider, Plaintiff does not allege any wrongdoing by Defendants that occurred during performance of nonmedical services, and thus this complaint sounds in professional negligence. See Szymborski v. Spring Mountain Treatment Ctr., 403 P.3d 1280, 1284 85 (Nev. 2017).

Because the complaint alleges only professional negligence under NRS Chapter 41A, the requirements of NRS 41A.071 and NRS 41A.097 apply to the entire complaint. NRS 41A.097(2) states that an action for professional negligence must be filed no more than three years after the date of injury or one year after the Plaintiff discovers the injury, whichever occurs first. Plaintiff admits in

PRINT DATE: 11/01/2018

Page 3 of 4

Minutes Date: June 05, 2018

her complaint, and reiterated at the hearing, that she was aware of the injury caused by the alleged negligence of Dr. Taylor on or about February 2016. Thus, under NRS 41A.097(2), the one-year limitations period is applicable because it would expire before the three-year limitations period, in February 2017. For statute of limitations purposes, the complaint is considered filed upon receipt by the court, which was on February 9, 2018, with Plaintiff's application to proceed in forma pauperis. Because February 9, 2018 was more than one year after Plaintiff discovered the injury, the claim is time-barred under NRS 41A.097(2), and thus must be dismissed with prejudice.

Additionally, because NRS 41A.071 applies, the complaint was void ab initio for lack of a concurrently filed medical expert affidavit, and the complaint must be automatically dismissed. *Washoe Med. Ctr. v. Second Judicial Dist. Ct.*, 122 Nev. 1298, 1304 (2006).

Counsel for Defendant is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be submitted to chambers in Microsoft word format, by email to dept14lc@clarkcountycourts.us.

CLERK'S NOTE: Parties notified as follows:

Teresa R. Burwell, via USPS to: 1015 Timberline Court, Henderson, Nevada 89015
Robert C. McBride, Esq. @ rcmcbride@cktfmlaw.com
Heather S. Hall, Esq. @ hshall@cktfmlaw.com

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated October 29, 2018, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 257.

TERESA R. BURWELL,

Plaintiff(s),

vs.

NEVADA ORTHOPEDIC AND SPINE
CENTER LLP; ARTHUR TAYLOR, MD;
TINA WELLS, ESQ.,

Defendant(s),

Case No: A-18-770532-C

Dept. No: XIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 1 day of November 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk