

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY PORCHIA,

Appellant,

vs.

CITY OF LAS VEGAS; STEPHEN
MASSA; and NICHOLAS
PAVELKA,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 78954-COA

DC CASE No. A-17-758321-C

MOTION TO REISSUE ORDER AS A PUBLISHED OPINION

Pursuant to NRAP 27(d) and 36(f), Respondent City of Las Vegas (the “City”) moves the Court to reissue as a published opinion its December 16, 2020, unanimous, unpublished Order of Affirmance (the “Order”) in this matter.

Publication under NRAP 36(f)(3) is proper because the Order satisfies each of the three independent criteria by which this Court may grant publication pursuant to NRAP 36(c)(1):

(A) “Presents an issue of first impression,” by addressing whether an alleged misdiagnosis or failure to transport an individual to the hospital leading to an adverse outcome meets the affirmative harm exception to the public duty doctrine. (Order, p. 8.) The Court clearly noted that the lone Nevada case discussing the application of the affirmative harm exception to

the public duty doctrine did not speak to the issue of alleged affirmative harm in this matter. (*Id.*) Thus, this matter's issue of first impression required the Court to turn to other jurisdictions before reaching its conclusion on the novel issue. (*Id.*)

(B) "Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals," by (1) making clear that the affirmative harm exception to the public duty doctrine—as set forth in *Coty v. Washoe County*, 108 Nev. 757, 760, 839 P.2d 97, 99 (1992) (*see also Frye v. Clark County*, 97 Nev. 632, 634, 637 P.2d 1215, 1216 (1981))—does not apply when emergency medical responders make a "judgement call" and exercise their discretion in determining whether to transport a patient (Order, pp. 10-11), and by (2) adding additional clarification to the underlying requirements to both exceptions to the public duty doctrine (Order, pp. 5-11).

(C) "Involves an issue of public importance that has application beyond the parties," by clarifying the criteria and considerations for triggering the affirmative harm exception, generally, and specifically in the context of an alleged misdiagnosis or failure to transport by emergency medical responders. These issues will be confronted in the future not only by the City, but also by every public agency in Nevada that employs

emergency medical responders and is responsible for providing an emergency medical response.

The policies of NRAP 36(f)(4) (disfavoring publication if it will result in discussion of additional issues not included in the original unpublished order) are not implicated because no revision is required since the Order is generally applicable to all emergency medical responders employed by public agencies within the State. As a result, the Order provides clear guidance to both the public agencies and the district courts, thereby serving the public interest and promoting judicial economy.

In sum, the Court's Order is reasoned and thorough. The Order is applicable to public emergency medical responders throughout the State, including emergency medical technicians (EMTs), advanced EMTs, paramedics, and firefighters who carry any one of those credentials. As noted *supra*, the Order provides necessary and valuable authority concerning the public duty doctrine, and it specifically addresses the application of the affirmative harm exception to a fact-pattern that will be encountered by emergency medical responders in the future.

No revision of the Order to address additional issues is required, and—absent publication of the Order—the City and other public agencies may not even cite to the Order as persuasive authority on the issues of the public duty doctrine

and its two exceptions. *See* NRAP 36(c)(3) (“[U]npublished dispositions by the Court of Appeals may not be cited in any Nevada court for any purpose.”).

For the reasons state above, the City believes that reissuance of the Order as a published opinion of the Court is necessary and proper.

DATED this 28th day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2020, I served a true and correct copy of the foregoing MOTION TO REISSUE ORDER AS A PUBLISHED OPINION through the electronic filing system of the Nevada Supreme Court, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

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AN EMPLOYEE OF THE CITY OF LAS VEGAS