

## **EXHIBIT 3**

## **EXHIBIT 3**

1 **2540**

2 Edward J. Lemons, Esq.

3 Nevada Bar No. 699

4 [ejl@lge.net](mailto:ejl@lge.net)

5 Alice Campos Mercado, Esq.

6 Nevada Bar No. 4555

7 [acm@lge.net](mailto:acm@lge.net)

8 **LEMONS, GRUNDY & EISENBERG**

9 6005 Plumas Street

10 3<sup>rd</sup> Floor

11 Reno, Nevada 89519

12 (775) 786-6868

13 *Attorneys for Defendant*

14 *Susan Ramos, M.D., F.A.C.S.*

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

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**MARIA JARAMILLO,**

Plaintiff,

vs.

**SUSAN R. RAMOS, M.D., F.A.C.S.;**  
**PRIME HEALTHCARE SERVICES-RENO, LLC,**  
A DELAWARE LIMITED LIABILITY COMPANY, D/B/A  
**SAINT MARY'S REGIONAL MEDICAL CENTER;**  
**PRIME HEALTHCARE MANAGEMENT INC.,**  
A CALIFORNIA CORPORATION;  
**SAINT MARY'S MEDICAL GROUP, INC.;**  
ABC CORPORATIONS I-X, INCLUSIVE,  
BLACK AND WHITE COMPANIES; AND  
DOES I-XX INCLUSIVE,

Defendants.

Case No.: CV17-00221

Dept. No. 1

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that an Order granting Defendant Susan R. Ramos,  
M.D.'s Motion for Summary Judgment was entered on the 9<sup>th</sup> day of October,  
2018. A true and correct copy of said Order is attached hereto.

~ \* ~

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document DOES NOT contain the Social Security Number of any person.

DATED this 10<sup>th</sup> day of October, 2018.

**LEMONS, GRUNDY & EISENBERG**  
*Attorneys for Defendant*  
*Susan R. Ramos, M.D.*

BY:

  
EDWARD J. LEMONS, ESQ.  
Nevada Bar No. 699

1 CERTIFICATE OF SERVICE

2 I am a citizen of the United States. My business address is 6005 Plumas  
3 Street, Third Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY &  
4 EISENBERG in the City of Reno and County of Washoe where this service occurs

5 On October 10, 2018, I caused to be served to the addressee(s) listed  
6 below, a true copy of the foregoing document(s) and described as **Notice of**  
7 **Entry of Order.**

8 ☐ **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed  
9 in the U.S. Mail at Reno, Nevada;

10 ☐ **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

11 ☐ **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight  
12 delivery carrier with delivery fees provided for;

13 ☐ **BY FACSIMILE:** by transmitting by facsimile to the respective fax  
14 telephone phone number(s).

15 ☒ **BY USING THE COURT'S EFS** which electronically served the following  
16 individual(s):

17 William C. Jeanney, Esq.  
18 BRADLEY, DRENDEL & JEANNEY

19 Janine C. Prupas, Esq.  
20 Carrie L. Parker, Esq.  
21 SNELL & WILMER, LLP

22 I declare under penalty of perjury under the laws of the State of Nevada  
23 that the foregoing is true and correct.

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
7 **THE STATE OF NEVADA IN AND FOR THE**  
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9 **MARIA JARAMILLO,**

10 **Plaintiff,**

**CASE NO.: CV17-00221**

11 **v.**

**DEPT. NO.: 1**

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15 **LLC, a Delaware Limited Liability**  
16 **Company, d/b/a SAINT MARY'S**  
17 **REGIONAL MEDICAL CENTER; PRIME**  
18 **HEALTHCARE MANAGEMENT, INC., a**  
19 **California Corporation; SAINT MARY'S**  
20 **MEDICAL GROUP, INC.; ABC**  
21 **Corporations I-X, inclusive, Black and**  
22 **White Companies; and DOES I-XX,**  
23 **inclusive,**

24 **Defendants.**

25  
26  
27 **ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR**  
28 **SUMMARY JUDGMENT**

29 This Court heard oral argument on September 24, 2018 regarding Defendant Susan R. Ramos,  
30 M.D.'s (hereafter "Dr. Ramos") *Motion for Summary Judgment* filed on August 3, 2018. Plaintiff  
31 Rosaiset Jaramillo, as Special Administrator of the Estate of Maria Jaramillo (hereafter "Plaintiff")  
32 filed an *Opposition* on August 27, 2018. Thereafter, Dr. Ramos filed a *Reply* on August 29, 2018,  
33 and simultaneously submitted the motion to the Court for decision.



1       Upon review of the record and the arguments presented, this Court finds good cause appears  
2 to GRANT Dr. Ramos's *Motion for Summary Judgment*.

3       **I.       Applicable Legal Standard**

4       NRCp 56(c) provides, "[summary judgment] shall be rendered if the pleadings, depositions,  
5 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there  
6 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter  
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14       The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*  
15 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment  
16 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134  
17 (2007). The party moving for summary judgment must meet his or her initial burden of production  
18 and show there is no genuine issue of material fact. *Id.* "The manner in which each party may satisfy  
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20 claim at trial." *Id.* When the moving party bears the burden at trial, that party must present evidence  
21 that would entitle it to judgment as a matter of law absent contrary evidence. *Id.* If the burden of  
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23 satisfy the burden of production by either (1) submitting evidence that negates an essential element  
24 of the nonmoving party's claim, or (2) pointing out that there is an absence of evidence to support the  
25 nonmoving party's case." *Id.* After the moving party meets his or her initial burden of production,  
26 the opposing party "must transcend the pleadings and by affidavit or other admissible evidence,  
27 introduce specific facts that show a genuine issue of material fact." *Id.*

28       ///

1           **II.     Undisputed Facts**

2           On March 26, 2015, Plaintiff Maria Jaramillo had a mammogram of her left breast, which  
3 showed that a lesion had increased in size from the time of her previous exam six months earlier.  
4 *Compl.* at ¶8. Thereafter, the radiologist recommended a direct surgical incision to confirm the  
5 findings and referred Plaintiff to Dr. Ramos. *Id.* at ¶¶9-10.

6           On April 29, 2015, Dr. Ramos performed a wire localization of the patient's left breast. *Id.* at  
7 ¶11. Plaintiff returned to Dr. Ramos for a follow-up appointment on January 28, 2016, wherein  
8 Plaintiff complained of pain in her left breast. *Id.* Dr. Ramos ordered a mammogram and ultrasound,  
9 the results of which showed a 3 cm length localization wire fragment in the upper left breast. *Id.* at  
10 ¶¶12-14. On March 28, 2016, Sharon Wright, M.D. performed a surgical excision of the wire  
11 fragment. *Plaintiff's Answer to Interrogatory No. 8.*

12           On October 23, 2017, Plaintiff passed away from gastrointestinal cancer, the cause of which  
13 is unrelated to the allegations in this matter.

14           **III.     Relevant Procedural History**

15           Plaintiff filed a *Complaint* on February 2, 2017, alleging professional negligence asserting  
16 that Defendants negligently left a foreign object in Plaintiff Maria Jaramillo's body at the conclusion  
17 of a surgical procedure. The primary claim of professional negligence implicates the doctrine of *res*  
18 *ipsa loquitur*, alleging that both the doctor and the hospital are responsible in negligence for leaving  
19 the foreign object in Plaintiff's body and that, under NRS 41A.100, there is a rebuttable presumption  
20 of negligence as to both the doctor and the hospital.

21           The *Complaint* was unaccompanied by a medical expert affidavit. *Compl.* at ¶20. Within the  
22 *Complaint*, Plaintiff asserts that an expert affidavit is not required in this circumstance, as the claim  
23 arises from an incident where a foreign substance has been unintentionally left in the patient's body,  
24 and thus a statutory, rebuttable presumption of negligence arises pursuant to NRS 41A.100(1)(a). *Id.*  
25 at ¶¶29-30.

26           Dr. Ramos filed an *Answer* on March 14, 2017. In June and July of 2017, parties exchanged  
27 initial disclosures of documents and filed the Joint Case Conference Report. Pursuant to the Joint  
28 Case Conference Report, the deadline for initial expert disclosures was June 22, 2018, with rebuttal

1 disclosures due by July 23, 2018. Dr. Ramos served her Expert Witness Disclosure on June 22, 2018,  
2 wherein she disclosed Andrew B. Cramer, M.D., a Board Certified general vascular surgeon. The  
3 Declaration of Andrew B. Cramer, M.D. was attached to the Expert Witness Disclosure. No rebuttal  
4 experts were disclosed by any of the parties. Pursuant to the Joint Case Conference Report, discovery  
5 closed on September 21, 2018.

#### 6 IV. Discussion

7 Dr. Ramos comes now requesting summary judgment on the basis that the uncontroverted  
8 evidence demonstrates that Dr. Ramos did not breach the standard of care owed to Plaintiff, and thus,  
9 the undisputed facts cannot establish negligence on the part of Dr. Ramos. Dr. Ramos asserts that the  
10 expert affidavit of Dr. Cramer provides expert evidence that Dr. Ramos conformed to the standard of  
11 care owed. The Declaration of Dr. Cramer provides:

12 5. It is my opinion, to a reasonable degree of medical probability, that the wire  
13 fragment left in the patient's breast in this case does not denominate negligence  
14 on the part of the surgeon. It is something that a surgeon should be unhappy to  
15 have happen but it isn't due to negligence. ***This is something that can happen  
without negligence on the part of the surgeon.***

16 6. It is also my opinion that it was reasonable for Dr. Ramos to ask the radiologist  
17 to image the area, which was done using Bioview, and confirm that the dissected  
18 tissue was what radiology wanted her to find and remove. It does not appear  
19 that the radiologist noted any retained wire fragment or that he brought any  
20 retained fragment to Dr. Ramos' attention.

21 7. ***In conclusion, based on the information currently available to me, Dr.  
Ramos' care and treatment of Maria Jaramillo was appropriate and within the  
applicable standards of care of a Board Certified Surgeon. There is nothing  
about the care by Dr. Ramos which was negligent in this case.***

22 Decl. of Andrew B. Cramer, M.D., at ¶¶5-7 (emphasis added). Dr. Ramos contends this affidavit  
23 rebuts the presumption of negligence put forth by Plaintiff. As Plaintiff has not disclosed any experts,  
24 and the deadline to do so has passed, Dr. Ramos asserts that the rebuttal of negligence is  
25 uncontroverted and thus, she is entitled to summary judgment.

26 Plaintiff opposes this motion, arguing that pursuant to NRS 41A.100(1)(a), the Plaintiff need  
27 only establish a prime facie case that a foreign substance was left inside the Plaintiff in order to trigger  
28 the statutory *res ipsa loquitur* presumption of negligence. Plaintiff further contends that pursuant to



1 Nevada case law, the statutory *res ipsa loquitur* under NRS Chapter 41A has replaced the traditional  
2 common law doctrine of *res ipsa loquitur*, and thus the traditional burden shifting does not occur.  
3 Plaintiff cites *Johnson v. Egtegar*, wherein the Nevada Supreme Court states:

4       Under NRS 41A.100, however, the presumption automatically applies where  
5 any of the enumerated factual circumstances are present. In regard to these  
6 factual predicates, the legislature has, in effect, already determined that they  
7 ordinarily do not occur in the absence of negligence. Thus, we conclude, all a  
8 plaintiff need do to warrant an instruction under the statutory medical  
9 malpractice *res ipsa loquitur* rule is present some evidence of the existence of  
10 one or more of the factual predicates enumerated in the statute. If the trier of fact  
then finds that one or more of the factual predicates exist, then the presumption  
must be applied. This is the approach taken in Nev. J.I.6.17 and Plaintiff's A.  
Accordingly, the district court should have given the proposed instruction if it  
was supported by evidence adduced at trial.

11 112 Nev. 428, 433-34, 915 P.2d 271, 274-75 (1996). Plaintiff argues that since the presumption of  
12 negligence "automatically applies" here, there is no other evidence that the Plaintiff is obligated to  
13 present, and it is for the jury to weigh the testimony of Dr. Cramer. Plaintiff contends that the question  
14 of whether the statutory presumption has been rebutted is a question of fact for the jury.

15       This Court rejects Plaintiff's arguments. Accepting Plaintiff's argument means that the  
16 presumption of negligence arising from a prima facie case of any scenario enumerated in NRS  
17 41A.100(1) cannot be rebutted, and thus, must go to trial for the jury decide. However, in scenarios  
18 such as this, where the Defendant has put forth uncontroverted evidence that negligence did not occur  
19 and thus rebutting the presumption of negligence, only three results could occur: (1) defendants move  
20 for directed verdict at the conclusion of their case, wherein the Court would have to grant it; (2) the  
21 jury finds no negligence; or (3) the jury finds a verdict in favor of negligence and Defendant appeals  
22 on the basis that the verdict is unsupported by the evidence. The Court finds the interpretation of  
23 NRS 41A.100(1) in this manner goes against the prevailing law in Nevada.

24       The parties, and the Court, agree that a presumption of negligence arises under NRS  
25 41A.100(1). The statute provides, in relevant part:

26       1. Liability for personal injury or death is not imposed upon any provider of  
27 health care based on alleged negligence in the performance of that care unless  
28 evidence consisting of expert medical testimony, material from recognized  
medical texts or treatises or the regulations of the licensed medical facility

1 wherein the alleged negligence occurred is presented to demonstrate the alleged  
2 deviation from the accepted standard of care in the specific circumstances of the  
3 case and to prove causation of the alleged personal injury or death, *except that*  
4 *such evidence is not required and a rebuttable presumption that the personal*  
5 *injury or death was caused by negligence arises where evidence is presented*  
6 *that the provider of health care caused the personal injury or death occurred*  
7 *in any one or more of the following circumstances:*

8 (a) *A foreign substance* other than medication or a prosthetic device *was*  
9 *unintentionally left within the body of a patient* following surgery;

10 NRS 41A.100(1)(a) (emphasis added). Pursuant to this statute, a rebuttable presumption of  
11 negligence, in favor of the plaintiff, is triggered by a showing of some evidence of a foreign substance  
12 being unintentionally left in the body of a patient. NRS 41A.100(1)(a) provides a statutory short cut  
13 to the *res ipsa loquitur* presumption of negligence. See *Szydel v. Markman*, 121 Nev. 453, 117 P.3d  
14 200 (2005). In contrast, a plaintiff pursuing a claim under the traditional doctrine of *res ipsa loquitur*  
15 must establish that the event in question is one that ordinarily does not occur in the absence of  
16 negligence.

17 In interpreting the language of NRS 41A.100(1) and the case law pertaining thereto (which  
18 includes acknowledging that the Nevada Supreme Court has held that “the legislature intended NRS  
19 41A.100 to replace rather than supplement, the classic *res ipsa loquitur* formulation in medical  
20 malpractices cases where it is factually applicable” *Johnson v. Egtegar*, 112 Nev. at 428), the Court  
21 disagrees with Plaintiff in that NRS 41A.100(1)(a)-(e) completely replaces the traditional doctrine of  
22 *res ipsa*, such that no evidence presented could rebut the presumption of negligence prior to trial. In  
23 fact, this Court finds that *Johnson* and *Born* speak only to those jury instructions that must be given  
24 in a case of this nature. See *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) (holding “we  
25 conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res*  
26 *ipsa loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
27 enumerated in the statute”); *Born v. Eisenman*, 114 Nev. 854, 859, 962 P.2d 974, 978 (1998) (finding  
28 “all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res ipsa*  
loquitur rule is present some evidence of the existence of one or more of the factual predicates  
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established by NRS 41A.100 as one that applies as a threshold matter and not as an evidentiary rule

1 wherein the alleged negligence occurred is presented to demonstrate the alleged  
2 deviation from the accepted standard of care in the specific circumstances of the  
3 case and to prove causation of the alleged personal injury or death, ***except that***  
4 ***such evidence is not required and a rebuttable presumption that the personal***  
5 ***injury or death was caused by negligence arises where evidence is presented***  
6 ***that the provider of health care caused the personal injury or death occurred***  
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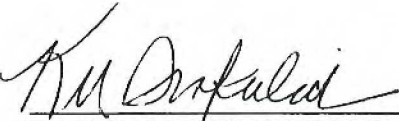


1 Pursuant to NRS 47.200, "if reasonable minds would necessarily agree that the direct evidence  
2 renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury  
3 to find against the existence of the presumed fact." Here, it is uncontroverted that the unintentional  
4 leaving of a wire fragment in Plaintiff's body was not a result of negligence. As such, this Court finds  
5 good cause to grant summary judgment in favor of Defendant Ramos. Finding that the discovery  
6 deadlines have passed, there are no questions of fact remaining for the jury to decide.

7 Accordingly, and good cause appearing,

8 IT IS HEREBY ORDERED that the Defendant Ramos's *Motion for Summary Judgment* is  
9 GRANTED.

10 Dated this 9<sup>th</sup> day of October, 2018.

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13 KATHLEEN DRAKULICH  
14 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV17-00221

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9<sup>th</sup> day of October, 2018, I electronically filed the **ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

ALICE CAMPOS MERCADO, ESQ. for SUSAN R. RAMOS

CARRIE PARKER, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

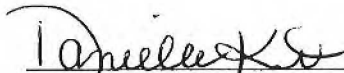
WILLIAM JEANNEY, ESQ. for ROSAISET JARAMILLO, MARIA JARAMILLO

EDWARD LEMONS, ESQ. for SUSAN R. RAMOS

JANINE PRUPAS, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

NONE

  
DANIELLE KENT  
Department 1 Judicial Assistant



## **EXHIBIT 2**

## **EXHIBIT 2**

IN THE SECOND JUDICIAL DISTRICT COURT OF  
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MARIA JARAMILLO,

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**ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR  
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13 is unrelated to the allegations in this matter.

14           **III.     Relevant Procedural History**

15           Plaintiff filed a *Complaint* on February 2, 2017, alleging professional negligence asserting  
16 that Defendants negligently left a foreign object in Plaintiff Maria Jaramillo's body at the conclusion  
17 of a surgical procedure. The primary claim of professional negligence implicates the doctrine of *res*  
18 *ipsa loquitur*, alleging that both the doctor and the hospital are responsible in negligence for leaving  
19 the foreign object in Plaintiff's body and that, under NRS 41A.100, there is a rebuttable presumption  
20 of negligence as to both the doctor and the hospital.

21           The *Complaint* was unaccompanied by a medical expert affidavit. *Compl.* at ¶20. Within the  
22 *Complaint*, Plaintiff asserts that an expert affidavit is not required in this circumstance, as the claim  
23 arises from an incident where a foreign substance has been unintentionally left in the patient's body,  
24 and thus a statutory, rebuttable presumption of negligence arises pursuant to NRS 41A.100(1)(a). *Id.*  
25 at ¶¶29-30.

26           Dr. Ramos filed an *Answer* on March 14, 2017. In June and July of 2017, parties exchanged  
27 initial disclosures of documents and filed the Joint Case Conference Report. Pursuant to the Joint  
28 Case Conference Report, the deadline for initial expert disclosures was June 22, 2018, with rebuttal

1 disclosures due by July 23, 2018. Dr. Ramos served her Expert Witness Disclosure on June 22, 2018,  
2 wherein she disclosed Andrew B. Cramer, M.D., a Board Certified general vascular surgeon. The  
3 Declaration of Andrew B. Cramer, M.D. was attached to the Expert Witness Disclosure. No rebuttal  
4 experts were disclosed by any of the parties. Pursuant to the Joint Case Conference Report, discovery  
5 closed on September 21, 2018.

#### 6 IV. Discussion

7 Dr. Ramos comes now requesting summary judgment on the basis that the uncontroverted  
8 evidence demonstrates that Dr. Ramos did not breach the standard of care owed to Plaintiff, and thus,  
9 the undisputed facts cannot establish negligence on the part of Dr. Ramos. Dr. Ramos asserts that the  
10 expert affidavit of Dr. Cramer provides expert evidence that Dr. Ramos conformed to the standard of  
11 care owed. The Declaration of Dr. Cramer provides:

12 5. It is my opinion, to a reasonable degree of medical probability, that the wire  
13 fragment left in the patient's breast in this case does not denominate negligence  
14 on the part of the surgeon. It is something that a surgeon should be unhappy to  
15 have happen but it isn't due to negligence. ***This is something that can happen***  
***without negligence on the part of the surgeon.***

16 6. It is also my opinion that it was reasonable for Dr. Ramos to ask the radiologist  
17 to image the area, which was done using Bioview, and confirm that the dissected  
18 tissue was what radiology wanted her to find and remove. It does not appear  
19 that the radiologist noted any retained wire fragment or that he brought any  
20 retained fragment to Dr. Ramos' attention.

21 7. ***In conclusion, based on the information currently available to me, Dr.***  
***Ramos' care and treatment of Maria Jaramillo was appropriate and within the***  
***applicable standards of care of a Board Certified Surgeon. There is nothing***  
***about the care by Dr. Ramos which was negligent in this case.***

22 Decl. of Andrew B. Cramer, M.D., at ¶¶5-7 (emphasis added). Dr. Ramos contends this affidavit  
23 rebuts the presumption of negligence put forth by Plaintiff. As Plaintiff has not disclosed any experts,  
24 and the deadline to do so has passed, Dr. Ramos asserts that the rebuttal of negligence is  
25 uncontroverted and thus, she is entitled to summary judgment.

26 Plaintiff opposes this motion, arguing that pursuant to NRS 41A.100(1)(a), the Plaintiff need  
27 only establish a prime facie case that a foreign substance was left inside the Plaintiff in order to trigger  
28 the statutory *res ipsa loquitur* presumption of negligence. Plaintiff further contends that pursuant to



1 Nevada case law, the statutory *res ipsa loquitur* under NRS Chapter 41A has replaced the traditional  
2 common law doctrine of *res ipsa loquitur*, and thus the traditional burden shifting does not occur.  
3 Plaintiff cites *Johnson v. Egteadar*, wherein the Nevada Supreme Court states:

4 Under NRS 41A.100, however, the presumption automatically applies where  
5 any of the enumerated factual circumstances are present. In regard to these  
6 factual predicates, the legislature has, in effect, already determined that they  
7 ordinarily do not occur in the absence of negligence. Thus, we conclude, all a  
8 plaintiff need do to warrant an instruction under the statutory medical  
9 malpractice *res ipsa loquitur* rule is present some evidence of the existence of  
10 one or more of the factual predicates enumerated in the statute. If the trier of fact  
then finds that one or more of the factual predicates exist, then the presumption  
must be applied. This is the approach taken in Nev. J.I.6.17 and Plaintiff's A.  
Accordingly, the district court should have given the proposed instruction if it  
was supported by evidence adduced at trial.

11 112 Nev. 428, 433-34, 915 P.2d 271, 274-75 (1996). Plaintiff argues that since the presumption of  
12 negligence "automatically applies" here, there is no other evidence that the Plaintiff is obligated to  
13 present, and it is for the jury to weigh the testimony of Dr. Cramer. Plaintiff contends that the question  
14 of whether the statutory presumption has been rebutted is a question of fact for the jury.

15 This Court rejects Plaintiff's arguments. Accepting Plaintiff's argument means that the  
16 presumption of negligence arising from a *prima facie* case of any scenario enumerated in NRS  
17 41A.100(1) cannot be rebutted, and thus, must go to trial for the jury decide. However, in scenarios  
18 such as this, where the Defendant has put forth uncontroverted evidence that negligence did not occur  
19 and thus rebutting the presumption of negligence, only three results could occur: (1) defendants move  
20 for directed verdict at the conclusion of their case, wherein the Court would have to grant it; (2) the  
21 jury finds no negligence; or (3) the jury finds a verdict in favor of negligence and Defendant appeals  
22 on the basis that the verdict is unsupported by the evidence. The Court finds the interpretation of  
23 NRS 41A.100(1) in this manner goes against the prevailing law in Nevada.

24 The parties, and the Court, agree that a presumption of negligence arises under NRS  
25 41A.100(1). The statute provides, in relevant part:

26 1. Liability for personal injury or death is not imposed upon any provider of  
27 health care based on alleged negligence in the performance of that care unless  
28 evidence consisting of expert medical testimony, material from recognized  
medical texts or treatises or the regulations of the licensed medical facility

1 wherein the alleged negligence occurred is presented to demonstrate the alleged  
2 deviation from the accepted standard of care in the specific circumstances of the  
3 case and to prove causation of the alleged personal injury or death, ***except that***  
4 ***such evidence is not required and a rebuttable presumption that the personal***  
5 ***injury or death was caused by negligence arises where evidence is presented***  
6 ***that the provider of health care caused the personal injury or death occurred***  
7 ***in any one or more of the following circumstances:***

8 (a) ***A foreign substance*** other than medication or a prosthetic device ***was***  
9 ***unintentionally left within the body of a patient*** following surgery;

10 NRS 41A.100(1)(a) (emphasis added). Pursuant to this statute, a rebuttable presumption of  
11 negligence, in favor of the plaintiff, is triggered by a showing of some evidence of a foreign substance  
12 being unintentionally left in the body of a patient. NRS 41A.100(1)(a) provides a statutory short cut  
13 to the *res ipsa loquitur* presumption of negligence. See *Szydel v. Markman*, 121 Nev. 453, 117 P.3d  
14 200 (2005). In contrast, a plaintiff pursuing a claim under the traditional doctrine of *res ipsa loquitur*  
15 must establish that the event in question is one that ordinarily does not occur in the absence of  
16 negligence.

17 In interpreting the language of NRS 41A.100(1) and the case law pertaining thereto (which  
18 includes acknowledging that the Nevada Supreme Court has held that “the legislature intended NRS  
19 41A.100 to replace rather than supplement, the classic *res ipsa loquitur* formulation in medical  
20 malpractices cases where it is factually applicable” *Johnson v. Egtegar*, 112 Nev. at 428), the Court  
21 disagrees with Plaintiff in that NRS 41A.100(1)(a)-(e) completely replaces the traditional doctrine of  
22 *res ipsa*, such that no evidence presented could rebut the presumption of negligence prior to trial. In  
23 fact, this Court finds that *Johnson* and *Born* speak only to those jury instructions that must be given  
24 in a case of this nature. See *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) (holding “we  
25 conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res*  
26 *ipsa loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
27 enumerated in the statute”); *Born v. Eisenman*, 114 Nev. 854, 859, 962 P.2d 974, 978 (1998) (finding  
28 “all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res ipsa*  
*loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
enumerated in the statute”). Further, the court in *Szydel*, characterizes the presumption of negligence  
established by NRS 41A.100 as one that applies as a threshold matter and not as an evidentiary rule

1 for trial. 121 Nev. at 458, 117 P.3d at 203 (2005) (stating “the plain language of NRS 41A.071  
2 provides a threshold requirement for medical malpractice pleadings and does not pertain to  
3 evidentiary matters at trial, as does NRS 41A.100(1)”) (citing *Borger v. District Court*, 120 Nev.  
4 1021, 102 P.3d 600, 605 (2004)). As a result, this Court finds that the issue at hand is whether  
5 Defendant Ramos has rebutted the presumption of negligence, triggered by NRS 41A.100(1)(a), to  
6 support a grant of summary judgment.

7 Chapter 47 *et seq.* of the Nevada Revised Statutes provides for the definition and existence of  
8 presumptions. Pursuant to NRS 47.180, a presumption “imposes on the party against whom it is  
9 directed the burden of proving that the nonexistence of the presumed fact is more probable than its  
10 existence.” NRS 47.180(1). Further, “direct evidence” is evidence “which tends to establish the  
11 existence or nonexistence of the presumed fact independently of the basic facts.” Here, the basic fact  
12 is that a 3 cm piece of wire was unintentionally left in Plaintiff’s left breast. The presumption, as  
13 triggered by NRS 41A.100(1), that the unintentional leaving of the piece of wire was a result of  
14 negligence on the part of Defendant Ramos. However, Defendant Ramos has presented direct  
15 evidence, through the affidavit of expert witness Dr. Cramer, that “the wire fragment left in the  
16 patient’s breast . . . does not denominate negligence,” rather “[t]his is something that can happen  
17 without negligence on the part of the surgeon.” *Decl. of Andrew B. Cramer, M.D.*, at ¶5. Further,  
18 Dr. Cramer states that “Dr. Ramos’ care and treatment of Maria Jaramillo was appropriate and within  
19 the applicable standards of care of a Board Certified Surgeon.” *Id.* at ¶7. Through this direct  
20 evidence, Defendant has rebutted the presumption that the unintentional leaving of the wire fragment  
21 was a result of negligence. Plaintiff, relying upon NRS 41A.100(1)(a), did not file an expert affidavit  
22 upon the filing of the *Complaint* in this case. As discussed, Plaintiff is not required to submit an  
23 affidavit, where the claim is pursued under NRS 41A.100(1)(a). However, Plaintiff did not file any  
24 expert affidavits or disclose expert witnesses prior to discovery deadlines in response to Defendant’s  
25 disclosure of Dr. Cramer, which Plaintiff’s counsel acknowledged at oral argument on September 24,  
26 2018. As a result, no direct evidence exists to oppose Defendant’s evidence supporting the  
27 nonexistence of negligence in this case. Therefore, Dr. Cramer’s expert affidavit is undisputed.

1 Pursuant to NRS 47.200, "if reasonable minds would necessarily agree that the direct evidence  
2 renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury  
3 to find against the existence of the presumed fact." Here, it is uncontroverted that the unintentional  
4 leaving of a wire fragment in Plaintiff's body was not a result of negligence. As such, this Court finds  
5 good cause to grant summary judgment in favor of Defendant Ramos. Finding that the discovery  
6 deadlines have passed, there are no questions of fact remaining for the jury to decide.

7 Accordingly, and good cause appearing,

8 IT IS HEREBY ORDERED that the Defendant Ramos's *Motion for Summary Judgment* is  
9 GRANTED.

10 Dated this 9<sup>th</sup> day of October, 2018.

11  
12   
13 KATHLEEN DRAKULICH  
14 DISTRICT JUDGE  
15  
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28

**CERTIFICATE OF SERVICE**

CASE NO. CV17-00221

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9<sup>th</sup> day of October, 2018, I electronically filed the **ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

ALICE CAMPOS MERCADO, ESQ. for SUSAN R. RAMOS

CARRIE PARKER, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

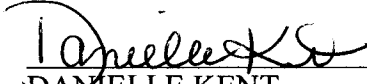
WILLIAM JEANNEY, ESQ. for ROSAISET JARAMILLO, MARIA JARAMILLO

EDWARD LEMONS, ESQ. for SUSAN R. RAMOS

JANINE PRUPAS, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

NONE

  
DANIELLE KENT  
Department 1 Judicial Assistant



## **EXHIBIT 1**

## **EXHIBIT 1**

1 **\$1425**  
2 William C. Jeanney, Esq.  
3 Nevada State Bar No. 01235  
4 BRADLEY, DRENDEL & JEANNEY  
5 P.O. Box 1987  
6 Reno, NV 89505  
7 Telephone No. (775) 335-9999  
8 Facsimile No. (775) 335-9993  
9 ***Attorney for Plaintiff***

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
11  
12 IN AND FOR THE COUNTY OF WASHOE  
13

14 MARIA JARAMILLO,

15 Plaintiff,

16 v.

Case No. CV17-00221

17 SUSAN R. RAMOS, M.D., F.A.C.S.;  
18 PRIME HEALTHCARE  
19 SERVICES-RENO, LLC, a Delaware  
20 Limited Liability Company, d/b/a SAINT  
21 MARY'S REGIONAL MEDICAL  
22 CENTER; PRIME HEALTHCARE  
23 MANAGEMENT, INC., a California  
24 Corporation; SAINT MARY'S MEDICAL  
25 GROUP, INC.; ABC Corporations I-X,  
26 inclusive, Black and White Companies; and  
27 DOES I-XX, inclusive,  
28

Dept. No. 1

Defendants.  
\_\_\_\_\_ /

19 **COMPLAINT**

20 Plaintiff, MARIA JARAMILLO, by and through her counsel of record, William C. Jeanney,  
21 Esq. of the law firm of Bradley, Drendel and Jeanney, and for a cause of action against the  
22 Defendants, each of them, hereby alleges and complains as follows:  
23

24 **PARTIES & JURISDICTION**

25 1. At all times material hereto, Plaintiff, MARIA JARAMILLO, was and is a resident  
26 of Washoe County, Nevada.

27 2. Based upon information and belief, Defendant, SUSAN R. RAMOS, M.D., F.A.C.S.,  
28 (hereinafter Defendant RAMOS) is a medical doctor duly licensed to practice medicine in the State

1 of Nevada and at all times material hereto is the agent, employee, or ostensible agent, or ostensible  
2 employee of all other Defendants and at all times was acting within the permission and consent  
3 within the course and scope of employment and agency.

4 3. Based upon information and belief, Defendant, PRIME HEALTHCARE  
5 SERVICES-RENO, LLC., is a Delaware Corporation doing business as SAINT MARY'S  
6 REGIONAL MEDICAL CENTER in Reno, Nevada.

7 4. Defendant, PRIME HEALTHCARE MANAGEMENT, INC. is a California  
8 Corporation, and is a hospital management company that is operating and existing by virtue of the  
9 laws of the State of Nevada.

10 5. Defendant, SAINT MARY'S MEDICAL GROUP, INC., is a Nevada Corporation  
11 operating and existing by virtue of the laws of the State of Nevada.

12 6. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH, vs. Virostek*, 107  
13 Nev. 873, 822 P.2d 1100 (1991), the identity of Defendants designated as DOES I through X,  
14 inclusive; ABC CORPORATIONS I through X, inclusive; and BLACK AND WHITE  
15 COMPANIES I through X, inclusive are unknown at the present time; however, it is alleged and  
16 believed these Defendants were involved in the initiation, approval, support or execution of the  
17 wrongful acts upon which this litigation is premised, and that said fictitiously designated Defendants  
18 are jointly and severally liable for the damages sustained by Plaintiff as alleged herein. When  
19 Plaintiff becomes aware of the true names of said Defendants, she will seek leave to amend this  
20 Complaint in order to state the true names in the place and stead of such fictitious names.

21 7. Plaintiff does not know the true names and capacities, whether corporate or otherwise,  
22 of these Defendants sued herein as DOES I through X, inclusive; ABC CORPORATIONS I through  
23 X, inclusive; and BLACK AND WHITE COMPANIES I through X, inclusive and Plaintiff prays  
24 leave that when the true names of said Defendants are ascertained, she may insert the same at the  
25 appropriate allegations. Plaintiff is informed and believes, and upon such information and belief,  
26 alleges that each of the Defendants designated herein by such fictitious names are negligently  
27 responsible in some manner for the events and happenings herein referred to and negligently caused  
28 the injuries to Plaintiff. Plaintiff further alleges that each Defendant designated herein by such

1 fictitious names are and at all times relevant hereto were, agents of each other and have ratified the  
2 acts of each other Defendant and acted within the course and scope of such agency and have the right  
3 to control the actions of the remaining Defendants.

4 8. At all times herein mentioned, Defendants, and each of them, were the apparent  
5 ostensible principals, principals, apparent ostensible agents, agents, apparent ostensible servants,  
6 servants, apparent ostensible employees, employees, apparent ostensible assistants, assistants,  
7 apparent ostensible consultants and consultants of their Co-Defendants, and were as such acting  
8 within the course, scope and authority of said agency and employment, and that each and every act  
9 of such Defendants, as aforesaid, when acting as a principal, agent, employee, assistant or consultant,  
10 were responsible in some manner for the events and happenings herein referred to.

#### 11 COMMONS ALLEGATIONS

12 7. Plaintiff realleges Paragraphs 1 through 8 of this Complaint and incorporates the same  
13 herein as though set forth at length.

14 8. On March 26, 2015 Plaintiff had a mammogram of her left breast. The findings  
15 showed that a left breast lesion had increased in size compared to the previous exam, which had been  
16 performed approximately six months prior.

17 9. The radiologist, Eric Kraemer, M.D. noted that given the possibility of sampling error  
18 with a needle biopsy, direct surgical excision was recommended.

19 10. Plaintiff was referred to Defendant, a general surgeon SUSAN R. RAMOS, M.D.,  
20 F.A.C.S.

21 11. On or about April 29, 2015 Plaintiff underwent a wire localization of her left breast  
22 at Defendant SAINT MARY'S REGIONAL MEDICAL CENTER'S facility by Defendant RAMOS.

23 12. On or about January 28, 2016 Plaintiff returned to Defendant RAMOS for a follow-up  
24 appointment. At that time she complained of pain in her left breast. Defendant RAMOS ordered  
25 a mammogram and ultrasound of Plaintiff's left breast.

26 13. On or about February 4, 2016 Plaintiff had the mammogram and ultrasound of her  
27 left breast at Defendant SAINT MARY'S REGIONAL MEDICAL CENTER'S facility on.

28 14. The mammogram results showed a 3 cm length localization wire fragment foreign

1 body in the left upper breast at or about 1:00 position.

2 15. On or about February 9, 2016 Plaintiff followed up with Defendant RAMOS who for  
3 the very first time disclosed that there was a 3 cm length wire fragment in Plaintiff's left breast  
4 which would require surgery.

5 **FIRST CAUSE OF ACTION**

6 16. Plaintiff realleges Paragraphs 1 through 15 of this Complaint and incorporates the  
7 same herein as though set forth at length.

8 17. At all relevant times, and for valuable consideration given, Plaintiff presented to  
9 Defendants for consultation, examination, medicare care and treatment.

10 18. During the course of Defendants' consultation, examination, medical care and  
11 treatment, Defendants, and each of them, negligently and carelessly failed to exercise that degree of  
12 care ordinarily possessed and exercised by other medical staff and facilities engaged in providing  
13 such services as the Defendants, and each of them.

14 19. Defendants, and each of them, breached their duty of care to Plaintiff, by failing to  
15 properly provide medical care and treatment to Plaintiff.

16 20. Pursuant to NRS 41A.100(1)(a) an Affidavit from a medical expert is not required  
17 at the time of filing the Plaintiff's complaint.

18 21. As a direct and proximate result of Defendant's negligence as herein alleged, Plaintiff  
19 was caused to suffer significant pain and suffering, permanent disfigurement and scarring in an  
20 amount in excess of Fifteen Thousand and No/Dollars (\$15,000.00).

21 22. Plaintiff was required and did employ physicians and other medical personnel and  
22 incurred doctor and medical bills, and will incur future medical bills in the future, in an amount that  
23 is presently unknown. Plaintiff prays leave to amend this Complaint to include such sums when the  
24 same become known.

25 23. That as a further direct and proximate result of the negligence, carelessness and  
26 recklessness of the Defendants, and each of them, as aforesaid, Plaintiff MARIA JARAMILLO has  
27 incurred past wage loss in an unknown amount and prays leave to amend this Complaint to include  
28 such sums when the same becomes known.



1 **SECOND CAUSE OF ACTION**

2 24. Plaintiff realleges Paragraphs 1 through 23 of this Complaint and incorporates the  
3 same herein as though set forth at length.

4 25. Defendants, and each of them, had a legal duty to Plaintiff to exercise due care in  
5 providing her a safe environment while she was in the custody and care of Defendant.

6 26. Defendants, and each of them failed to exercise due care in providing a safe  
7 environment for Plaintiff while she was a patient at SAINT MARY'S REGIONAL MEDICAL  
8 CENTER and therefore breached their duty to Plaintiff.

9 27. As a direct and legal result of Defendants; breach of respective duties Plaintiff  
10 sustained damages as set forth above.

11 **THIRD CAUSE OF ACTION**

12 28. Plaintiff realleges Paragraphs 1 through 27 of this Complaint and incorporates the  
13 same herein as though set forth at length.

14 29. Pursuant to NRS 41A.100 provides, in relevant part that there arises a rebuttal  
15 presumption that an injury to a patient by the acts or omissions of a health care provider was caused  
16 by the latter's negligence where the patient sustains an injury as a result of a foreign substance other  
17 than medication or a prosthetic device being left within her body following surgery.

18 30. In the alleged circumstances, NRS 41A.100 gives rise to a rebuttable presumption that  
19 Plaintiff's injuries were the proximate and legal result of the negligence of Defendants.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgment against the Defendants, each of them, as follows:

- 22 1. For leave to amend the Complaint upon discovery of the true names and identities of  
23 each Doe defendant;
- 24 2. For past and future medical and incidental expenses which will be shown according  
25 to proof;
- 26 3. For past and future general damages to Plaintiffs, each in a sum in excess of  
27 \$15,000.00;
- 28 4. For past wage loss which will be shown according to proof;

- 1           5.     For costs of suit and reasonable attorney fees herein;
- 2           6.     For pre-judgment and post-judgment interest as allowed by law; and
- 3           7.     For such other and further relief, at law or in equity, as this Court may deem
- 4                 equitable and just.

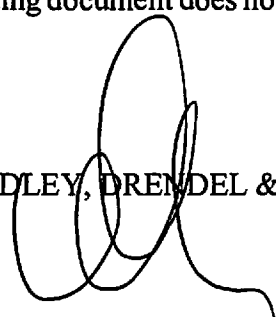
5                                 AFFIRMATION Pursuant to NRS 239B.030

6           The undersigned does hereby affirm that the preceding document does not contain the social

7 security number of any person.

8           Dated this 2nd day of February 2017.

9   BRADLEY, DRENDEL & JEANNEY

10     
11 \_\_\_\_\_  
12 William C. Jeanney, Esq.  
13 *Attorney for Plaintiff*

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

**INDICATE FULL CAPTION:**

ROSAISET JARAMILLO, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF  
MARIA JARAMILLO,  
Appellants,  
vs.  
SUSAN R. RAMOS, M.D., F.A.C.S.,  
Respondent.

Electronically Filed  
No. 77385 Dec 17 2018 11:35 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out this statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: **Second** Department: **1**  
County: **Washoe** Judge: **Hon. Kathleen Drakulich**  
District Ct. Docket No.: **CV17-00221**

2. **Attorney filing this docket statement:**

Attorney: **William C. Jeanney, Esq.**

Telephone: **(775) 335-9999**

Firm: **Bradley, Drendel & Jeanney**

Address: **P.O. Box 1987**

**Reno, Nevada 89505**

Client(s): **Rosaiset Jaramillo, as Special Administrator of the Estate of  
Maria Jaramillo**

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement. **N/A**

3. **Attorney(s) representing respondent(s):**

Attorney: **Edward J. Lemons, Esq.**

Telephone: **(775) 786-6868**

**Alice Campos Mercado, Esq.**

Firm: **Lemons, Grundy & Eisenberg**

Address: **6005 Plumas Street, Suite 300**

**Reno, Nevada 89519**

Client(s): **Susan R. Ramos, M.D., F.A.C.S.**

4. **Nature of disposition below (check all that apply):**

☐ Judgment after bench trial

☐ Judgment after jury trial

☒ Summary judgment

☐ Default judgment

☐ Grant/Denial of NRCP 60(b) relief

☐ Grant/Denial of injunction

☐ Grant/Denial of declaratory relief

☐ Review of agency determination

☐ Dismissal

☐ Lack of jurisdiction

☐ Failure to state a claim

☐ Failure to prosecute

☐ Other (specify): \_\_\_\_\_

☐ Divorce

☐ Original ☐ Modification

☐ Other disposition (specify): \_\_\_\_\_

5. **Does this appeal raise issues concerning any of the following:** N/A
- ☐ Child custody
  - ☐ Venue
  - ☐ Termination of parental rights
6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal. N/A
7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition. N/A
8. **Nature of the action.** Briefly describe the nature of the action and the result below:
- This case arises out of the decedent MARIA JARAMILLO bringing causes of action of Medical Negligence, Failure to Provide a Safe Environment; and NRS 41A.100 (*res ipsa loquitur*).**
9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary): 1) **Whether the district court erred in granting summary judgment as to Plaintiff's claim of NRS 41A.100 (*res ipsa loquitur*).**
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issues raised: **None known.**
11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?
- ☒ N/A
  - ☐ Yes
  - ☐ No

If not, explain: N/A

12. **Other issues.** Does this appeal involve any of the following issues? N/A
- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
  - ☐ An issue arising under the United States and/or Nevada Constitution
  - ☐ A substantial issue of first-impression
  - ☐ An issue of public policy
  - ☐ An issue where en banc consideration is necessary to maintain uniformity of court's decisions
  - ☐ A ballot question

If so, explain:

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subrogation(2) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals identify the specific issue(2) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance: **This matter is presumptively assigned to both the Supreme Court and the Court of Appeals. On one hand, it is presumptively assigned to the Court of Appeals because it is an appeal from a judgment that is less than \$250,000 in a tort case. NRAP 17(b)(5). However, because it involves an issue of first impression that is of statewide public importance, i.e., the effect of the statutory presumption of negligence set forth in NRS 41A.100(1)(a), it presumptively remains in the Supreme Court. See NRAP 17(a)(12) (noting the Supreme Court presumptively retains “[m]atters raising as a principal issue a question of statewide public importance . . .”). Appellant respectfully submits that this appeal should remain in the Supreme Court.**
14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A  
Was it a bench or jury trial? N/A.
15. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? No.

#### **TIMELINESS OF NOTICE OF APPEAL**

16. **Date of entry of written judgment or order appealed from:** If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: **October 10, 2018.**

17. **Date written notice of entry of judgment or order served: October 10, 2018.**  
**Was service by:**  
☐ Delivery  
☒ Mail/electronic/fax
18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59), N/A**
- (a) Specify the type of motion, and the date and method of service of the motion, and date of filing.  
☐ NRCP 50(b)      Date of filing:  
☐ NRCP 52(b)      Date of filing:  
☐ NRCP 59          Date of filing:

**NOTE:      Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

- (b) Date of entry of written order resolving tolling motion: N/A/
- (c) Date written notice of entry of order resolving motion served: N/A  
**Was service by:**  
☐ Delivery  
☐ Mail/electronic/fax
19. **Date notice of appeal filed: November 8, 2018.**
- (a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A.
20. **Specify statute or rule governing time limit for filing the notice of appeal, e.g., NRAP 4(a) or other: NRAP 4(a).**

### **SUBSTANTIVE APPEALABILITY**

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**
- ☒ NRAP 3A(b)(1):                      ☐ NRS 38.205

- ☐ NRAP 3A(b)(2):                      ☐ NRS 233B.150  
☐ NRAP 3A(b)(3):                      ☐ NRS 703.376  
☐ Other (specify):

Explain how each authority provides a basis for appeal from the judgment or order:  
**The judgment is a final judgment, appealable under NRAP 3A(b)(1), and the entry of such final judgment also rendered the order granting motion for summary judgment final and appealable.**

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:    **Rosaiset Jaramillo, as Special Administrator of the Estate of Maria Jaramillo, plaintiff.**  
                      **Susan R. Ramos, M.D., F.A.C.S., defendant.**  
                      **Prime Healthcare Services Reno, LLC, a Delaware Limited Liability Company, d/b/a Saint Mary's Regional Medical Center; Prime Healthcare Management, Inc., a California Corporation; Saint Mary's Medical Group, Inc. The Plaintiff settled with Prime Healthcare Services Reno, LLC, a Delaware Limited Liability Company, d/b/a Saint Mary's Regional Medical Center; Prime Healthcare Management, Inc., a California Corporation; Saint Mary's Medical Group, Inc., defendant**

(b) If all parties in the district court are not parties to this appeal, explain in detail why these parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: **Plaintiff settled with Prime Healthcare Services Reno, LLC, a Delaware Limited Liability Company, d/b/a Saint Mary's Regional Medical Center; Prime Healthcare Management, Inc., a California Corporation; Saint Mary's Medical Group, Inc. The Plaintiff settled with Prime Healthcare Services Reno, LLC, a Delaware Limited Liability Company, d/b/a Saint Mary's Regional Medical Center; Prime Healthcare Management, Inc., a California Corporation; Saint Mary's Medical Group, Inc.**

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

**NRS 41A.100 (*res ipsa loquitur*); Medical Negligence; and failure to Provide a Safe Environment. Summary judgment was granted as to Medical Negligence and NRS 41A.100 (*res ipsa loquitur*) on October 11, 2018. Plaintiff settled with**



**Prime Healthcare Defendants with regard to Failure to Provide a Safe Environment on October 4, 2018.**

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**  
☒ Yes  
☐ No
25. **If you answered “No” to the immediately previous question, complete the following:**  
N/A.  
(a) Specify the claim remaining pending below:  
  
(b) Specify the parties remaining below:  
  
(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):  
☐ Yes  
☐ No  
  
(D) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?  
☐ Yes  
☐ No
26. **If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**  
N/A.
27. **Attach file-stamped copies of the following documents:**
  - The latest-filed complaint, counterclaims, cross-claims, and third-party claims
  - Any tolling motion(s) and order(s) resolving tolling motion(s)
  - Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated actions below, even if not at issue on appeal
  - Any other order challenged on appeal
  - Notices of entry for each attached order

## VERIFICATION

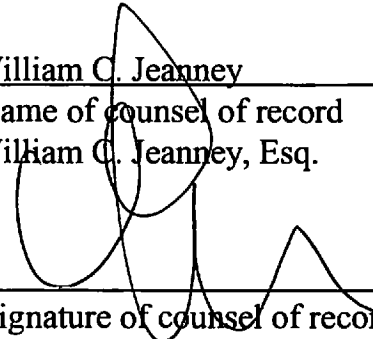
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Rosiaset Jaramillo  
Name of appellant

12/17/18  
Date

Washoe County, Nevada  
State and county where signed

William C. Jeanney  
Name of counsel of record  
William C. Jeanney, Esq.

  
Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 17th day of December, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Edward J. Lemons, Esq.  
Alice Campos Mercado, Esq.  
6005 Plumas Street, Suite 300  
Reno, NV 89519

Dated this 17<sup>th</sup> day of December, 2018.

/s/ Reva S. Archer  
Signature