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

| | |
|---|---|
| ROSAISET JARAMILLO, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF MARIA JARAMILLO<br>APPELLANT,<br>VS.<br>SUSAN R. RAMOS, M.D., F.A.C.S.,<br>RESPONDENT. | CASE NO. 77385 |



APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE KATHLEEN DRAKULICH, DISTRICT JUDGE
DISTRICT COURT CASE NO. CV17-00221

# APPELLANT'S REPLY BRIEF

William C. Jeanney, Esq.
Nevada State Bar No. 01235
BRADLEY, DRENDEL & JEANNEY
P.O. Box 1987
Reno, Nevada 89505
Telephone: (775) 335-9999
Facsimile: (775) 335-9995
Email: wcjeanney@bdjlaw.com
*Attorneys for Appellant*

# IN THE SUPREME COURT OF THE STATE OF NEVADA

| | |
|---|---|
| ROSAISET JARAMILLO, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF MARIA JARAMILLO<br>APPELLANT,<br>VS.<br>SUSAN R. RAMOS, M.D., F.A.C.S.,<br>RESPONDENT. | CASE NO. 77385 |

## NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record for appellant Rosaiset Jaramillo, as Special Administrator of the Estate of Maria Jaramillo, does hereby certify that appellant is an individual who has been represented in the underlying proceeding by partners or associates of the law firm of Bradley, Drendel & Jeanney. Such counsel will continue to represent respondent in this appeal.

DATED this 16th day of July, 2019.

BRADLEY, DRENDEL & JEANNEY

s/ *William C. Jeanney*

By: _____

William C. Jeanney, Esq.
Nevada Bar No. 01235
P.O. Box 1987
Reno, Nevada 89505
Telephone: (775) 335-9999
Facsimile: (775) 335-9999
Email: wcjeanney@bdjlaw.com

**APPELLANT'S REPLY BRIEF**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES. . . . . ii

ARGUMENT . . . . . 1

I. RESPONDENT FAILS TO ACKNOWLEDGE OR ATTEMPT TO REFUTE THE APPLICABILITY OF *CLAUSON v. LLOYD* . . . . . 1

II. BECAUSE THE DOCTRINE OF RES IPSA LOQUITUR APPLIES, PLAINTIFF WAS EXCUSED FROM RETAINING AN EXPERT WITNESS 3

III. RESPONDENT'S ASSERTION THAT SHE REBUTTED THE PRESUMPTION OF NEGLIGENCE UNDER 41A.100 IS WHOLLY UNAVAILING. . . . . 13

CONCLUSION. . . . . 15

## TABLE OF AUTHORITIES

### Cases

*Clauson v. Lloyd*,
103 Nev. 432, 743 P.2d 631 (1987) . . . . . 1, 2, 3

*Funk v. Bonham,*
183 N.E. 312 Ind. 1932) . . . . . 8-10

*Gravitt v, Newman*,
495 N.Y.S.2d 439 (N.Y.App.Div. 1985) . . . . . 11

*Nicholson v. Sisters of Charity of Providence*,
463 P.2d 86 (Or. 1970) . . . . . 12

*Nixdorf v. Hicken*,
612 P.2d 348 (Utah 1980). . . . . 12

*Revels v. Pohle*,
418 P.2d 364 (Ariz. 1966) . . . . . 10-11

*Ripley v. Lanzer*,
215 P.3d 1020 (Wash.App. 2009) . . . . . 12

*Szydel v. Markman*,
121 Nev. 453, 117 P.3d 200 (2005) . . . . . 3, 4, 5

*Wright v. Carter*,
604 N.E.2d 1236 (Ind. App. 1993) . . . . . 5-8

*Wright v, Carter*,
622 N.E.2d 170 (Ind. 1993) . . . . . 5, 8-10

## Statutes, Court Rules, and Miscellaneous Authorities

NRS 41A.071 . . . . . 3, 4

NRS 41A.100 . . . . . 3

NRS 41A.100(1)(a) . . . . . 3, 4

## ARGUMENT

## I. RESPONDENT FAILS TO ACKNOWLEDGE OR ATTEMPT TO REFUTE THE APPLICABILITY OF *CLAUSON v. LLOYD*

In her opening brief, Jaramillo relied on *Clauson v. Lloyd*, 103 Nev. 432, 743 P.2d 631 (1987), as follows:

> Dr. Ramos contended [in her opening brief] that "Plaintiff has *alleged* that the doctrine of *res ipsa loquitur* applies, but has not established the application of that doctrine." AA, pg. 039, lns. 7-8; emphasis in original. This argument is unclear. We recognize that a party need not support a Rule 56 motion with an affidavit, *Clauson v. Lloyd*, 103 Nev. 432, 743 P.2d 631 (1987), and can instead merely point to the absence of evidence in the record to support the opponent's position as to a matter on which he will have the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986). But this requires an affirmative showing, not merely a conclusory statement in the motion. *Id*. Dr. Ramos made no such showing, probably because she realized she could not do so. Even her own expert recognized that a foreign substance, a wire fragment, was inadvertently left in Ms. Jaramillo's body. AA, pg. 084, ¶ 5.

In *Clauson*, a doctor who was sued in a medical malpractice action based on negligence during the performance of a hysterectomy on the plaintiff filed a motion for summary judgment which was based solely on the doctor's affidavit. The affidavit asserted that the doctor "performed according to the standard of practice. learning, and skill ordinarily practiced by medical practitioners in the community." 103 Nev. at 433, 743 P.2d at 632. The plaintiff did not produce an expert to refute the claim in the motion, and the district court enter summary judgment. This Court reversed. It held that plaintiff was not required to produce expert testimony to refute the defendant's

argument because the affidavit in support of the motion was deficient. The Court explained:

> In light of our findings in the primary record, Lloyd's motion, if it is to stand, must do so on the strength of the affidavit. Unfortunately, we find it fatally defective for several reasons: the affidavit is replete with generalizations which do not address adequately the allegations in the complaint; the affidavit does not show that there is no genuine issue as to any material fact; and, it states little apart from the doctor's name which is admissible into evidence as is required under NRCP 56(e); indeed, respondent does not deny in the affidavit that he incised the back of plaintiff's bladder—rather, he summarily reaches the conclusion that his performance conformed to the applicable standard of care.
>
> Were we to hold that the affidavit in this case is strong enough to support a summary judgment motion, the effect would be chilling: any defendant physician could come into court, file a motion for summary judgment alleging solely that he conformed to the applicable standard of care without any valid supporting documentation and if the plaintiff did not procure an expert to refute the charge, his case would be thrown out. We do not think this is what the Supreme Court contemplated in *Celotex*[ *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986)]. [Footnotes omitted.]

*Id*. at 434-35, 743 P.2d at 633.

*Clauson*, which Dr. Ramos ignores, is directly applicable in this case, although it did not involve res ipsa loquitur. Dr. Ramos' motion for summary judgment was based solely on the assertions of her expert in his report which stated in part:

> There were no actions that the hospital staff would have been required to perform as part of this procedure and, they would have had no responsibility for identifying the fact that the wire had been divided.

R.App., pg. 71. In other words, as in *Clauson*, Dr. Ramos was merely stating the

conclusion that she performed according to the applicable standard of care, which is clearly insufficient to satisfy defendant's initial burden as the movant.[1]

The declaration of Dr. Cramer, upon which defendant relies, is similarly deficient. RAB, pg. 8, quoting declaration. The declaration states:

> 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.

Again, as in *Clauson*, this is wholly inadequate; it is an invalid, conclusory assertion that Dr, Ramos conformed to the standard of care.

*Szydel v. Markman*, 121 Nev. 453, 117 P.3d 200 (2005), is also instructive. There, the plaintiff brought a medical malpractice action against a physician who performed a breast lift operation on her. Following the surgery one of the surgical needles was unaccounted for. A fluoroscopy showed that the needle was located in the middle of the plaintiff's right breast. She was taken back into the operating room and the needle was removed. The plaintiff subsequently filed a malpractice complaint in district court alleging that in performing the surgery the defendant left the needle inside her breast, creating a presumption of negligence under Nevada's res ipsa loquitur statute (NRS 41A.100). The defendant moved to dismiss for failure to comply

---

[1]Other deficiencies in Dr. Ramos' opposition are addressed below.

with NRS 41A.071, which required that malpractice actions be accompanied by a medical expert's affidavit. The plaintiff argued that NRS 41A.071 did not apply in a case in which a foreign object was left inside a patient's body, citing NRS 41A.100(1)(a).[2] The district court dismissed the complaint for failure to comply with NRS 41A.071.

On appeal, this court reversed:

> [W]e conclude that requiring an expert affidavit in a res ipsa case under NRS 41A.100(1) is unnecessary. As this court has noted, the purpose of the expert affidavit requirement is to lower costs, reduce frivolous lawsuits, and ensure that medical malpractice actions are filed in good faith based upon competent expert medical opinion. NRS 41A.071 was intended to substitute the medical-legal screening panel with a less expensive process that continues to deter frivolous lawsuits. *Undeniably,*

---

[2]At the time, NRS 41A.100(1)(a) provided:

> 1. Liability for personal injury or death is not imposed upon any provider of health care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the personal injury or death occurred in any one or more of the following circumstances:
>
> (a) A foreign substance other than medication or a prosthetic device was unintentionally left within the body of a patient following surgery . . ..

> *the res ipsa loquitur doctrine codified in NRS 41A.100 permits medical malpractice claims to go forward without expert testimony when the plaintiff is able to present some evidence that one or more of the factual situations enumerated in NRS 41A.100(1)(a)-(e) exist. These are factual situations where the negligence can be shown without expert medical testimony, as when a foreign substance is found in the patient's body following surgery,* NRS 41A.100(1)(a), or when a surgical procedure is performed on the wrong limb of the patient's body, NRS 41A.100(1)(e). It would be unreasonable to require a plaintiff to expend unnecessary effort and expense to obtain an affidavit from a medical expert when *expert testimony is not necessary for the plaintiff to succeed at trial.*

121 Nev. at 459-60, 117 P.3d at 204; emphasis added; footnotes omitted.

*Szydel* is dispositive. Here, it is undisputed that there is evidence that one of the factual situations enumerated in NRS 41A.100 exists, *i.e.,* that a foreign substance was left inside of Jaramillo's breast. This permits Jaramillo to move forward to trial without an expert witness.

## II. BECAUSE THE DOCTRINE OF RES IPSA LOQUITUR APPLIES, PLAINTIFF WAS EXCUSED FROM RETAINING AN EXPERT WITNESS

Jaramillo's position is supported by *Wright v. Carter*, 604 N.E.2d 1236 (Ind. App. 1993).[3] The plaintiff in *Wright* underwent the same type of procedure as did Jaramillo and experienced the same type of injury. The court summarized the facts as follows:

> In August, 1986, Dr. Donner, a radiologist, localized a non-

[3]Affirmed in part and vacated in part by *Wright v, Carter*, 622 N.E.2d 170 (Ind. 1993), as discussed below.

> palpable breast mass in Betty Carter's left breast by using a Kopan's needle and xerogram radiographic studies. The procedure was used to facilitate the identification and stabilization of the target mass for biopsy. Later, Dr. Wright surgically excised the mass. During the surgical procedure by Dr. Wright, the mammographic wire or "needle" portion of the Kopan's device was transected and a 1.1 centimeter piece of the opaque marking needle was left in Betty Carter's breast. Dr. Donner was not present during the surgery. However, post-operatively, Dr. Donner did examine the mass by xerogram but did not detect from his examination of the mass that the wire had been transected. In May, 1987, Dr. Donner performed a xeromammography of Betty Carter's left breast which revealed the presence of the wire. The wire was subsequently surgically excised by another surgeon at a different hospital.

*Id*. at 1237.

The plaintiff thereafter sued the doctor who performed the surgery (Wright), the hospital, and the radiologist who inserted the wire (Donner), alleging negligence in their care of her. The defendants moved for summary judgment, contending there was an absence of a genuine issue of material fact as to their failure to exercise due care because the plaintiff failed to offer any expert evidence in opposition to an opinion of a medical review panel that defendants were not negligent. *Id*. at 1238. The trial court denied the motions. On appeal to the Court of Appeals of Indiana, the court stated the plaintiff's position as follows:

> But, the Carters maintain, their allegations, which concern the failure of Betty Carter's physicians to retrieve and remove a part of a foreign object from her breast which they employed as a means of identifying a fibrous mass and which no longer serves any medical purpose, place this case in the class of cases which do not require expert medical testimony for a jury to determine whether the physicians met the

standard of care required of them.

*Id*. The court agreed with the plaintiff, explaining:

> The continued presence of a foreign object is a matter which is both understandable and within the common knowledge of laypersons. Accordingly, the Carters maintain that the affidavit and testimony of Betty Carter is sufficient, in and of itself, to refute the medical review panel's determination that none of the defendants breached the standard of care required of them. The Carters cite several analogous cases in which the courts have found, despite expert medical opinion that no breach of duty occurred, that a question of fact existed to be resolved by a jury where substances of various types have been utilized during surgery and then not removed. *See e.g. Burke,* 520 N.E.2d 439; *Klinger v. Caylor* (1971), 148 Ind.App. 508, 267 N.E.2d 848; *Ciesiolka v. Selby* (1970), 147 Ind.App. 396, 261 N.E.2d 95; *Funk v. Bonham* (1932), 204 Ind. 170, 183 N.E. 312.
>
> In meeting the allegations of their complaint, the Carters will not be required to show that Betty Carter's physicians did not utilize the proper procedure, did not do what was proper in the performance of the biopsy itself or did anything improper in carrying out the Kopan's needle procedure. Rather, the Carters will be asking a jury to conclude that due care required that the physicians be responsible for removing the foreign substances they introduce while performing these specific procedures which will not serve some medical purpose when the treatment has been completed.
>
> Perhaps, as Dr. Wright argues, medical expertise may be needed for jurors to understand how a mass is removed by use of a Kopan's needle, how delicate the Kopan's needle is and how easily it may be severed by even the best of surgeons. But given the ease in which a Kopan's needle may be transected, *due care may require that even the most competent of surgeons adopt some additional precaution to ensure that all of the needle is removed*. This is not a question which requires medical expertise but one that can be best and ably performed by laypersons. Even lacking knowledge of what should be done, an ordinary person could perceive that under these circumstances, something should

> be done. *Shirey,* 140 Ind.App. at 611, 223 N.E.2d 759. As the Indiana Supreme Court pointed out early on, to decide otherwise would be to permit the medical community to determine by custom within the profession whether the standard of care had been violated, a function which Indiana law has assigned to the jury. *See Funk,* 204 Ind. at 176, 183 N.E. at 315. [Emphasis added.]

*Id.* at 1238-39.

The defendants thereafter appealed to the Indiana Supreme Court. *See, Wright v. Carter, supra*, at n. 1, which affirmed the denial of summary judgment except as to the radiologist who inserted the wire.[4] The court determined that as to the surgeon the facts gave rise to res ipsa loquitur, stating:

> Expert testimony, however, is not always a prerequisite to surviving a defendant's motion for summary judgment. As we noted in *Funk v. Bonham* (1932), 204 Ind. 170, 183 N.E. 312, there are some situations in which a physician defendant's allegedly negligent act or omission is so obvious as to allow plaintiffs to rely on the doctrine of res ipsa loquitur. Juries do not need an expert to help them conclude, say, that it is malpractice to operate by mistake on the wrong limb. Sometimes, the undisputed facts themselves create an inference of negligence such that the judge cannot say that the defendant must win as a matter of law, the contrary opinion of the medical review panel notwithstanding.
>
> *Cases where expert opinion evidence is not necessary typically involve the failure of the operating physician to remove some surgical implement or other foreign object from the patient's body.* In addition to *Funk* (sponge left in abdomen), see also *Ciesiolka v. Selby* (1970), 147 Ind.App. 396, 261 N.E.2d 95 (Teflon mesh left in abdomen); *Klinger v.*

---

[4]The court held that the radiologist was not liable because the plaintiff was under the exclusive care of the surgeon at the time the wire was left in her body and that the radiologist had complete his assigned task and had departed. 622 N.E.2d at 172.

> *Caylor* (1971), 148 Ind.App. 508, 267 N.E.2d 848 ("surgical padding" left in intestinal tract); and *Burke v. Capello* (1988), Ind., 520 N.E.2d 439 (cement left in hip).
>
> ` In this case, Carter argues that the fact that a piece of wire remained in her body following the biopsy is sufficient to raise an inference of negligence, thereby obviating the need for an affidavit to that effect from an expert in order for her to survive defendants' motions for summary judgment. *If undisputed facts support such an inference—that is, if they "speak for themselves"—plaintiff's burden of production is satisfied without expert testimony.* As we observed in *Funk,* to hold otherwise would cede to the medical profession the ability to determine what constitutes a violation of the standard of care, a function which Indiana law has assigned to the jury. 204 Ind. at 178, 183 N.E. at 315.
>
> . . ..
>
> While we agree that the continued presence of a foreign object introduced while performing a specific procedure, but serving no medical purpose once that procedure has been completed, does give rise to an inference of negligence, the question remains one of identifying the negligent actor. Here the inference of negligence arises as to the surgeon and the hospital,

*Id*. at 171-72; footnotes omitted; emphasis added. In one of the omitted footnotes, the court quoted from *Funk* as follows:

> "The handling and placing of sponges in the body in an abdominal operation might be a matter which would depend upon expert testimony, but the failure to remove such sponges after the operation, they not being necessary for any use in the abdomen after the closing of the incision, was not a matter which depended solely upon expert testimony." 204 Ind. at 181, 183 N.E. at 316. "[I]t is for the jury to determine from the evidence whether the omission of certain treatment, like the failure to remove a lap-sponge used in the operation before the incision was closed, was or was not negligence." *Id.* at 176, 183 N.E. at 316.

622 N.E.2d at 171, n. 4.

*Revels v. Pohle*, 418 P.2d 364 (Ariz. 1966), is also instructive with respect to the issue of postoperative care of a surgical patient. The plaintiff in *Revels* underwent a hysterectomy performed by the defendant physician. There was no contention that the defendant did not follow the approved standard in performing the operation. However, following the surgery, the plaintiff complained of "sticking pains" in the incision of her abdomen. It was subsequently determined that there was steel suture material beneath the plaintiff's healed hysterectomy scar, which necessitated further surgery to remove the material. In an action brought by the plaintiff, the trial court granted a directed verdict for the defendant on the ground that the plaintiff had not made out a prima facie case against the defendant. The Arizona Supreme Court revered. In doing so, it rejected the defendant's argument that the plaintiff did not show by expert testimony that the postoperative care given by him departed from the established standard of care, The court explained:

> Since our decisions in Butler v. Rule, 29 Ariz. 405, 242 P. 436, and Boyce v. Brown, 51 Ariz. 416, 77 P.2d 455, the general rules of law governing actions of malpractice are well established in this state. Our opinion in the Boyce case at page 421, 77 P.2d page 457 contains the broad statement that in malpractice suits '* * * negligence on the part of a physician or surgeon, * * * must be established by expert medical testimony * * *.' This rule is in accord with the weight of authority generally where the defendant's use of suitable professional skill is a subject calling for expert testimony only, or the question to be determined is strictly within special and technical knowledge of the profession and not within the knowledge of the average layman. But the force of the rule is broken when the act or omission comes within the realm of common

> knowledge and thus, there is an exception to the rule that is as well settled as the rule itself, and that is expert testimony is not required where '* * * the negligence is so grossly apparent that a layman would have no difficulty in recognizing it.' Boyce v. Brown, supra, at page 421, 77 P.2d at page 457.

*Id.* at 366. The court then concluded that there was a question for the jury as to whether the defendant was negligent in his care of the plaintiff. *Id*. at 367. Other states are in accord. *See, e.g., Gravitt v, Newman*, 495 N.Y.S.2d 439, 440 (N.Y.App.Div. 1985) (plaintiff alleged that during the course of surgical procedure to remove varicose veins, certain portion of surgical instrument, *i.e.,* metal tip of internal vein stripper, was not removed prior to completion of surgery, and second surgery was thereafter performed to remove metal tip; these facts demonstrated sufficient evidentiary basis for invoking doctrine of res ipsa loquitur); *Nicholson v. Sisters of Charity of Providence*, 463 P.2d 86 (Or. 1970) (doctors performing operation were liable for injuries resulting from safety pin being left in plaintiff's abdomen, and res ipsa loquitur was applicable); *Nixdorf v. Hicken*, 612 P.2d 348, 352 (Utah 1980) (where surgeon left needle inside patient's body during surgery, patient was not required to introduce expert testimony to establish applicable standard of care and where appropriate evidentiary basis exists, plaintiff may employ res ipsa loquitur to carry his burden); *Ripley v. Lanzer*, 215 P.3d 1020 (Wash.App. 2009) (trial court's grant of summary judgment to doctor, who left scalpel in plaintiff's knee after closing incision,

reversed on ground that plaintiff did not need to produce expert testimony in order to defeat motion for summary judgment).

## III. RESPONDENT'S ASSERTION THAT SHE REBUTTED THE PRESUMPTION OF NEGLIGENCE UNDER 41A.100 IS WHOLLY UNAVAILING

Dr. Ramos makes the following, fallacious argument:

> NRS 41A.100 provides for a rebuttable presumption, which, under Nevada law may be rebutted with direct evidence. Here, the district court correctly applied the law of presumptions and found that Dr. Ramos rebutted the presumption of negligence through direct, expert evidence. It is undisputed that Dr. Ramos' motion for summary judgment showing that retention of the subject wire fragment was an accepted risk involved in the type of procedure performed by Dr. Ramos on Ms. Jaramillo and does not constitute negligence. Dr. Cramer stated, to a reasonable degree of medical probability, that "the wire fragment left in the patient's breast does not denominate negligence on the part of the surgeon. . . . This is something that can happen without negligence on the part of the surgeon." *A.App. 084*, ¶5. Dr. Cramer also opined that Dr. Ramos' care and treatment of Ms. Jaramillo "was appropriate and within the applicable standards of care of a Board Certified Surgeon." *Id.,* ¶7. This evidence rebutted the presumption of negligence under NRS 41A.100(1)(a).
>
> Once rebutted, the presumption disappeared and Jaramillo was required to present expert testimony to establish the essential elements of standard of care and causation to prevail on her medical malpractice claim.

RAB, pgs. 33-34.

There are fatal flaws in this argument. First, Dr. Cramer does not support his contention that leaving part of a surgical device inside of a patient is an "accepted risk involved in the type of procedure performed by Dr. Ramos on Ms. Jaramillo and does

not constitute negligence." This is a flagrant disregard of NRS 41A.100(1)(a), which provides that leaving a foreign substance within the body of a patient following surgery raises a rebuttable presumption that the injury was caused by negligence without presentation of expert medical testimony by the patient. *Szydel, supra.* Whether leaving a foreign object inside a body is an "accepted risk" does not excuse negligence by the doctor or deflect the applicability of the statute, but, in fact, raises the duty of the doctor to take extra precautions to ascertain that all objects are accounted for and removed. *See Wright*, 604 N.E.2d at 1238.

Additionally, as already noted, Jaramillo was not required "to present expert testimony to establish the essential elements of standard of care and causation to prevail on her medical malpractice claim." Defendant's reliance on NRS Ch. 47 in support of this argument fails. That Chapter is inapplicable. Rather, the express, and more specific, provisions of NRS 41A.100(1)(a) apply in this case. *Szydel, supra*.

///

///

///

///

///

///

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the district court's Order Granting Defendant Susan R. Ramos, M.D.'s Motion for Summary Judgment should be reversed and the matter remanded back to the district court for trial.

DATED this 16th day of July, 2019.

BRADLEY, DRENDEL & JEANNEY

By s/ *William C. Jeanney*

William C. Jeanney, Esq.
Nevada State Bar No. 1235
P.O. Box 1987
Reno, Nevada 89505
Telephone No. (775) 335-9999
Facsimile No. (775) 335-9993
*Attorneys for Appellant*

## CERTIFICATION 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 proportionally spaced typeface using WordPerfect 12 in 14-point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations in NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 3,916 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 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 16th day of July, 2019.

s/ *William C. Jeanney*
William C. Jeanney, Esq.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 16th day of July, 2019, and therefore the court's computer system has electronically delivered a copy of the Appellant's Reply Brief to the following person(s) at the following email address:

Edward J. Lemons, Esq.
Email: ejl@lge.net
Alice Campos Mercado
Email: acm@lge.net
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, 3rd Floor
Reno, Nevada 89519
(775) 786-6868

*Attorneys for Respondent,*
*Susan R. Ramos, M.D.*

s/ *Stacy Culbert*
An Employee of Bradley, Drendel & Jeanney