

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY JAMES RIVES, M.D.; and
LAPAROSCOPIC SURGERY OF NEVADA,
LLC,

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

BARRY JAMES RIVES, M.D.; and
LAPAROSCOPIC SURGERY OF NEVADA,
LLC,

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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APPELLANTS' APPENDIX
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	<u>Exhibit B</u> : Transcript of Video Deposition of Michael B. Hurwitz, M.D., FACS	9/18/19	10 11	2098-2221 2222-2261

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	<u>Exhibit B</u> : Expert Report of Brian E. Juell, MD FACS	9/9/19	11	2269-2271
	<u>Exhibit C</u> : Transcript of Video Transcript of Brian E. Juell, M.D.	6/12/19	11	2272-2314
54.	Offer of Proof re Sarah Larsen	11/1/19	11	2315-2317
	<u>Exhibit A</u> : CV of Sarah Larsen, RN, MSN, FNP, LNC, CLCP		11	2318-2322
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91.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of, LLC's Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation And Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6494-6503
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¹ These additional documents were added after the first 29 volumes of the appendix were complete and already numbered (6,493 pages).

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99.	Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6802-6815
100.	Notice of Entry Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/31/20	31	6816-6819
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(Cont. 101)	<u>Exhibit 2</u> : Order on Plaintiffs' Motion for Fees and Costs and Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs	3/30/20	31	6842-6857

EXHIBIT C

LIFE CARE PLAN

FOR

TITINA FARRIS

*** * ***

Dated: December 19, 2018

Prepared by:

**OLZACK HEALTHCARE CONSULTING, INC.
Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P.
2092 Peace Court, Atwater, CA 95301
Phone: 209-358-8104 / Fax: 209-358-8115**

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Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPc, CLCP
 2092 Peace Ct, Atwater, CA 95301

OPTION I - HOME CARE (DIRECT HIRE)					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option I Home Care Trained Attendant Direct Hire - 90% and Agency Hire - 10% (Hourly)	Age 56 to Life	2-4 hours / day	To assist Ms. Farris with activities of daily living and day to day chore work	Trained Attendant Direct Hire - 90% \$13.00 to \$15.00 per hour and 18% Employer Taxes and Agency Hire - 10% \$21.50 / hour	Option I Annually \$13,806.45 \$2,485.16 \$2,355.86
Option I Payroll Service	1 x Only	1 x Only	To manage payroll services for the trained attendant	Initial Fee \$200.00	Option I One Time Only \$200.00
	1 x / 2 weeks	1 x / 2 weeks		Bi-Weekly \$44.00 to \$68.00	Annually \$1,456.00
Option I Advertising, Agency Referral Fee Allowance	1 x / year	1 x / year	To cover costs for advertising/referral service for trained attendant	\$1,000.00 / year	Option I Annually \$1,000.00

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LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
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 2092 Peace Ct, Atwater, CA 95301

OPTION I - HOME CARE (DIRECT HIRE) - Continued					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option I Housekeeping	Age 56 to Life	2-4 hours / month	For heavy housekeeping including scrubbing, vacuuming, mopping, etc.	\$65.77 / hour	Option I Annually \$2,367.72
Option I Case Management	Age 56 to Life	4-8 hours / year	Coordinates care and communicates with Ms. Farris and her health care providers as necessary	\$105.00 / hour	Option I Annually \$630.00
TOTALS:					Option I One Time Only \$200.00 Annually \$24,101.19
Resources: Paychex, Inc. United States Department of Labor - Occupational Wage and Salary Data					

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LIFE CARE PLAN

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OPTION II - HOME CARE (AGENCY HIRE)					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option II Home Care Trained Attendant Agency Hire 100%	Age 56 to Life	2-4 hours / day	To assist Ms. Farris with activities of daily living and day to day chore work	Trained Attendant Agency Hire - 100% \$21.50 / hour	Option II Annually \$23,558.63
Option II Housekeeping	Age 56 to Life	2-4 hours / month	For heavy housekeeping including scrubbing, vacuuming, mopping, etc.	\$65.77 / hour	Option II Annually \$2,367.72
Option II Case Management	Age 56 to Life	4-8 hours / year	Coordinates care and communicates with Ms. Farris and her health care providers as necessary	\$105.00 / hour	Option II Annually \$630.00
TOTALS:					Option II Annually \$26,556.35

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12A.App.2459

Name: Titina Farris
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LIFE CARE PLAN

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FUTURE MEDICAL CARE					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Physical Medicine and Rehabilitation Specialist	Age 56	1 Evaluation	To evaluate and manage issues related to mobility, pain and orthotics	Evaluation \$254.00 to \$500.00	One Time Only \$377.00
	Age 56 to Life	4 x / year		Follow Up Visit \$100.00 to \$154.00	Annually \$508.00
Podiatrist	Age 56	1 Evaluation	To evaluate and manage wound care/foot care for Ms. Farris	Evaluation \$75.00 to \$175.00	One Time Only \$125.00
	Age 56 to 57	6-12 x / year x 1 year		Follow Up Visit \$45.00 to \$50.00	Annually To Age 57 \$427.50
	Age 57 to Life	4-6 x / year			Age 57 to Life \$237.50

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LIFE CARE PLAN

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 2092 Peace Ct, Atwater, CA 95301

FUTURE MEDICAL CARE - Continued					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Psychologist	Age 56 to Life	10-20 x / Life	For individual and family therapy related to adjusting to health care needs	Session \$100.00 to \$225.00	One Time Only \$2,437.50
Dietician	Age 56 Age 56 to Life	1 Evaluation 1 x / year	For dietary counseling related to weight, blood pressure and diabetes management	Evaluation \$75.00 to \$130.00 Follow Up Visit \$45.00 to \$90.00	One Time Only \$102.50 Annually \$67.50
Wound Clinic	Age 56	2 x / week x 3-6 months	For the evaluation and treatment of wound to left heel	Visit \$249.24	One Time Only \$9,720.36

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LIFE CARE PLAN

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FUTURE MEDICAL CARE - Continued			
	Annual Cost		
	One Time Only \$12,762.36		
	Annually To Age 57 \$1,003.00		
	Age 57 to Life \$813.00		
TOTALS:			
<p>Resources:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy </td> <td style="width: 50%; vertical-align: top;"> Bree Mullin, Psy.D. – Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection </td> </tr> </table>		Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy	Bree Mullin, Psy.D. – Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection
Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy	Bree Mullin, Psy.D. – Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection		

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LIFE CARE PLAN

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WHEELCHAIR NEEDS					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Power Scooter or Power Wheelchair	Age 56 to Life	1 x / 7 years	For distance and community mobility	\$1,678.17	Annually \$239.74
Manual Wheelchair	Age 56 to Life	1 x / 7 years	For community mobility	\$179.75	Annually \$25.68
Wheelchair Cushion	Age 56 to Life	1 x / 2 years	For increased safety when using scooter or wheelchair	\$31.29	Annually \$15.65
Portable Ramps	Age 56 to Life	1 x / 7 years	For increased safety and mobility	\$100.85	Annually \$14.41
TOTALS:					Annually \$295.47

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12A.App.2463

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LIFE CARE PLAN

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DURABLE MEDICAL EQUIPMENT AND SUPPLIES					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
4-Wheeled Walker	Age 56 to Life	1 x / 5 years	For increased safety and independence with ambulation	\$65.83	Annually \$13.17
Reacher	Age 56 to Life	1 x / 5 years	For increased safety and independence in the home and community	\$11.56	Annually \$2.31
Handheld Shower Head	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$25.19	Annually \$5.04
Shower Bench	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$56.08	Annually \$11.22
Grab Bars	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$14.66	Annually \$2.93
Single Point Cane	Age 56 to Life	1 x / 5 years	For increased safety and independence with ambulation	\$14.81	Annually \$2.96

Name: Titina Farris
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LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
2092 Peace Ct, Atwater, CA 95301

DURABLE MEDICAL EQUIPMENT AND SUPPLIES - Continued	
TOTALS:	Annual Cost
	Annually \$37.63

Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPc, CLCP
 2092 Peace Ct, Atwater, CA 95301

PROJECTED THERAPEUTIC MODALITIES					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Physical Therapy Evaluation	Age 56 to Life	1 x / year	To evaluate and assist in formulating a home exercise program	Evaluation \$85.00 to \$120.00	Annually \$102.50
Occupational Therapy Evaluation	Age 56 to Life	1 x / year	To evaluate for any needs related to activities of daily living and assistive devices	Evaluation \$85.00 to \$120.00	Annually \$102.50
Gym Membership with Pool	Age 56 to Life	Enrollment Fee 1 x Only Annual Fee 1 x / year Monthly Membership Fee 1 x / month	For physical activity to improve overall health and cardiovascular status, assist with weight management	Enrollment Fee \$40.00 to \$99.00 Annual Fee \$0.00 to \$45.00 Monthly Membership Fee \$23.00 to \$45.00	One Time Only \$69.50 Annually \$22.50 Annually \$408.00

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LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
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2092 Peace Ct, Atwater, CA 95301

PROJECTED THERAPEUTIC MODALITIES - Continued	
TOTALS:	Annual Cost
	One Time Only \$69.50
	Annually \$635.50
Resources: Select Physical Therapy ATI Physical Therapy Matt Smith Physical Therapy Tim Soder Physical Therapy Tru Physical Therapy Leavitt Physical Therapy Affiliated Therapy Skyview YMCA Las Vegas Athletic Clubs Anytime Fitness Desert Inn	

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LIFE CARE PLAN

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ORTHOTICS					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Bilateral Custom Fit AFO	Age 56 to Life	1 pair / 3-4 years	To maintain anatomical and functional positioning of ankles and feet	\$66.30 / each	Annually \$37.89
PRAFO	Age 56 to Life	1 x / 3-4 years	For nighttime use to help prevent pressure sores on feet	\$236.30	Annually \$67.51
TOTALS:					Annually \$105.40

Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPc, CLCP
 2092 Peace Ct, Atwater, CA 95301

TRANSPORTATION					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Wheelchair Accessible Van (Conversion Package)	Age 56 to Life	1 x / 7 years	To transport wheelchair or power scooter for community mobility	\$22,240.00	Annually \$3,177.14
TOTALS:					Annually \$3,177.14

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
2092 Peace Ct, Atwater, CA 95301

Payroll Service / Bookkeeping

Paychex, Inc.
(855) 973-2408 / National Sales Line
Set-Up Fee: \$200.00 *one-time fee
Bi-Weekly: \$44.00 - \$68.00 / pay period
*payroll fees for 1-5 employee; prices range based on complexity of payroll (for example if wages need to be garnished)

Physical Medicine and Rehabilitation

Desert Orthopedic Center
Andrew Kim D.O. – Physiatrist
2800 East Desert Inn Road, Suite 100
Las Vegas, NV 89121
(702) 731-4088 / Caren
Evaluation: \$300.00 - \$500.00
Follow Up Visit: \$ 100.00

Advance Orthopedics and Sports Medicine
Matthew HC Otten M.D. – Physiatrist
8420 West Warm Springs Road, Suite 100
Las Vegas, NV 89113
(702) 740-5327 / Anette
Evaluation: \$254.00
Follow Up visit: \$154.00

Dynamic Pain Rehabilitation
Alexander Imas, M.D. – Physiatrist
1358 Paseo Verde Parkway, Suite 100
Henderson, NV 89012
(702)982-7100 / Stephanie
Evaluation: \$ 275.00
Follow Up visit: \$ 100.00

McKenna, Ruggeroli & Helmi
6070 South Fort Apache Road 100
Las Vegas, NV 89148
702) 307-7700 / Daisy
Evaluation: \$400.00
Follow Up Visit: \$100.00

Physical Medicine and Rehabilitation - Cont.

Innovative Pain Center
Eric Brimhall, M.D.- Physiatrist
503 South Rancho Drive, Suite G44
Las Vegas, CA 89106
(702) 684-7246 / Jesiree
Evaluation: \$455.00
Follow Up Visit: \$100.00

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

Podiatry

Eastern Podiatry
3777 Pecos-McLeod, Suite 103
Las Vegas, NV 89121
(702) 434-2023 / Perala
Evaluation: \$120.00
Follow Up Visit: \$45.00

Jerry T Henry, DPM
341 North Buffalo Drive, Suite A
Las Vegas NV 89145
(702) 242-3870 / Heather
Evaluation: \$75.00
Follow Up Visit: \$45.00

Foot Care Clinic
3650 South Eastern Avenue, Suite 200
Las Vegas, NV 89169
(702) 420-7970 / Cindy
Evaluation: \$97.00
Follow Up Visit: \$50.00

Apache Foot and Ankle Specialist
Lee Wittenberg, DPM
4840 South Fort Apache Road, Suite 101
Las Vegas, NV 89147
(702) 362-6634 / Jasmine
Evaluation: \$110.00
Follow Up Visit: \$45.00

Podiatry - Cont.

Foot and Ankle Specialist of Nevada
7135 West Sahara Avenue, Suite 201
Las Vegas, NV 89117
(702) 878-2455 / Yolanda
Evaluation: \$175.00
Follow Up Visit: \$50.00

Swenson Foot and Ankle
5380 Rainbow Boulevard, Suite 318
Las Vegas, NV 89118
(702) 873-3556 / Yarcely
Evaluation: \$120.00-\$140.00
Follow Up Visit: \$45.00

Psychology

Danielson Therapy
Melissa Danielson, Ph.D. – Psychologist
9480 South Eastern Avenue, Suite 258
Las Vegas, NV 89123
(702) 339-5663 / Melissa Danielson
Session: \$125.00 - \$150.00

Bree Mullin, Psy.D. – Psychologist □
1820 East Warm Springs Road, Suite 115
Las Vegas, NV 89119
(702) 270-4357 / Cassidy
Session: \$225.00

Life Quest Behavioral Health Quest
4780 Arville Street
Las Vegas, NV 89103
(720) 830-9740 / Carla
Sessions: \$100.00

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
2092 Peace Ct, Atwater, CA 95301

Dietician

Anders and Dunaway Nutrition Consultants, Inc.
2121 East Flamingo Road, Suite 110
Las Vegas, NV 89119
(702) 382-8841 / Brenda
Evaluation: \$75.00
Follow Up Visit: \$45.00

Your Dietician for Diabetes and Weight Control
7655 West Sahara Avenue, Suite 110
Las Vegas, NV 89117
(702) 525-1105 / Lydia
Evaluation: \$85.00
Follow Up Visit: \$45.00

Nutrition Moves
Geri Lynn Grossan, Med, RDN, CDE, HTCP
7721 Leavorite Drive
Las Vegas, NV 89128
(702) 242-5730
Evaluation: \$130.00
Follow Up Visit: \$90.00

Nutrition by Joey
8275 South Eastern Avenue #118
Las Vegas, NV 89123
(702) 878-5639 / Cecelia
Evaluation: \$95.00
Follow Up Visit: \$55.00

Dietician - Cont.

The Food Connection
4215 South Grand Canyon
Las Vegas, NV 90147
(702) 664-1204 / Stephanie
Evaluation: \$95.00
Follow Up Visit: \$45.00 - \$90.00

Physical Therapy

Select Physical Therapy
821 North Nellis Boulevard, Suite 130
Las Vegas, NV 89110
(702) 452-4563 / Liz
Evaluation: \$120.00

ATI Physical Therapy
7301 Peak Drive, Suite 101
Las Vegas, NV 89128
(702) 940-3000 / Kandra / Sherry
Evaluation: \$85.00

Matt Smith Physical Therapy
1505 Wigwam Parkway, Suite 240
Henderson, NV 89074
(702) 568-0195 / Brent, Donna
Evaluation: \$85.00

Tim Soder Physical Therapy
2779 West Horizon Ridge Parkway, Suite 100
Henderson, NV 89052
(702) 897-1222 / Chelsea
Evaluation: \$95.00

Tru Physical Therapy
70 East Horizon Ridge Parkway Suite 180
Henderson, NV 89002
(702) 856-0422 / Kylie / Tayslie
Evaluation: \$120.00

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

Physical Therapy - Cont.

Leavitt Physical Therapy
3037 West Horizon Ridge Parkway, Suite 120
Henderson, NV 89052
(702) 263-4993 / Jeff
Evaluation: \$120.00

Affiliated Therapy
9050 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
(702) 209-0069 / Carol
Evaluation: \$100.00

Occupational Therapy

Affiliated Therapy
9050 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
(702) 209-0069 / Carol
Evaluation: \$100.00

Select Physical Therapy
821 North Nellis Boulevard, Suite 130
Las Vegas, NV 89110
(702) 452-4563 / Liz
Evaluation: \$120.00

Matt Smith Physical Therapy
1505 Wigwam Parkway, Suite 240
Henderson, NV 89074
(702) 568-0195 / Brent, Donna
Evaluation: \$85.00

ATI Physical Therapy
7301 Peak Drive, Suite 101
Las Vegas, NV 89128
(702) 940-3000 / Kandra / Sherry
Evaluation: \$85.00

Gym Membership with Pool

Skyview YMCA
3050 East Centennial Parkway
North Las Vegas, NV 89081
(702) 522-7500 / Crystal
Monthly Membership: \$39.00

Las Vegas Athletic Clubs
2655 South Maryland Parkway
Las Vegas, NV 89109
(702) 734-5822 / Tony
Enrollment Fee: \$49.00 - \$99.00
Monthly Fee: \$23.00 - \$31.00
Annual Fee: \$0.00

Anytime Fitness Desert Inn
8490 West Desert Inn Road
Las Vegas, NV 89117
(702) 820-0660 / Steve
Enrollment Fee: \$40.00 - \$50.00
Monthly Fee: \$35.99 - \$44.99
Annual Fee: \$45.00

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
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Occupational Employment Statistics Query System

Occupational Employment Statistics

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(For more information or help)

Multiple occupations for one geographical area

[Back to results](#)

Area: Las Vegas-Henderson-Paradise, NV
Period: May 2017

Occupation (SOC code)	Hourly mean wage
Home Health Aides(311011)	12.83
Personal Care Aides(399021)	13.27

Footnotes:
SOC code: Standard Occupational Classification code - see <http://www.bls.gov/soc/home.htm>

Data extracted on December 17, 2018

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

NOV 01 2019

BY Denise Husted
DENISE HUSTED, DEPUTY

TITINA FARRIS and PATRICK FARRIS
Plaintiffs,

CASE NO. A-16-739464-C
DEPT. NO.: 31

v.

SPECIAL VERDICT FORM

BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC

A-16-739464-C
SVF
Special Verdict Form
4873587

Defendants.



We the jury in the above-entitled matter, answer the questions submitted to us as follows:

1. Was Dr. Barry Rives negligent in his care and treatment of Titina Farris?

Answer: Yes X No _____

If your answer to Question No. 1 is "Yes," proceed to Question No. 2. If your answer to Question No. 1 is "No," stop here and have the foreperson sign and date this form.

2. Was Dr. Barry Rives' negligence a proximate cause of Titina Farris' injuries and damages?

Answer: Yes X No _____

If your answer to Question No. 2 is "Yes," proceed to Question No. 3, 4 and 5. If your answer to Question No. 2 is "No," stop here and have the foreperson sign and date this form.

3. What are Titina Farris' economic damages:

a. Past medical and related expenses: \$1,063,006.94

b. Present Value of Life Care Plan: \$4,663,473.00

c. Do you believe that the present value of Titina Farris' Life Care Plan should be reduced based on the testimony of defense economist Erik Volk?

Answer: Yes _____ No X

If your answer to Question 3c. is "Yes", proceed to

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Question 3d. If your answer to Question 3c is "No", proceed to Question 4.

d. What percentage between 0% and 30% do you reduce the present value of Titina Farris' Life Care Plan? _____%

4. What are Titina Farris' non-economic damages:

a. Her past physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life: \$ 1,571,000

b. Her future physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life: \$ 4,786,000

5. What are Patrick Farris' non-economic damages:

a. Past loss of companionship, society, comfort, and consortium: \$ 821,000

J. Future
b. ~~Past~~ loss of companionship, society, comfort, and consortium: \$ 736,000

Signed: *C. P. Racoos*
Foreperson

Dated: 11-1-19

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OSC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TITINA FARRIS; ET AL.,
PLAINTIFF(S),
VS.
BARRY RIVES; ET AL.,
DEFENDANT(S).

Case No.: A-16-739464-C

Dept. No.: XXXI

ORDER TO SHOW CAUSE

TO: THOMAS J. DOYLE, ESQ.

YOU ARE HEREBY ORDERED TO APPEAR, in person, to District Court, Department XXXI, **Courtroom 12B**, located at 200 Lewis Ave.; Las Vegas, NV., on the 7th day of **NOVEMBER, 2019**, at **9:30 a.m.**, and show cause why seven separate documents were filed by Defendants on November 1, 2019, during closing arguments without any notice to the Court after all parties had already rested, and after the Court confirmed there were no further outstanding issues to be addressed.

This Order to Show Cause is being set at the same time the parties were already scheduled to appear before the Court.

DATED this 5th day of November, 2019


HON. JOANNA S. KISHNER
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

KIMBALL JONES, ESQ.
JACOB G. LEAVITT, ESQ.
BIGHORN LAW

GEORGE F. HAND, ESQ.
HAND & SULLIVAN, LLC.

THOMAS J. DOYLE, ESQ.
AIMEE CLARK NEWBERRY, ESQ.
SCHUERING ZIMMERMAN & DOYLE

KIM MANDELBAUM, ESQ.
MANDELBAUM & ASSOCIATES


TRACY J. CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

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Steven D. Grierson
CLERK OF THE COURT



JGJV

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No. 12608

BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: Kimball@BighornLaw.com

Jacob@BighornLaw.com

GEORGE F. HAND, ESQ.

Nevada Bar No. 8483

HAND & SULLIVAN, LLC

3442 North Buffalo Drive

Las Vegas, Nevada 89129

Phone: (702) 656-5814

ghand@handsullivan.com

Attorneys for Plaintiffs

TITINA FARRIS and PATRICK FARRIS

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

**BARRY RIVES, M.D., LAPAROSCOPIC
SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,**

Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

The above–entitled matter having come on for trial by jury on October 14, 2019, before the Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and PATRICK FARRIS (“Plaintiffs”), appeared in person with their counsel of record, KIMBALL JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC (“Defendants”) appeared by and through their counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 prejudgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions. plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

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- 1 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-
2 judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime
3 plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the
4 judgment with daily post-judgment interest accruing at a rate equal to the prime rate
5 at the largest bank in Nevada as ascertained by the Commissioner of Financial
6 Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1
7 and July 1 thereafter until the judgment is satisfied;
- 8 3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish,
9 disability and loss of enjoyment of life, plus prejudgment interest in the amount of
10 \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from
11 date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days =
12 \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily
13 post-judgment interest accruing at a rate equal to the prime rate at the largest bank in
14 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
15 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
16 the judgment is satisfied;
- 17 4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering,
18 anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing
19 at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%)
20 pursuant to NRS 17.130 from the time of entry of the judgment with daily post-
21 judgment interest accruing at a rate equal to the prime rate at the largest bank in
22 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
23 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
24 the judgment is satisfied;
- 25 5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and
26 consortium, plus prejudgment interest in the amount of \$22,417.85 (interest
27 calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August
28 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant
to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied; and
6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort
and consortium, plus post-judgment interest accruing at \$17.00 per day (interest
calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130
from the time of entry of the judgment with daily post-judgment interest accruing at a
rate equal to the prime rate at the largest bank in Nevada as ascertained by the
Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4	Principal	\$	6,076,479.94
5	Pre-Judgment Interest	\$	291,325.58 (1,183 days @ 7.50%)
6	TOTAL JUDGMENT of:	\$	6,367,805.52

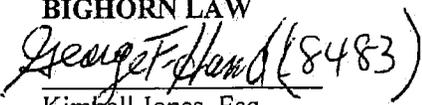
7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

13
14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 District Court Judge

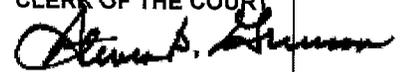
17 Respectfully Submitted by:
18 Dated this 11th day of November, 2019.

Approved as to form and content:
Dated this 11th day of November, 2019.

19
20 **BIGHORN LAW**
21 By:  (8483)
22 Kimball Jones, Esq.
23 Nevada Bar No. 12982
24 716 S. Jones Blvd
25 Las Vegas, NV 89107
26 George F. Hand, Esq.
27 Nevada Bar No. 8483
28 3442 N. Buffalo Drive
Las Vegas, NV 89129
Attorneys for Plaintiffs

SCHUERING ZIMMERMAN & DOYLE, LLP
By: /s/ Thomas J. Doyle, Esq.
Thomas J. Doyle, Esq.
Nevada Bar No. 1120
Aimee Clark Newberry, Esq.
Nevada Bar No. 11084
400 University Avenue
Sacramento, CA 95825
Attorneys for Defendants
Barry J. Rives, M.D.;
Laparoscopic Surgery of Nevada, LLC

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11/19/2019 3:54 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NEOJ**
KIMBALL JONES, ESQ.
2 Nevada Bar No.: 12982
3 JACOB G. LEAVITT, ESQ.
Nevada Bar No.: 12608
4 **BIGHORN LAW**
716 S. Jones Blvd.
5 Las Vegas, Nevada 89107
6 Phone: (702) 333-1111
7 Email: Kimball@BighornLaw.com
Jacob@BighornLaw.com

8 GEORGE F. HAND, ESQ.
Nevada Bar No.: 8483
9 **HAND & SULLIVAN, LLC**
3442 N. Buffalo Drive
10 Las Vegas, Nevada 89129
11 Phone: (702) 656-5814
12 Email: GHand@HandSullivan.com

13 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

16 TITINA FARRIS and PATRICK FARRIS,

17 Plaintiffs,

18 vs.

19 BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC et al.,

20 Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: XXXI

NOTICE OF ENTRY OF JUDGMENT

22 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that a Judgment on Verdict
23 was entered, in the above-entitled matter, on November 14, 2019, a copy of which is attached hereto.

24 DATED this 19th day of November, 2019.

25 **BIGHORN LAW**
By: /s/ Kimball Jones
26 **KIMBALL JONES, ESQ.**
Nevada Bar.: 12982
27 **JACOB G. LEAVITT, ESQ.**
Nevada Bar No.: 12608
28 716 S. Jones Blvd.
Las Vegas, Nevada 89107

CERTIFICATE OF SERVICE

Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 19th day of November, 2019, I served the foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

- Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or
- U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

Kim Mandelbaum, Esq.
 MANDELBAUM ELLERTON & ASSOCIATES
 2012 Hamilton Lane
 Las Vegas, Nevada 89106
 &
 Thomas J. Doyle, Esq.
 Chad C. Couchot, Esq.
 SCHUERING ZIMMERMAN & DOYLE, LLP
 400 University Avenue
 Sacramento, California 95825
Attorneys for Defendants

/s/ Erickson Finch
 An employee of **BIGHORN LAW**

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Steven D. Grierson
CLERK OF THE COURT



1 **JGJV**
2 **KIMBALL JONES, ESQ.**
3 Nevada Bar No.: 12982
4 **JACOB G. LEAVITT, ESQ.**
5 Nevada Bar No. 12608
6 **BIGHORN LAW**
7 716 S. Jones Blvd.
8 Las Vegas, Nevada 89107
9 Phone: (702) 333-1111
10 Email: Kimball@BighornLaw.com
11 Jacob@BighornLaw.com

12 **GEORGE F. HAND, ESQ.**
13 Nevada Bar No. 8483
14 **HAND & SULLIVAN, LLC**
15 3442 North Buffalo Drive
16 Las Vegas, Nevada 89129
17 Phone: (702) 656-5814
18 ghand@handsullivan.com

19 Attorneys for Plaintiffs
20 **TITINA FARRIS and PATRICK FARRIS**

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 **TITINA FARRIS and PATRICK FARRIS,**
24 **Plaintiffs,**
25 **vs.**

Case No.: A-16-739464-C
Dept. No.: 31

JUDGMENT ON VERDICT

26 **BARRY RIVES, M.D., LAPAROSCOPIC**
27 **SURGERY OF NEVADA LLC; DOES I-V,**
28 **inclusive; and ROE CORPORATIONS I-V,**
inclusive,
Defendants.

29 The above-entitled matter having come on for trial by jury on October 14, 2019, before the
30 Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and
31 PATRICK FARRIS ("Plaintiffs"), appeared in person with their counsel of record, KIMBALL
32 JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE
33 HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and
34 LAPAROSCOPIC SURGERY OF NEVADA, LLC ("Defendants") appeared by and through their
35 counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 prejudgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

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- 1 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-
2 judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime
3 plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the
4 judgment with daily post-judgment interest accruing at a rate equal to the prime rate
5 at the largest bank in Nevada as ascertained by the Commissioner of Financial
6 Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1
7 and July 1 thereafter until the judgment is satisfied;
- 8 3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish,
9 disability and loss of enjoyment of life, plus prejudgment interest in the amount of
10 \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from
11 date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days =
12 \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily
13 post-judgment interest accruing at a rate equal to the prime rate at the largest bank in
14 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
15 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
16 the judgment is satisfied;
- 17 4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering,
18 anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing
19 at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%)
20 pursuant to NRS 17.130 from the time of entry of the judgment with daily post-
21 judgment interest accruing at a rate equal to the prime rate at the largest bank in
22 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
23 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
24 the judgment is satisfied;
- 25 5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and
26 consortium, plus prejudgment interest in the amount of \$22,417.85 (interest
27 calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August
28 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant
to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied; and
6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort
and consortium, plus post-judgment interest accruing at \$17.00 per day (interest
calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130
from the time of entry of the judgment with daily post-judgment interest accruing at a
rate equal to the prime rate at the largest bank in Nevada as ascertained by the
Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4 Principal \$ 6,076,479.94
5 Pre-Judgment Interest \$ 291,325.58 (1,183 days @ 7.50%)
6 **TOTAL JUDGMENT of:** \$ **6,367,805.52**

7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

13
14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 District Court Judge

17 Respectfully Submitted by:

Approved as to form and content:

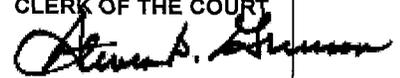
18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19
20 **BIGHORN LAW**
21 By: George F. Hand (8483)
22 Kimball Jones, Esq.
23 Nevada Bar No. 12982
24 716 S. Jones Blvd
25 Las Vegas, NV 89107
26 George F. Hand, Esq.
27 Nevada Bar No. 8483
28 3442 N. Buffalo Drive
Las Vegas, NV 89129
Attorneys for Plaintiffs

SCHUERING ZIMMERMAN & DOYLE, LLP
By: /s/ Thomas J. Doyle, Esq.
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Nevada Bar No. 1120
Aimee Clark Newberry, Esq.
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400 University Avenue
Sacramento, CA 95825
Attorneys for Defendants
Barry J. Rives, M.D.;
Laparoscopic Surgery of Nevada, LLC

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Steven D. Grierson
CLERK OF THE COURT



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13 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

16 TITINA FARRIS and PATRICK FARRIS,

17 Plaintiffs,

18 vs.

19 BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC et al.,

20 Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: XXXI

HEARING DATE REQUESTED

22 **PLAINTIFFS' MOTION FOR FEES AND COSTS**

23 COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their
24 attorney of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices
25 of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of **HAND &**
26 **SULLIVAN, LLC**, and hereby submit this Motion for Fees and Costs ("Motion").
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1 This Motion is made and based upon all of the pleadings and papers on file herein and the
2 attached Memorandum of Points and Authorities.

3 DATED this 22nd day of November, 2019.

4 **BIGHORN LAW**

5 By: /s/ Kimball Jones

6 **KIMBALL JONES, ESQ.**

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7 **JACOB G. LEAVITT, ESQ.**

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12 3442 N. Buffalo Drive

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13 *Attorneys for Plaintiffs*

14 **NOTICE OF HEARING**

15 TO: ALL INTERESTED PARTIES, AND THEIR ATTORNEYS OF RECORD

16 It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS
17 HEREBY ORDERED that the foregoing **PLAINTIFFS' MOTION FOR FEES AND COSTS** shall
18 be heard on the ____ day of _____, 2019, at the hour of ____ a.m. in the above-noted
19 Courtroom.
20

21 DATED this ____ day of _____, 2019.

22 _____
23 **DISTRICT COURT JUDGE**

24 Respectfully submitted by:

25 **BIGHORN LAW**

26 By: /s/ Kimball Jones

27 **KIMBALL JONES, ESQ.**

Nevada Bar.: 12982

28 *Attorneys for Plaintiffs*

1 **DECLARATION OF KIMBALL JONES IN SUPPORT OF MOTION FOR ATTORNEYS'**
2 **FEEES AND COSTS**

3 KIMBALL JONES, ESQ., being first duly sworn, under penalty of perjury under the laws of
4 the State of Nevada and sayeth:

5 1. I am an attorney duly licensed to practice law in the State of Nevada and a managing partner
6 with the Law Offices of **BIGHORN LAW**.

7 2. I am the partner and trial counsel assigned to this file and I am personally familiar with the
8 facts and circumstances surrounding this matter and am competent to testify hereto.

9 3. That on June 5, 2019, near the end of discovery in this matter, Plaintiffs made an Offer of
10 Judgment in Accordance with NRCP 68, offering to settle this matter for \$1,000,000.00, inclusive of
11 fees, costs, and pre-judgment interest. See Offer of Judgment, attached hereto as **Exhibit "1."**

12 4. That Defendants did not accept the Offer of Judgment.

13 5. As a result of Defendants' unwillingness to accept Plaintiffs' Offer of Judgment, Plaintiffs
14 went to trial against Defendants and were awarded a Jury Verdict of \$13,640,479.94, which resulted
15 in a Judgment on Verdict totaling \$6,367,805.52. See Judgment on Verdict, attached as **Exhibit "2."**

16 6. That the resulting judgment of \$6,367,805.52 exceeded the \$1,000,000.00 offer of judgment.

17 7. Regarding my background and qualifications:

18 a. I graduated Magna Cum Laude from Brigham Young University-Idaho in 2005 and
19 was given the award, "Man of the Year," as the top student in economics.

20 b. I graduated from Brigham Young University in 2008 and was awarded a Dean's
21 Scholarship for academic merit all three (3) years of law school.

22 c. I was first admitted to practice law in Nevada in 2013, scoring in the 98th percentile
23 nationally on the MBE.

24 d. I also passed the Idaho Bar Exam later the same year, though I do not actively
25 practice in the State of Idaho.
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- 1 e. Since being admitted to the Nevada Bar I have tried numerous jury trials, bench
2 trials, binding arbitrations, and nonbinding arbitrations. In total, I have completed
3 over 100 of such contests.
- 4 f. I have prevailed in more than ninety-five percent (95%) of the above-mentioned
5 contests.
- 6 g. As partner in my firm, I have recovered more than \$30,000,000 for our clients
7 through judgments and settlements in the last six (6) years.
- 8 h. In terms of overall difficulty and work required in the subject case, the complexity
9 was above average and the difficulty was high. This was partly due to the inherent
10 nature of a medical malpractice trial with a high volume of witnesses, but was made
11 substantially more complex and difficult due to Defendants' bad conduct. This
12 conduct included a failure to comply with the discovery rules, by refusing to
13 provided relevant, discoverable evidence, in possibly destroying evidence, and in
14 asking witnesses to provide opinions that are not allowed under the rules (*asking*
15 *rebuttal witnesses to testify as initial witnesses, asking witnesses to provide*
16 *opinions never provided during discovery, asking witnesses to testify outside the*
17 *scope of their expertise, etc.*). Defendant Rives also testified in a way that was so
18 inconsistent with the evidence regarding Rives' personal knowledge it appeared to
19 Plaintiffs that Rives committed perjury on multiple occasions. Moreover, Defense
20 Counsel violated the Court's orders and rules in trial seemingly on a daily basis,
21 requiring numerous hearings, which delayed the trial and required Plaintiffs and the
22 Court to alter planning to rectify injustices caused by Defense Counsel's bad
23 behavior.

///

1 i. My usual and customary fee on an hourly basis is \$500.00 an hour, which is at or
2 below average for attorneys of my skill and experience who handle similar matters
3 in Clark County, Nevada.

4
5 8. Likewise, Mr. Jacob Leavitt Esq. is a duly licensed to practice law in the State of Nevada and
6 is familiar with the facts and circumstances surrounding this matter. Mr. Leavitt has been an attorney,
7 admitted to practice in the State of Nevada for the past seven (7) years and is a partner with Bighorn
8 Law. Mr. Leavitt's billing rate of \$500.00 per hour is at or below average for attorneys of his skill and
9 experience who handle similar matters in Clark County, Nevada.

10 9. Mr. Hand is licensed to practice law in New York and Nevada. He has been licensed to practice
11 law in Nevada for sixteen (16) years. Prior to that, he was licensed as an attorney in New York where
12 he practiced in areas of personal injury, medical malpractice, and insurance defense litigation. He has
13 conducted more than 125 total trials. Mr. Hand also served as a Deputy County Attorney for Nassau
14 County, New York. Mr. Hand's billing rate is \$500.00 per hour is at or below average for attorneys of
15 his skill and experience who handle similar matters in Clark County, Nevada.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18 Date this 22nd day of November, 2019

19 /s/ Kimball Jones
20 **KIMBALL JONES, ESQ.**

1 **DECLARATION OF JACOB G. LEAVITT IN SUPPORT OF MOTION FOR**
2 **ATTORNEYS' FEES AND COSTS**

3 JACOB G. LEAVITT, ESQ., being first duly sworn, under penalty of perjury under the laws
4 of the State of Nevada and sayeth:

5 1. I am an attorney duly licensed to practice law in the State of Nevada and a partner with the
6 Law Offices of **BIGHORN LAW**.

7 2. I am one of the partners and trial counsel who participated on this file and I am personally
8 familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.

9 3. I am aware that on June 5, 2019, near the end of discovery in this matter, Plaintiffs made an
10 Offer of Judgment in Accordance with NRCP 68, offering to settle this matter for \$1,000,000.00,
11 inclusive of fees, costs, and pre-judgment interest. See Offer of Judgment, attached hereto as **Exhibit**
12 **“1.”**

13 4. That Defendants rejected the Offer of Judgment, as there was never an acceptance of the same.

14 5. Plaintiffs went to trial against Defendants and were awarded a Jury Verdict of \$13,640,479.94,
15 which resulted in a Judgment on Verdict totaling \$6,367,805.52. See Judgment on Verdict, attached
16 as **Exhibit “2.”**

17 6. That the resulting judgment of \$6,367,805.52 exceeded the \$1,000,000.00 offer of judgment.

18 7. Regarding my background and qualifications:

19 a. I graduated Cum Laude from the University of Las Vegas Nevada in 2004.

20 b. I graduated from the Thomas M. Cooley Law School in 2012, in the top 13% and attended
21 the same with a scholarship.

22 c. I was first admitted to practice law in Nevada in 2012 after completing an externship under
23 the Honorable Michael Cherry on the Nevada Supreme Court.

24 d. I am accepted to practice in the Ninth Circuit Court of Appeals.
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- 1 e. I have successfully tried numerous jury trials, binding arbitrations, and nonbinding
2 arbitrations, short trials in the State of Nevada.
- 3 f. I have attended hundreds of Administrative Hearings in workers' compensation and
4 Administrative appeals.
- 5 g. I have filed many petitions for judicial review for injured workers.
- 6
- 7 h. The subject case was one of complexity and demanded a great amount of time in
8 preparation and study. The great amount of witnesses presented by both parties required
9 extensive preparation and strategy as hopefully evidence in my personal presentation. The
10 subject case presented other obstacles by way of conduct by Defendant and counsel, adding
11 to the complexity in managing the subject trial.
- 12
- 13 i. My usual and customary fee on an hourly basis is \$500.00 an hour, which is at or below
14 average for attorneys of my skill and experience who handle similar matters in Clark
15 County, Nevada, including those that handle both workers' compensation, medical
16 malpractice and personal injury cases.

17 Dated this 22nd day of November, 2019

18 /s/ Jacob G. Leavitt
19 **JACOB G. LEAVITT, ESQ.**

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF RELEVANT FACTS

Historical Background

Plaintiff Titina Farris was a patient of Defendants. Defendant RIVES, while performing surgery on Plaintiff, negligently cut, burned, or tore her colon. Thereafter, RIVES failed to adequately repair the colon or sanitize the abdominal cavity. RIVES then failed to recommend any surgery to repair the punctured colon or contaminated abdomen for twelve (12) days, during which time Titina was on the verge of death due to the predictable sepsis that ensued as a result of RIVES initial negligence. As a further result of RIVES negligence, Titina developed bilateral “dropped feet” and now cannot walk without assistance.

Offers and Trial

On June 5, 2019, Plaintiffs made an Offer of Judgment to Defendants offering to settle this matter for \$1,000,000.00 inclusive of fees, costs, and pre-judgment interest, in accordance with NRCPC 68. See Exhibit 1. Defendants rejected this offer.

Judgment on Verdict in the amount of **\$6,367,805.52** was filed on November 14, 2019. See Exhibit 2.

Rule 68 notes in pertinent part:

(a) **The Offer.** At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

...

(f) **Penalties for Rejection of Offer.**

(1) **In General.** If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror’s post-offer costs and expenses,

1 including a reasonable sum to cover any expenses incurred by the offeror for each expert
2 witness whose services were reasonably necessary to prepare for and conduct the trial
3 of the case, applicable interest on the judgment from the time of the offer to the time of
4 entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred
5 by the offeror from the time of the offer. If the offeror's attorney is collecting a
6 contingent fee, the amount of any attorney fees awarded to the party for whom the offer
7 is made must be deducted from that contingent fee.

8 Plaintiffs received a far more favorable judgment than that offered to Defendants and are the
9 prevailing party under NRCP 68—and as such, an order of fees and costs is warranted.

10 Contingency Fees are Properly Awarded

11 The Nevada Supreme Court has engaged in an extensive analysis recommending the merits of
12 awarding contingency fees:

13 Courts have recognized an additional reason that supports awarding attorney
14 fees—the risks attorneys take by offering or
15 accepting contingency fee agreements. *See King v. Fox*, 7 N.Y.3d 181, 818 N.Y.S.2d
16 833, 851 N.E.2d 1184, 1191-92 (2006) (“In entering into contingent fee agreements,
17 attorneys risk their time and resources in endeavors that may ultimately be
18 fruitless. Moreover, it is well settled that the client may terminate
19 [the contingency fee agreement] at any time, leaving the lawyer no cause of action for
20 breach of contract[,] only quantum meruit,” (first alteration in original) (citation and
21 internal quotation marks omitted)); *see also Schefke v. Reliable Collection Agency,*
22 *Ltd.*, 96 Hawai'i 408, 32 P.3d 52, 96-97 (2001) (concluding that fee awards can be
23 justified based on the risks associated with accepting a case on
24 a contingency fee basis). Courts should also account for the greater risk of nonpayment
25 for attorneys who take contingency fee cases, in comparison to attorneys who bill and
26 are paid on an hourly basis, as they normally obtain assurances they will receive
27 payment. *See Rendine v. Pantzer*, 141 N.J. 292, 661 A.2d 1202, 1228 (1995)
28 (recognizing that rewarding a lawyer for taking a case for which compensation is
contingent on the outcome is based in part on providing a monetary incentive for taking
such cases because an hourly fee is more attractive unless such an extra incentive exists).

23 Additionally, contingency fees allow those who cannot afford an attorney who
24 bills at an hourly rate to secure legal representation. *See King*, 818 N.Y.S.2d 833, 851
25 N.E.2d at 1191 (“Contingent fee agreements between attorneys and their clients ...
26 generally allow a client without financial means to obtain legal access to the civil justice
27 system.”). Relatedly, attorney fees are permissible in pro bono cases, where there are
28 likewise no billing statements. *See Miller v. Wilfong*, 121 Nev. 619, 622-23, 119 P.3d
727, 729-30 (2005) (discussing the public policy rationale in support of awarding
attorney fees to pro bono counsel and concluding that such awards are
proper); *672 *Black v. Brooks*, 285 Neb. 440, 827 N.W.2d 256, 265 (2013) (concluding
that if organizations are not awarded for recovery of statutory fees, they may decline to
represent pro bono cases); *see, e.g., New Jerseyans for a Death Penalty Moratorium v.*

1 *N.J. Dep't of Corr.*, 370 N.J.Super. 11, 850 A.2d 530, 532 (2004) (explaining that when
 2 determining a reasonable fee to award in a pro bono case, courts should consider
 3 whether to increase the “fee to reflect the risk of nonpayment in all cases in which the
 4 attorney’s compensation entirely or substantially is contingent on a successful
 outcome”) (internal quotation marks omitted), *aff’d as modified* by 185 N.J. 137, 883
 A.2d 329 (2005).

5 *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664, 671–72 (Nev.
 6 App. 2018).

7 The Amount of Contingency Fee Depends on Waiver of NRS 7.095

8 Unless waived, the amount of contingency fees which Counsel may collect in a medical
 9 malpractice action is noted in NRS 7.095:

10 An attorney shall not contract for or collect a fee contingent on the amount of recovery
 11 for representing a person seeking damages in connection with an action for injury or
 death against a provider of health care based upon professional negligence in excess of:

- 12 (a) Forty percent of the first \$50,000 recovered;
 13 (b) Thirty-three and one-third percent of the next \$50,000 recovered;
 14 (c) Twenty-five percent of the next \$500,000 recovered; and
 (d) Fifteen percent of the amount of recovery that exceeds \$600,000.

15 However, case law is clear that a client may waive this limitation on fees, so long as the waiver
 16 is “knowing, voluntary, and intelligent.” See *Order from the Evidentiary Hearing Approving Attorney*
 17 *Fees*, attached hereto as **Exhibit “3.”** See also *Udevco Inc v. Wagner* 100 Nev. 185 (1984); *McKeeman*
 18 *v. General Am.Life Ins. Co.* 111 Nev. 1042 (1995).

19 As noted in affidavits signed by Plaintiffs Titina and Patrick Farris, they were apprised of the
 20 limitation of fees instituted by NRS 7.095. They were also told that to secure representation, that
 21 Plaintiffs would be required to waive that limitation in their contract with Plaintiffs’ Counsel. Finally,
 22 Plaintiffs note that they were pleased with the result of litigation and feel that the 40% contingency
 23 fee was earned by Counsel. See *Affidavits* attached hereto as **Exhibit “4.”**

24 In Nevada waiver is the voluntary and intentional relinquishment of a known right. *Udevco Inc*
 25 *v. Wagner*, 100 Nev. 185 (1984). Waiver requires an existing right, knowledge of its existence, and an
 26 actual intention to relinquish it, or conduct so inconsistent with the intent to enforce the right as to
 27
 28

1 induce a reasonable belief that it has been relinquished. *McKeeman v. General Am. Life Ins. Co.*, 111
2 Nev. 1042 (1995).

3 A knowing and intelligent waiver can be performed via a written instrument or orally. *Mubarek*
4 *v. State*, 2017 Nev.App. Unpub. LEXIS 834 (2017). A waiver of a right can also be implied through
5 conduct when a party knowingly acquiesces to existing condition. *Building & Constr. Trades v. Public*
6 *Works*, 108 21 Nev. 605 (1992).

8 There are two (2) ways to implicitly waive a right. First, conduct that evidences an intention
9 to waive a right will function as an implied waiver. *Mahban v. MGM Grand Hotels*, 100 Nev. 593
10 (1984). Second, conduct that is inconsistent with any other intention than to waive a right will also
11 function as a waiver. *Id.*

13 Waiver can be additionally implied by accepting performance when a party has all of the facts
14 constituting the basis for waiver available to them. *Udevco* 100 Nev. at 7, *Gottwals v. Rencher*, 60
15 Nev. 47 (1940).

16 As noted by the Plaintiffs' sworn affidavit, the requirements for waiver exist in this case.
17 Plaintiffs were apprised of the limits of NRS 7.095 and they knowingly waived their right to such
18 limitations and agreed to a 40% contingency fee. Plaintiffs were not pressured into accepting the
19 condition, as they were told that they could obtain other counsel who may not have the same
20 contractual contingency agreement. Yet, Plaintiffs still signed with Plaintiffs' Counsel. As such, NRS
21 7.095 was "knowingly, voluntarily, and intelligently" waived.

23 As NRS 7.095 was explicitly waived by Plaintiffs in this matter, Plaintiffs' agreement with
24 Counsel to pay a 40% contingency fee is properly applied. Should Defendants appeal the Court's
25 judgment in this matter, then the contractual contingency fee will increase. However, as no appeal has
26 yet transpired, Plaintiffs are properly awarded **\$2,547,122.21** in attorney's fees in this matter (40% of
27 \$6,367,805.52).
28

1 Fee Cap Under NRS 7.095:

2 Should the Court not consider the limit of NRS 7.095 to be waived, the following restriction
3 applies:

- 4 (a) Forty percent of the first \$50,000 recovered;
5 (b) Thirty-three and one-third percent of the next \$50,000 recovered;
6 (c) Twenty-five percent of the next \$500,000 recovered; and
7 (d) Fifteen percent of the amount of recovery that exceeds \$600,000.

8 As such, Plaintiffs would receive the following amounts as compensable attorney's fees in this
9 matter: \$20,000.00 of the first \$50,000 recovered; \$16,665.00 of the second \$50,000 recovered,
10 \$125,000.00 of the amount from \$100,000-\$600,000; and \$865,170.83 of the final \$5,767,805.52
11 awarded to Plaintiffs. The total amount of attorneys' fees awardable under the limitations of NRS
12 7.095 is **\$1,026,835.83**.

13 However, as noted above, Plaintiffs acknowledge that they waived the limitations under NRS
14 7.095, thus attorneys' fees of **\$2,547,122.21** are properly awarded to Plaintiffs on the basis that
15 Plaintiffs are the prevailing party.
16

17 Sanctions

18 In addition to damages as prevailing party, Plaintiffs are entitled to additional damages for
19 Defense misconduct, separate from the attorneys' fees and costs as the prevailing party. Plaintiffs were
20 forced to file Rule 37 motions for misconduct and several similar motions, during trial, for misconduct
21 occurring during the trial itself. The following areas arose during trial, which enlarged the time of trial
22 by approximately four (4) days:
23

24 (1) The collateral source issue. The Defense was well aware and had all information required
25 to know that Plaintiffs' treatment was on a federally-protected ERISA plan. Nevertheless, Defendants
26 blurted out, "insurance" during trial and Defense Counsel argued that such behavior was appropriate
27 on the basis that Plaintiffs did not provide sufficient notice of the status of the plan. This argument
28

1 was rejected by the Court for the numerous reasons outlined within Plaintiffs EDCR 7.27 Briefing and
2 through the Court's verbal order following the hearing on this matter.

3 (2) Dr. Chaney's "willingness" to attend trial. It was presented by Defense Counsel that more
4 than one (1) trial subpoena was properly (as the issue of how many were issued sent and/or properly
5 served). Defense Counsel presented to this Court that service was not an issue as Dr. Chaney was
6 willing to attend and did not require service. Defendants' position was NOT supported by Dr.
7 Chaney's testimony, nor that of counsel.
8

9 The issue became more suspect on the issue of when money was offered to Dr. Chaney to
10 testify, as Defendants purported that money was offered before her second scheduled testimony and
11 before her third, which also was NOT supported by Dr. Chaney's testimony, nor that of Dr. Chaney's
12 counsel.
13

14 The issue of Dr. Chaney caused much delay in the subject trial.

15 (3) The Deposition Transcript of Dr. Hurwitz. Defense Counsel's improper use, as shown in
16 the "JAVS" video demonstrated an outright disregard of this Court's order denying the use of Dr.
17 Hurwitz's deposition transcript for failure to follow EDCR 2.69. Defense Counsel was offered may
18 times to provide evidence that the deposition transcript of Dr. Hurwitz was stipulated to at the Calendar
19 call on October 8, 2019 or good cause for not bringing the same to Calendar Call. Defendants did not
20 offer any evidence of a stipulation or good cause for failing to follow EDCR 2.69.
21

22 Defense Counsel was Ordered not to use the deposition transcript of Dr. Hurwitz, yet despite
23 the Order, blurted out in front of the Jury he had the deposition transcript and could provide the court
24 copies of the same in an effort to either seek sympathy from the Jury, taint the Jury against Plaintiffs'
25 or to cause a mistrial. Regardless, Defense Counsel then went on to use the deposition transcript as he
26 read from it in his hand, again causing another objection.
27

28 ///

1 Defense Counsel's behavior caused that the trial to take longer and caused Plaintiffs to recall
2 Dr. Hurwitz in Plaintiffs' case in chief and should be made to pay for the trial testimony of Dr. Hurwitz
3 in the amount of \$11,000.00, daily and for both days the amount of \$22,000.00.

4 (4) Defendants post case resting offers of proof. As this Court is aware Defendants filed seven
5 (7) offers of proof filed during closing arguments on November 1, 2019. Defendants filed seven (7)
6 offers of proof without nay notice to this Court or any other party without demonstrating good cause
7 or any rule under EDCR or NRCP that allow for such filings after both parties have rested.

8 (5) Defendants attempting to offer undisclosed, unauthenticated office records of Dr. Rives.

9 At one point in the trial, Defense Counsel attempted to introduce into evidence office records
10 of Dr. Rives that were not properly authenticated and had electronic signature dates that were not
11 contemporaneous with the creation of the records. A significant amount of time was expended on this
12 issue, further delaying the trial.

13 As this Court is aware, the subject trial lasted four (4) days more than what the parties
14 scheduled based partly on what is discussed above and the many speaking objections by Defense
15 Counsel and failure to raise issues of witnesses prior to witnesses taking the stand, resulting in a large
16 waste of jury time and causing Plaintiffs' to spend more time and money on the subject trial, including
17 having to call Dr. Hurwitz to return in their case in chief.

18 Plaintiffs request that Defendants pay, by way of sanction for (4) days of Plaintiffs' Counsel
19 time at 16 hours a day during trial at \$500.00 an hour each, times three (3) which comes to \$1,500.00
20 an hour at 16 hours a day, equaling \$24,000 daily and is \$96,000.00 for the 4 days. It was the actions
21 of Defendants and their counsel that caused the exuberant amount of delay in the trial which prejudiced
22 Plaintiffs and should be offset by way of a monetary sanction.

23 In addition, Plaintiffs seeks that Defendants pay for two (2) attorneys for each sanction hearing
24 and evidentiary hearing at \$500.00, each or \$1,000.00 per hour. The hearing on September 26, 2019,
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1 giving rise to the evidentiary hearing, one and half hours (1.5). The evidentiary hearing on October 7,
2 2019 for approximately two (2) hours. The first Show Cause Hearing on November 7, 2019, for
3 approximately two (2) hours. The hearing on November 13, 2019, for approximately (2) hours and
4 another three and a half (3.5) hour on November 14, 2019. Then the final hearing on November 20,
5 2019, for approximately two and a half (2.5) hours. Totaling 13.5 hours of hearings on conduct of
6 Defendants and their counsel, totaling \$13,500.00 in separate sanctions against Defendants.
7

8 As stated in *Hawkins v. Eighth Judicial Dist. Court of Nev.*, 407 P.3d 766 (Nev., 2017), the
9 district court has authority to impose sanctions through NRCP 37 and its inherent equitable powers,
10 including “sanctions for discovery and other litigation abuses not specifically proscribed by statute.”
11 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Discovery sanctions
12 can include an order to pay “reasonable expenses incurred ... including reasonable attorney’s fees.”
13 NRCP 37(c)(2). Based upon the conduct outlined above, it is respectfully submitted that sanctions are
14 merited. Plaintiffs request that the Court award a separate sanction of \$109,500 (\$96,000 + \$13,500)
15 for Defendants repeated violations in this matter, which prolonged this case unnecessarily.
16

17 Costs

18 In addition to Attorneys’ Fees, under NRS 18.020, Plaintiffs are entitled to costs as they are
19 the prevailing party.
20

21 NRS 18.020 reads in pertinent part,

22 Cases in which costs allowed prevailing party. Costs *must* be allowed of course to the
23 prevailing party against any adverse party against whom judgment is rendered, in the following
cases:

24 ...

25 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover
more than \$2,500.

26 The award of taxable costs is not discretionary; proper and reasonably incurred taxable costs
27 **must** be awarded.
28

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1 Under the circumstances, the Defendants are required by law to reimburse Plaintiffs for these
 2 costs in the amount of \$74,138.70 to Bighorn Law, and \$78,979.56 to Hand and Sullivan, LLC, for a
 3 total of **\$153,118.26**. See *Plaintiffs' Verified Memorandum of Costs*, attached hereto as **Exhibit "5."**

4 **II. LEGAL ARGUMENT AND ANALYSIS**

5 **A. The Court is Warranted in Awarding Fees and Costs as Prevailing Party in this Matter.**

6 Nevada follows the "American Rule" regarding awards of fees and costs. *Smith v. Crown Fin.*
 7 *Servs.*, 111 Nev. 227, 281 (1995). Under this rule, the district courts must rely on a statute, rule or
 8 contract to award attorney's fees and costs of suit. *Sun Realty v. Dist. Ct.*, 91 Nev. 774, 542 P2d 1072
 9 (1975).
 10

11 Rule 68 notes in pertinent part:

12
 13 (a) **The Offer.** At any time more than 21 days before trial, any party may serve
 14 an offer in writing to allow judgment to be taken in accordance with its terms and
 15 conditions. Unless otherwise specified, an offer made under this rule is an offer to
 16 resolve all claims in the action between the parties to the date of the offer, including
 costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney
 fees.

17 ...

18 (f) **Penalties for Rejection of Offer.**

19 (1) **In General.** If the offeree rejects an offer and fails to obtain a more
 20 favorable judgment:

21 (A) the offeree cannot recover any costs, expenses, or attorney fees and may
 22 not recover interest for the period after the service of the offer and before the judgment;
 23 and

24 (B) the offeree must pay the offeror's post-offer costs and expenses,
 25 including a reasonable sum to cover any expenses incurred by the offeror for each expert
 26 witness whose services were reasonably necessary to prepare for and conduct the trial
 27 of the case, applicable interest on the judgment from the time of the offer to the time of
 28 entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred
 by the offeror from the time of the offer. If the offeror's attorney is collecting a
 contingent fee, the amount of any attorney fees awarded to the party for whom the offer
 is made must be deducted from that contingent fee.

As the court is well aware, and as noted above, Defendants rejected Plaintiffs' Offer of
 Judgment, and failed to obtain a more favorable judgment. As such, under Rule 68, Attorneys' Fees
 may be properly awarded to Plaintiffs as the prevailing party. Likewise, Costs are mandatorily ordered

1 in this matter under NRS 18.020, which states, “Costs must be allowed of course to the prevailing
2 party against any adverse party against whom judgment is rendered” when an action for damages
3 “where the plaintiff seeks to recover more than \$2,500.” NRS 18.020(3).

4 As such, Plaintiffs’ respectfully request that the Court GRANT Plaintiffs’ Motion for fees and
5 Costs.
6

7 **B. The *Brunzell* and *Beattie* Factors Support Plaintiffs’ Request for Attorneys’ Fees.**

8 Under *Brunzell* and *Beattie*, the Court has noted that four (4) factors determine whether an
9 award of attorneys’ fees is reasonable and warranted: (1) the qualities of the advocate: his ability, his
10 training, education, experience, professional standing and skill; (2) the character of the work to be
11 done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and
12 the prominence and character of the parties where they affect the importance of the litigation; (3) the
13 work actually performed by the lawyer: the skill, time and attention given to the work; and (4) the
14 result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden Gate*
15 *Nat’l Bank*, 85 Nev. 345, 349 (1969). If the record reflects that the court properly considered these
16 factors, there is no abuse of discretion. *Wynn v. Smith*, 117 Nev. 6, 13,16 P.3d 424, 428-29 (2001);
17 *Beattie v. Thompson*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).
18
19

20 Plaintiffs’ Counsel has demonstrated great skill and advocacy in the instant case. Attorneys’
21 fees are warranted using the *Brunzell* factors.

22 Qualities of the Advocate

23 Plaintiffs’ Counsel has demonstrated zealous advocacy for their clients. Plaintiffs were
24 professional in their conduct throughout litigation, and throughout trial in this matter. Counsel has
25 used great skill, but also exhausted vast resources in both overcoming the discovery violations of
26 Defendants, but also in securing persuasive evidence in favor of Plaintiffs’ claims.
27

28 ///

1 Plaintiffs' attorneys, Mr. Leavitt, Mr. Jones and Mr. Hand, are qualified, educated attorneys
2 with significant skill and experience. As this Court is keenly aware, this work, involving numerous
3 parties and involving pursuit of document for years, has required great technical skill and tenacity.

4 Mr. Jones is a managing partner with the Law Offices of BIGHORN LAW. He graduated
5 Magna Cum Laude from Brigham Young University-Idaho in 2005 and graduated as the top student
6 in economics that year. He graduated from Brigham Young University in 2008 and was awarded a
7 Dean's Scholarship for academic merit all three (3) years of law school. Mr. Jones was first admitted
8 to practice law in Nevada in 2013, scoring in the 98th percentile nationally on the MBE. He has also
9 passed the Idaho Bar Exam. Mr. Jones has prevailed in more than 95 percent of the arbitrations and
10 trials he has litigated. Further, as a partner in his firm, he has recovered more than \$30,000,000 for our
11 clients through judgments and settlements in the last six (6) year. Mr. Jones' usual and customary fee
12 on an hourly basis is \$500.00 an hour, which is far below average for attorneys of my skill and
13 experience who handle similar matters in Clark County, Nevada.

14 Likewise, Mr. Leavitt is a partner with Bighorn Law. He has been licensed to practice law
15 since 2012 and has a billing rate of \$500.00 per hour, a rate at or below average for attorneys of his
16 skill and experience who handle similar matters in Clark County, Nevada, as set forth in his declaration
17 above.

18 Mr. Hand is licensed to practice law in New York and Nevada. He has been licensed to practice
19 law in Nevada for sixteen (16) years. Prior to that, he was licensed as an attorney in New York where
20 he practiced in areas of personal injury, medical malpractice, and insurance defense litigation. He has
21 conducted more than 125 jury and bench trials. Mr. Hand also served as a Deputy County Attorney
22 for Nassau County, New York. Mr. Hand's billing rate is \$500.00 per hour is at or below average for
23 attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

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1 The qualities of the advocates who performed work in this matter merit an award of attorneys'
2 fees under the *Beattie* and *Brunzell* factors.

3 Character of the Work to be Done

4 As noted above, Plaintiffs' Counsel was engaged in proving a complicated Professional
5 Negligence matter. This work required retaining and questioning experts and dealing with nuanced
6 medical topics. Furthermore, the work was complicated by Opposing Counsel and Defendants'
7 discovery violations—which necessitated further motion practice and the seeking of sanctions by
8 Plaintiffs' Counsel against Defendants. The nature of this work has been time-consuming and difficult,
9 particularly with the hindrance of overcoming Defendants' violations. Yet, in the end, Plaintiffs
10 prevailed and a verdict and a judgment against Defendants.

11 Work Actually Performed by the Lawyer

12 Plaintiffs' Counsel engaged in multitudinous depositions, written discovery, and this work
13 culminated in a three-week trial on the matter. Plaintiffs' Counsel worked for approximately sixteen
14 to eighteen (16-18) hours daily for the entirety of trial and for a couple of weeks before trial in
15 preparation for the trial. Counsel had to coordinate a multitude of witnesses in this case and had to
16 overcome both Defendants' advocacy and misconduct on a daily basis. There was extensive motion
17 practice due to uncovered discovery violations.

18 Result—whether the Attorney was Successful and what Benefits were Derived

19 Plaintiffs were successful in their attempts before this Court. The Court Awarded a Judgment
20 on the Verdict in favor of Plaintiffs and against Defendants in the amount of \$6,565,830.84. Plaintiffs'
21 Counsel was able to procure a favorable outcome for their clients. Defendants had refused to settle
22 this matter for \$1,000,000.00 mere months prior to trial. Plaintiffs' Counsels' work, and the benefits
23 derived therefrom support an award of Attorneys' Fees.

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1 Under *Brunzell* and NRS 18.010(2), and as Plaintiffs are the prevailing party in this matter,
2 this Court is Warranted in Requiring Defendants to pay Plaintiffs' Costs in the amount of **\$153,118.26**,
3 attorneys' fees as the prevailing party of **\$2,547,122.21** (alternatively, **\$1,026,835.83** should the Court
4 deem Plaintiffs' waiver insufficient for the purposes of awarding attorney fees) and an additional
5 **\$109,500.00** in sanctions against Defendants for repeated misconduct.
6

7 **III. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully requests that this Court GRANT Plaintiffs'
9 Motion for Fees and Costs.

10 DATED this 22nd day of November, 2019.

11 **BIGHORN LAW**

12 By: /s/ Kimball Jones

13 **KIMBALL JONES, ESQ.**

14 Nevada Bar.: 12982

15 **JACOB G. LEAVITT, ESQ.**

16 Nevada Bar No.: 12608

17 716 S. Jones Blvd.

18 Las Vegas, Nevada 89107

19 **GEORGE F. HAND, ESQ.**

20 Nevada Bar No.: 8483

21 **HAND & SULLIVAN, LLC**

22 3442 N. Buffalo Drive

23 Las Vegas, Nevada 89129

24 *Attorneys for Plaintiffs*
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 22nd day of November, 2019, I served the foregoing **PLAINTIFFS'** **MOTION FOR FEES AND COSTS** as follows:

- Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or
- U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

Kim Mandelbaum, Esq.
 MANDELBAUM ELLERTON & ASSOCIATES
 2012 Hamilton Lane
 Las Vegas, Nevada 89106
 &
 Thomas J. Doyle, Esq.
 Chad C. Couchot, Esq.
 SCHUERING ZIMMERMAN & DOYLE, LLP
 400 University Avenue
 Sacramento, California 95825
Attorneys for Defendants

/s/ Erickson Finch
 An employee of **BIGHORN LAW**

EXHIBIT “1”

1 **OFFR**
George F. Hand, Esq.
2 Nevada State Bar No. 8483
ghand@handsullivan.com
3 **HAND & SULLIVAN, LLC**
3442 N. Buffalo Drive
4 Las Vegas, Nevada 89129
Telephone: (702) 656-5814
5 Facsimile: (702) 656-9820

6 Attorneys for Plaintiff
TITINA FARRIS and PATRICK FARRIS
7

8 **DISTRICT COURT**

9 **CLARK COUNTY, STATE OF NEVADA**

10 TITINA FARRIS and PATRICK FARRIS,
11 Plaintiffs,

Case No.: A-16-739464-C

Dept. No.: 31

12 vs.

13 BARRY RIVES, M.D., LAPAROSCOPIC
SURGERY OF NEVADA LLC; DOES I-V,
14 inclusive; and ROE CORPORATIONS I-V,
inclusive,

15 Defendants.
16

17 **PLAINTIFFS' JOINT UNAPPORTIONED OFFER OF JUDGMENT TO DEFENDANT**
18 **BARRY RIVES, M.D. and DEFENDANT LAPAROSCOPIC SURGERY OF NEVADA LLC**

19 TO: BARRY RIVES, M.D., Defendant
LAPAROSCOPIC SURGERY OF NEVADA LLC, Defendant

20 TO: SCHUERING ZIMMERMAN & DOYLE, LLP, Attorneys for Defendants
21 MANDELBAUM ELLERTON & ASSOCIATES, Attorneys for Defendants

22 PLEASE TAKE NOTICE that pursuant to the provisions of N.R.C.P. 68, Plaintiffs TITINA
23 FARRIS and PATRICK FARRIS, hereby offer to accept judgment against Defendant, BARRY
24 RIVES, M.D. and Defendant LAPAROSCOPIC SURGERY OF NEVADA LLC, jointly, in this
25 action in the total sum of ONE MILLION DOLLARS (\$1,000,000.00), inclusive of fees, costs and
26 pre-judgment interest.

27 ///

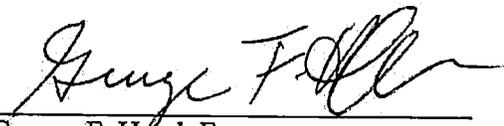
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1 This offer is available for acceptance for the time period provided in NRCP 68. This offer
 2 is made for the purposes specified in N.R.C.P. 68 as a compromise offer of settlement only as
 3 against Defendant, BARRY RIVES, M.D. and Defendant LAPAROSCOPIC SURGERY OF
 4 NEVADA LLC, jointly, and shall not be deemed an admission or introduced into evidence at the
 5 time of trial of this action. This offer is made in accordance with the provisions of N.R.C.P 68 as
 6 (A) there is a single common theory of liability against all the offeree defendants, such as where the
 7 liability of some is entirely derivative of the others or where the liability of all is derivative of
 8 common acts by another; and (B) the same entity, person, or group is authorized to decide whether
 9 to settle the claims against the offerees.

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DATED: June 5, 2019.

HAND & SULLIVAN, LLC

By: 

George F. Hand, Esq.
 Nevada State Bar No. 8483
 3442 North Buffalo Drive
 Las Vegas, Nevada 89129
 Attorney for Plaintiffs
 TITINA FARRIS and PATRICK FARRIS

CERTIFICATE OF SERVICE

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is 3442 N. Buffalo Drive, Las Vegas, NV 89129.

On June 5, 2019, I served the within document(s) described as:

PLAINTIFFS' JOINT UNAPPORTIONED OFFER OF JUDGMENT TO DEFENDANT BARRY RIVES, M.D. and DEFENDANT LAPAROSCOPIC SURGERY OF NEVADA LLC

on the interested parties in this action as stated on the below mailing list.

(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed to Defendant's last-known address. I placed such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Las Vegas, Nevada. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY ELECTRONIC SERVICE) By e-serving through Odyssey, pursuant to Administrative Order 14-2 mandatory electronic service, a true file stamped copy of the foregoing document(s) to the last known email address listed below of each Defendant which Plaintiff knows to be a valid email address for each Defendant.

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

Anna Grigoryan
(Type or print name)


(Signature)

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TITINA FARRIS and PATRICK FARRIS

v.

BARRY RIVES, M.D., LAPAROSCOPIC SURGERY OF NEVADA LLC

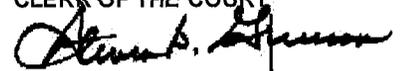
Case No: A-16-739464-C

SERVICE LIST

<p>Thomas J. Doyle Nevada Bar No. 1120 SCHUERING ZIMMERMAN & DOYLE, LLP 400 University Avenue Sacramento, California 95825-6502 Telephone: (916) 567-0400 Fax: (916) 568-0400 Email: calendar@szs.com</p> <p><i>ATTORNEYS FOR BARRY RIVES, M.D., LAPAROSCOPIC SURGERY OF NEVADA LLC</i></p>	<p>Kim Mandelbaum Nevada Bar No. 318 MANDELBAUM ELLERTON & ASSOCIATES 2012 Hamilton Lane Las Vegas, Nevada 89106 Telephone: (702)367-1234 Email: filng@memlaw.net</p> <p><i>ATTORNEYS FOR BARRY RIVES, M.D., LAPAROSCOPIC SURGERY OF NEVADA LLC</i></p>
--	--

EXHIBIT “2”

Electronically Filed
11/14/2019 6:17 PM
Steven D. Grierson
CLERK OF THE COURT



JGJV

1 **KIMBALL JONES, ESQ.**

Nevada Bar No.: 12982

2 **JACOB G. LEAVITT, ESQ.**

Nevada Bar No. 12608

3 **BIGHORN LAW**

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4 Las Vegas, Nevada 89107

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6 **GEORGE F. HAND, ESQ.**

Nevada Bar No. 8483

7 **HAND & SULLIVAN, LLC**

8 3442 North Buffalo Drive

Las Vegas, Nevada 89129

9 Phone: (702) 656-5814

gband@handsullivan.com

10 Attorneys for Plaintiffs

11 **TITINA FARRIS and PATRICK FARRIS**

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **TITINA FARRIS and PATRICK FARRIS,**

15 Plaintiffs,

16 vs.

17 **BARRY RIVES, M.D., LAPAROSCOPIC**
18 **SURGERY OF NEVADA LLC; DOES I-V,**
19 **inclusive; and ROE CORPORATIONS I-V,**
20 **inclusive,**

Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

21
22 The above–entitled matter having come on for trial by jury on October 14, 2019, before the
23 Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and
24 PATRICK FARRIS (“Plaintiffs”), appeared in person with their counsel of record, KIMBALL
25 JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE
26 HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and
27 LAPAROSCOPIC SURGERY OF NEVADA, LLC (“Defendants”) appeared by and through their
28 counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 pre-judgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

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- 1 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-
2 judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime
3 plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the
4 judgment with daily post-judgment interest accruing at a rate equal to the prime rate
5 at the largest bank in Nevada as ascertained by the Commissioner of Financial
6 Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1
7 and July 1 thereafter until the judgment is satisfied;
- 8 3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish,
9 disability and loss of enjoyment of life, plus prejudgment interest in the amount of
10 \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from
11 date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days =
12 \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily
13 post-judgment interest accruing at a rate equal to the prime rate at the largest bank in
14 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
15 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
16 the judgment is satisfied;
- 17 4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering,
18 anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing
19 at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%)
20 pursuant to NRS 17.130 from the time of entry of the judgment with daily post-
21 judgment interest accruing at a rate equal to the prime rate at the largest bank in
22 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
23 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
24 the judgment is satisfied;
- 25 5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and
26 consortium, plus prejudgment interest in the amount of \$22,417.85 (interest
27 calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August
28 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant
to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied; and
6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort
and consortium, plus post-judgment interest accruing at \$17.00 per day (interest
calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130
from the time of entry of the judgment with daily post-judgment interest accruing at a
rate equal to the prime rate at the largest bank in Nevada as ascertained by the
Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

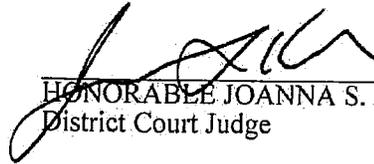
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28 ///

1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
 2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
 3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4	Principal	\$	6,076,479.94
5	Pre-Judgment Interest	\$	291,325.58 (1,183 days @ 7.50%)
6	TOTAL JUDGMENT of:	\$	6,367,805.52

7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
 8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
 9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
 10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
 11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

13
 14  JOANNA S. KISHNER
 15 HONORABLE JOANNA S. KISHNER
 16 District Court Judge

17 Respectfully Submitted by:

Approved as to form and content:

18 Dated this 11th day of November, 2019.

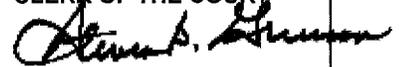
Dated this 11th day of November, 2019.

19
 20 **BIGHORN LAW**
 21 By: George F. Hand (8483)
 22 Kimball Jones, Esq.
 23 Nevada Bar No. 12982
 24 716 S. Jones Blvd
 25 Las Vegas, NV 89107
 26 George F. Hand, Esq.
 27 Nevada Bar No. 8483
 28 3442 N. Buffalo Drive
 Las Vegas, NV 89129
 Attorneys for Plaintiffs

SCHUERING ZIMMERMAN & DOYLE, LLP
 By: /s/ Thomas J. Doyle, Esq.
 Thomas J. Doyle, Esq.
 Nevada Bar No. 1120
 Aimee Clark Newberry, Esq.
 Nevada Bar No. 11084
 400 University Avenue
 Sacramento, CA 95825
 Attorneys for Defendants
 Barry J. Rives, M.D.;
 Laparoscopic Surgery of Nevada, LLC

EXHIBIT “3”

Electronically Filed
4/3/2019 5:15 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NOE**
2 Laura Payne Hunt, Esq.
3 Nevada Bar No. 4718
4 **The Law Offices of Laura Hunt, PC**
5 330 East Warm Springs Road
6 Las Vegas, NV 89119
7 Tel: (702) 450-4868
8 Email: huntlawoffices@cox.net

9 Amanda L. Ireland, Esq.
10 Nevada Bar No. 13155
11 Jay T. Hopkins, Esq.
12 Nevada Bar No. 3223
13 **Ireland Law Group, LLC**
14 7854 West Sahara Ave.
15 Las Vegas, Nevada 89117
16 Tel: (702) 427-2110
17 Fax: (702) 441-7637
18 Email: amanda@irelandlawgroup.com
19 Email: jay@irelandlawgroup.com

20 *Attorneys for Plaintiffs*

21 EIGHTH JUDICIAL DISTRICT COURT
22 CLARK COUNTY, NEVADA

23 ERIC MENDOZA and MICHELLE MENDOZA,
24 parents and guardians of CHARLES MENDOZA,
25 a minor; ERIC MENDOZA, individually;
26 MICHELLE MENDOZA, individually,

27 Plaintiffs,

28 v.

JEFFREY L. JOHNSON, M.D., an individual;
RADIOLOGY SPECIALISTS, LTD., a Nevada
Professional Corporation; SUNRISE HOSPITAL
AND MEDICAL CENTER, LLC, a Delaware
Corporation; SRINIVAS HALTHORE, M.D., an
individual; HALTHORE JOHNS PEDIATRIC
NEUROLOGY ASSOCIATES, LTD., a Nevada
Professional Corporation; DOES I - X and ROE
CORPORATIONS I - X, inclusive,

Defendants.

CASE NO. A-14-708740-C
DEPT. NO. XXIV

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that the foregoing ORDER FROM THE EVIDENTIARY
2 HEARING APPROVING ATTORNEY'S FEES was duly entered in the above captioned
3 matter on February 27, 2019, which is attached hereto.

4 DATED this 3rd day of April, 2019.

5
6 By 

7 Laura Payne Hunt, Esq.
8 **The Law Offices of Laura Hunt, PC**
9 330 East Warm Springs Road
10 Las Vegas, NV 89119
11 Tel: (702) 450-4868
12 huntlawoffices@cox.net

13 Amanda L. Ireland, Esq.
14 Jay T. Hopkins, Esq.
15 **Ireland Law Group, LLC**
16 7854 West Sahara Ave.
17 Las Vegas, Nevada 89117
18 Tel: (702) 427-2110
19 Fax: (702) 441-7637
20 amanda@irelandlawgroup.com
21 jay@irelandlawgroup.com

22 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on this ____ day of April, 2019. I served the foregoing **NOTICE OF ENTRY OF ORDER** by the Court's electronic system (EFS E-File & Serve), to the following:

Dennis M. Prince, Esq.
Robert M. Adams, Esq.
EGLET PRINCE
400 South 7th Street, Box 1, Ste. 400
Las Vegas, NV 89101
Email: eservice@egletlaw.com
Ph: 702-450-5400
Fax: 702-450-5451

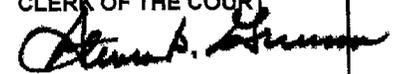
Keith Galliher, Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Ste. 107
Las Vegas, NV 89104
Email: kgalliher@galliherlawfirm.com
Ph: 702-735-0049
Fax: 702-735-0204



Ireland Law Group

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2/27/2019 10:08 AM
Steven D. Grierson
CLERK OF THE COURT



EGLET PRINCE

1 **ORD**
 2 DENNIS M. PRINCE, ESQ.
 3 Nevada Bar No. 5092
 4 TRACY A. EGLET, ESQ.
 5 Nevada Bar No. 6419
 6 THOMAS N. BECKOM, ESQ.
 7 Nevada Bar No.: 12554
 8 **EGLET PRINCE**
 9 400 South 7th Street, 4th Floor
 10 Las Vegas, Nevada 89101
 11 E-Mail: eservice@egletlaw.com
 12 Tel.: (702) 450-5400
 13 Fax: (702) 450-5451

**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

11 ERIC MENDOZA and MICHELLE
 12 MENDOZA, parents and guardians of
 13 CHARLES MENDOZA, a minor; ERIC
 14 MENDOZA, individually; MICHELLE
 15 MENDOZA, individually,

Plaintiffs,

16 vs.

17 JEFFREY L. JOHNSON, M.D., an
 18 individual; RADIOLOGY SPECIALISTS,
 19 LTD, a Nevada Professional Corporation;
 20 SUNRISE HOSPITAL AND MEDICAL
 21 CENTER, LLC, a Delaware Corporation;
 22 YET UNKNOWN EMPLOYEES OF
 23 SUNRISE HOSPITAL AND MEDICAL
 24 CENTER, LLC; SRINIVAS HALTHORE,
 25 M.D., an individual; HALTHORE JOHNS
 26 PEDIATRIC NEUROLOGY
 27 ASSOCIATES, LTD., a Nevada
 28 Professional Corporation; JOHN DOES I
 through X; ROE CORPORATIONS I
 through X, inclusive,

Defendants.

CASE NO. A-14-708740-C
DEPT. NO. XXIV

**ORDER FROM THE EVIDENTIARY
HEARING APPROVING
ATTORNEY'S FEES**

/.../.../

- 1 4. Based on their initial suspicions that were ultimately confirmed, the Mendozas
2 contacted Francis Stewart, a California Attorney, at the beginning of 2014 to discuss a
3 possible medical malpractice action.
- 4 5. Mr. Stewart referred the Mendozas to the Galliher Law Firm in order to investigate
5 their suspicions regarding Charlie's misdiagnosis. The Mendozas, however, waited
6 almost a year before contacting the Galliher Law Firm on September 16, 2014 and this
7 resulted in an initial consultation that was mere weeks before the statute of limitations
8 ran for Charlie's complicated medical malpractice claim. As further noted below, in
9 light of this truncated timeframe, Mr. Galliher was compelled to work up this medical
10 malpractice claim faster than he ever had before in his 40 year career in order to
11 perform his due diligence and file the Mendoza's case.
- 12 6. After Mr. Galliher, through long hours of very hard work, determined that the
13 Mendoza's had a viable medical malpractice case, Mr. Galliher met with the
14 Mendoza's a second time on October 17, 2014 to finalize their case for filing.
- 15 7. At this meeting, the Mendozas executed a Retainer Agreement providing that the
16 Galliher Law Firm would receive thirty-three and one third percent (33 1/3%) of any
17 gross recovery if the case settled without filing a lawsuit and 40% if a lawsuit was filed.
- 18 8. On October 20, 2014, the Mendozas filed a Medical Malpractice Action on behalf of
19 their minor son, Charlie, against the named Defendants in this action through the
20 Galliher Law Firm a mere three (3) days after their final consultation and mere weeks
21 after they presented to the Galliher Law Firm.
- 22 9. As this extremely difficult and contested case progressed, on April 13, 2015, Eglet
23 Prince associated into this medical malpractice action, with the Galliher Law Firm, on
24 behalf of the Mendozas to assist Charlie in obtaining a successful litigation outcome.
25
26
27
28

- 1 10. Ultimately after the Complaint in this matter was filed, the Mendozas finally received
2 the positive outcome for Charlie they were desperately seeking, through the hard work
3 of their attorneys, and the matter was settled between the Plaintiffs and the Defendants
4 and a Stipulation and Order for dismissal was filed on May 25, 2018 for a substantial
5 amount.
- 6
- 7 11. In light of the successful outcome and consistent with Nevada Law on May 10, 2018,
8 Eglet Prince filed a petition to compromise Charlie's claims and also requested that
9 40% of the overall settlement be dispersed to Charlie's lawyers in compensation for
10 their hard work.
- 11
- 12 12. In regards to medical malpractice actions however, NRS §7.095 provides for
13 limitations on the amount an attorney may charge as a contingency fee in a medical
14 malpractice case and states in relevant part:
- 15 "An attorney shall not contract for or collect a fee contingent on the amount of recovery
16 for representing a person seeking damages in connection with an action for injury or
17 death against a provider of health care based upon profession negligence in excess of:
- 18 (a) Forty percent of the first \$50,000 recovered;
- 19 (b) Thirty-three and one-third percent of the next \$50,000 recovered;
- 20 (c) Twenty-five percent of the next \$500,000 recovered and
- 21 (d) Fifteen percent of the amount of recovery that exceeds \$600,000.00"
- 22
- 23 13. The Mendozas ultimately objected to the 40% disbursement through a letter to this
24 Court stating they had been unaware of NRS §7.095.
- 25 14. The attorneys for the Mendozas however objected and stated that the Mendozas had
26 been informed of the attorney's fee limitations for medical malpractice actions and
27 furthermore had waived the fee limitations in NRS §7.095 through their conduct.
28

- 1 15. On this basis on July 2, 2018, this Honorable Court ordered that pursuant to NRS
 2 §7.095, \$296,666.67 out of requested fees of \$600,000.00, at a 40% contingency fee
 3 rate, were to be paid to the attorneys with a remaining balance of \$303,333.33 to be
 4 held in the trust account for Eglet Prince pending briefing on where or not NRS §7.095
 5 could be waived by Eric and Michelle Mendoza on behalf of Charlie.
 6
- 7 16. After substantial briefing on this subject on August 10, 2018, this Honorable Court
 8 ruled that NRS §7.095 could be waived by Eric and Michelle Mendoza on behalf of
 9 Charlie under Nevada law.
 10
- 11 17. However a dispute arose between Eric and Michelle Mendoza and Charlie's attorney as
 12 to whether or not the waiver of NRS §7.095 actually occurred and as such this
 13 Honorable Court set an evidentiary hearing on whether or not there was a knowing,
 14 voluntary, and intelligent waiver of NRS §7.095 by Eric and Michelle Mendoza on
 15 behalf of Charlie.
 16
- 17 18. After hearing the testimony of Eric and Michelle Mendoza, Keith Galliher, and Deena
 18 Mooney at the October 29, 2018 evidentiary hearing, the Court hereby determines
 19 following occurred.
 20
- 21 **B. Testimony Of Keith Galliher, Esq**
- 22 19. This Court notes that Keith Galliher is an experienced trial lawyer whom has only
 23 handled a small number of medical malpractice cases through out his career.
 24
- 25 20. Eric and Michelle Mendoza approached Mr. Galliher to evaluate Charlie's medical
 26 malpractice case less than two (2) months before the statute of limitations ran for
 27 Charlie's medical malpractice claim. Mr Galliher testified that this was the fastest he
 28 had ever worked up a medical malpractice claim given the time constraints.

1 21. Mr. Galliher further testified that he explained to the Mendozas that attorney's fees
 2 were capped in Nevada through the following testimony:

3 "Q. Can you explain to me your recollection of your conversation with them.

4 A. Same conversation I had with every medical malpractice case I accept...

5 ...

6 As far as the attorney's fee statute is concerned, I told them we have a statute in the
 7 State that limits attorney's fees in these types of case. However, no attorney that I
 8 know, including myself, will accept a case based on the statutory fee because medical
 9 malpractice cases are among the most difficult to win, and they cost a tremendous
 10 amount of money to litigate, the results are very, very uncertain ..." (Emphasis Added)

11 22. Mr. Galliher also testified that it was custom and practice in Nevada that experienced
 12 medical malpractice attorneys would only take medical malpractice cases for a 40%
 13 contingency fee and further that it was his firm's custom and practice to explain the
 14 attorney fee limitations to his clients.

15 23. Mr. Galliher testified that the Mendozas retained the Galliher Law Firm and signed his
 16 40% retainer even after the fee limitation was explained to them with no objections to
 17 the 40% fee and no indication they did not understand.

18 24. This Court notes that Mr. Galliher's recollection of his interactions with the Mendozas
 19 was pretty close to impeccable. The Court further notes that based on the depths of his
 20 recollections, the Court finds Mr. Galliher to be an extremely credible witness.

21 **C. Testimony of Deena Mooney**

22 25. The Court also heard testimony of Deena Mooney, Keith Galliher's paralegal whom
 23 was also present at the October 17, 2014 meeting between Mr. Galliher and the
 24 Mendozas.

25 26. Ms. Mooney testified that Mr. Galliher explained the fee limitations to the Mendozas,
 26 explained that Mr. Galliher would not take a medical malpractice case for the fee
 27 limitations stated in that agreement.
 28

- 1 27. Ms. Mooney further testified that Mr. Galliher was extremely “regimented” in his
2 consultations and further would state the following every single time he on boarded a
3 medical malpractice claim with the Galliher Law Firm:
4 “He will tell them, let me talk to you a little bit about medical malpractice cases. Our
5 legislature in their wisdom put on the ballot medical malpractice claims, and in doing
6 that they kept attorney’s fees at 25 percent. I will not take a case for 25 percent—a
7 medical malpractice case for 25 percent, and I’m going to tell you why. These cases
8 are very expensive to maintain, they’re expert-intensive, you can expect to be into this
9 case anywhere between 50 to a hundred thousand dollars before trial....”
10 28. The Court notes again as to Ms. Mooney that her testimony is extreme precise and this
11 is not surprising as she is a professional whom does this for a living. On this basis the
12 Court finds the testimony of Ms. Mooney extremely credible.
- 13 **D. Testimony of Eric and Michelle Mendoza**
- 14 29. The Court, however, notes that it is tasked with weighing the testimony of Mr. Galliher
15 and Ms. Mooney with the testimony of the Mendozas whose sole singular concerning is
16 obtained the best result for Charlie.
- 17 30. Mr. Mendoza at the outset of the hearing believed he had only met with the Galliher
18 Law Firm once in October 2014, yet then later on under Cross-examination stated he
19 may have met with the Galliher Law Firm a second time prior in September 2014.
- 20 31. Contrast this with Ms. Mendoza whom testified that she had met with the Galliher Law
21 Firm in September 2014 yet could not clearly recall the second meeting in October,
22 2014.
- 23 32. Neither of the Mendozas recall any form of discussion as to any form of fee limitation
24 for attorney’s fees in Medical Malpractice cases in Nevada however this is not
25 surprising as discussed below.
26
27
28

1 33. The Mendozas were having an extremely chaotic and difficult time in their lives. The
 2 Mendozas had a son whom was in ICU at a hospital for nearly two months and then
 3 had to go through extremely difficult rehabilitation. The Mendozas also testified that
 4 they were going through a divorce at this exact same time. Finally, in combination
 5 with all of the above the Mendozas initiated an extremely contested medical
 6 malpractice lawsuit to obtain the best possible result for Charlie.

8 34. On this basis and in light of all of this, the Court notes that it would not be entirely
 9 surprising that the Mendozas would be focused more so on their potentially terminally
 10 ill child, which was complicated by a divorce, than on the specific contents of Mr.
 11 Galliher's representations concerning the medical malpractice attorney's fee limitation
 12 at the time they signed a retainer agreement with the Galliher Law Firm agreeing to a
 13 40% contingency fee in the event a lawsuit was filed.

15 **E. The Retainer Agreement**

16 35. The Court notes however that it is undisputed that the Mendozas executed a retainer
 17 agreement with the Galliher Law Firm, which contains the following provisions below.

19 36. The retainer agreement that the Mendozas executed with the Galliher Law Firm
 20 specifically has the following relevant provisions:

21 "Attorney shall receive for such profession services THIRTY THREE AND ONE
 22 THIRD PERCENT 33 1/3% OF THE GROSS RECOVERY (REGARDLESS OF THE
 23 MANNER OR FORM) HEREAFTER, IF SETTLES WITHOUT FILING SUIT OR
 24 DEMAND FOR ARBITRATION, OR FORTY PERCENT (40%) THEREOF IF
 25 SETTLED OR RESOLVED AFTER SUIT OR DEMAND FOR ARBITRATION IS
 26 FILED"

27 37. The retainer agreement also additionally states:

28 "This fee is not set by law, but is subject to negotiation between Attorney and Client,
 and could under law be higher or lower should the parties not have agreed to the
 percentages stated herein."

1 38. In light of the foregoing testimony and witnesses discussed above, the Court hereby
2 makes the following conclusions of law below.

3 39. The Mendozas, however, do not dispute that 40% is a reasonable fee or that the fee was
4 not earned.

5
6 **II.**
CONCLUSIONS OF LAW

- 7 1. As outlined in greater depth below, this Court finds that the Mendozas had
8 knowledge of the attorney fee limitation in medical malpractice cases and by
9 executing the retainer agreement with the Galliher Law Firm they knowingly,
10 voluntarily, and intelligently waived the fee limitations under NRS §7.095.
- 11 2. In Nevada waiver is the voluntary and intentional relinquishment of a known right.
12 *Udevco Inc v. Wagner* 100 Nev. 185 (1984).
- 13 3. Waiver requires an existing right, knowledge of its existence, and an actual intention
14 to relinquish it, or conduct so inconsistent with the intent to enforce the right as to
15 induce a reasonable belief that it has been relinquished. *McKeeman v. General Am.*
16 *Life Ins. Co* 111 Nev. 1042 (1995).
- 17 4. A knowing and intelligent waiver can be performed via a written instrument or
18 orally. *Mubarek v. State* 2017 Nev.App.Unpub. LEXIS 834 (2017).
- 19 5. A waiver of a right can also be implied through conduct when a party knowingly
20 acquiesces to existing condition. *Building & Constr. Trades v. Public Works* 108
21 Nev. 605 (1992).
- 22 6. There are two ways to implicitly waive a right. First, conduct that evidences an
23 intention to waive a right will function as an implied waiver. *Mahban v. MGM*
24 *Grand Hotels* 100 Nev. 593 (1984). Second conduct that is inconsistent with any
25 other intention than to waive a right will also function as a waiver. *Id.*
- 26 7. Waiver can be additionally implied by accepting performance when a party has all of
27 the facts constituting the basis for waiver available to them. *Udevco* 100 Nev. at 7,
28 *Gottwals v. Rencher* 60 Nev. 47 (1940)

- 1 8. The Court hereby find that the Mendozas were aware of and had knowledge of the
- 2 attorney fee limitations contained in NRS §7.095 based on the testimony of Keith
- 3 Galliher and Deena Mooney. While the Court is sympathetic to the plight of the
- 4 Mendozas, given the chaos in their lives when they retained the Galliher Law Firm
- 5 the Court finds Keith Galliher and Deena Mooney to be more credible as witnesses
- 6 and believes that Nevada's fee limitation was explained to the Mendozas at the time
- 7 they executed the Galliher Retainer Agreement.
- 8 9. This Court also finds credible Mr. Galliher's testimony that it was his firm's custom
- 9 and practice to explain Nevada's medical malpractice attorney fee limitation.
- 10 10. As such the Court finds that the Mendozas had knowledge of the existence of
- 11 Charlie's rights concerning attorney's fee limitations in Medical Malpractice Cases.
- 12 11. Additionally, the Court finds that by executing the retainer with the Galliher law
- 13 firm, the Mendozas voluntarily relinquished their rights and therefore agreed to a
- 14 40% contingency fee as well as any other fees contained in that agreement payable
- 15 to Eglet Prince and the Galliher Law Firm.
- 16 12. As such, the Court concludes that the Mendozas knowingly, voluntarily, and
- 17 intelligently waived the attorney's fee limitation in NRS §7.095 and therefore the
- 18 attorney's for Charlie are entitled to a 40% contingency fee consistent with the
- 19 retainer agreement.

20 /.../.../

21

22

23 /.../.../

24

25

26 /.../.../

27

28

EGLET PRINCE

**III.
ORDER**

The Court having heard the witnesses and reviewed the pleadings and having taken the matter under advisement IT IS HEREBY ORDERED that the amount of \$600,000.00 (which is 40% of the total amount recovered) shall be paid to the attorneys and that the amount of \$303,333.33 (which is the difference between the amount of attorney fees permitted by NRS §7.095 and the 40% attorney fee that was negotiated by the Petitioners) which this Court previously ruled was to be held in the trust account of EGLET PRINCE, shall be released and paid to the attorney's to the minor

IT IS SO ORDERED

DATED this 26 day of ~~January~~ ^{FEB}, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted by:

EGLET PRINCE



DENNIS M. PRINCE, ESQ
Nevada Bar No. 5092
THOMAS N. BECKOM, ESQ
Nevada Bar No. 12554

Approved as to Form and Content:

THE LAW OFFICES OF LAURA HUNT, PC

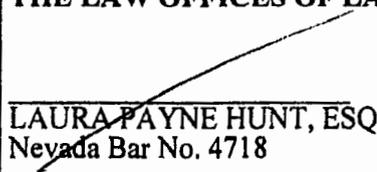

LAURA PAYNE HUNT, ESQ
Nevada Bar No. 4718

EXHIBIT “4”

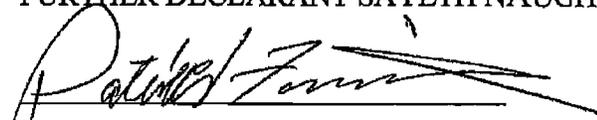
DECLARATION OF PATRICK FARRIS

PATRICK FARRIS, being first duly sworn under oath and under penalty of perjury under the laws of the State of Nevada, declares:

1. That I am a client of BIGHORN LAW and HAND & SULLIVAN, LLC;
2. That I am represented by these firms in a medical malpractice lawsuit, A-16-739464-C;
3. That I have personal knowledge of the facts and circumstances herein and could testify to the same;
4. That prior to signing a contract with my attorneys, I was advised regarding NRS 7.095, which limits Attorney's fees in Medical Malpractice Cases;
5. My attorneys were not willing to accept my case unless I waived the same and signed under a contingency fee agreement of 40% should the case go to litigation due to the complexity of the case, the high degree of risk of loss, and the extensive expenses the case would be require, which expenses I could not personally bear;
6. That I was told that the contracted rate of 40% would apply in this matter should I decide to have my attorneys represent me in this case, but I understood I could seek other counsel if I did not wish to pay the 40% contingency fee;
7. That I decided that I wanted to be represented by my attorneys and I agreed to the pay the 40% fee agreement as I felt it was reasonable given that I am unaware of any attorney charging less for cases of this type, the complexity of my case, the high degree of risk of loss, and the extensive expenses the case would require;
8. That I am pleased with the outcome of this case and am satisfied with the work my attorneys did on my case;

9. This Declaration is made in good faith, and not for purposes of delay.

FURTHER DECLARANT SAYETH NAUGHT.



A handwritten signature in black ink, appearing to read "Patrick Farris", is written over a horizontal line. The signature is stylized and cursive.

PATRICK FARRIS

DECLARATION OF TITINA FARRIS

TITINA FARRIS., being first duly sworn under oath and under penalty of perjury under the laws of the State of Nevada, declares:

1. That I am a client of BIGHORN LAW and HAND & SULLIVAN, LLC;
2. That I am represented by these firms in a medical malpractice lawsuit, A-16-739464-C;
3. That I have personal knowledge of the facts and circumstances herein and could testify to the same;
4. That prior to signing a contract with my attorneys, I was advised regarding NRS 7.095, which limits Attorney's fees in Medical Malpractice Cases;
5. My attorneys were not willing to accept my case unless I waived the same and signed under a contingency fee agreement of 40% should the case go to litigation due to the complexity of the case, the high degree of risk of loss, and the extensive expenses the case would be require, which expenses I could not personally bear;
6. That I was told that the contracted rate of 40% would apply in this matter should I decide to have my attorneys represent me in this case, but I understood I could seek other counsel if I did not wish to pay the 40% contingency fee;
7. That I decided that I wanted to be represented by my attorneys and I agreed to the pay the 40% fee agreement as I felt it was reasonable given that I am unaware of any attorney charging less for cases of this type, the complexity of my case, the high degree of risk of loss, and the extensive expenses the case would require;
8. That I am pleased with the outcome of this case and am satisfied with the work my attorneys did on my case;

///

9. This Declaration is made in good faith, and not for purposes of delay.

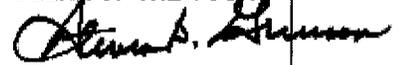
FURTHER DECLARANT SAYETH NAUGHT.

A handwritten signature in cursive script, appearing to read "Titina Farris", written over a horizontal line.

TITINA FARRIS

EXHIBIT “5”

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Steven D. Grierson
CLERK OF THE COURT



1 **MEMO**

2 KIMBALL JONES, ESQ.

3 Nevada Bar No.: 12982

4 JACOB G. LEAVITT, ESQ.

5 Nevada Bar No.: 12608

6 **BIGHORN LAW**

7 716 S. Jones Blvd.

8 Las Vegas, Nevada 89107

9 Phone: (702) 333-1111

10 Email: Kimball@BighornLaw.com

11 Jacob@BighornLaw.com

12 GEORGE F. HAND, ESQ.

13 Nevada Bar No.: 8483

14 **HAND & SULLIVAN, LLC**

15 3442 N. Buffalo Drive

16 Las Vegas, Nevada 89129

17 Phone: (702) 656-5814

18 Email: GHand@HandSullivan.com

19 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

20 TITINA FARRIS and PATRICK FARRIS,

21 Plaintiffs,

22 vs.

23 BARRY RIVES, M.D.; LAPAROSCOPIC
24 SURGERY OF NEVADA, LLC et al.,

25 Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

26 **PLAINTIFFS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS**

27 Pursuant to N.R.S. 18.005, 18.020, N.R.S. 18.110 and N.R.C.P. 68, Plaintiffs PATRICK
28 FARRIS and TITINA FARRIS, by and through their attorney of record, KIMBALL JONES, ESQ.
and JACOB G. LEAVITT, ESQ., with the Law Offices of **BIGHORN LAW** and GEORGE F.
HAND, ESQ., with the Law Offices of **HAND & SULLIVAN, LLC**, hereby move this Court to
recover their costs of suit. The costs were actually incurred and are reasonable in amount.

///

1 Plaintiffs are entitled to recovery statutory interest on the above costs from date the cost was
 2 incurred through the date of Entry of Judgment pursuant to N.R.S. 17.130 and *Gibellini v. Klindt*, 110
 3 Nev. 1201, 885 P.2d 540 (1994). For purposes of calculation of prejudgment interest, the actual date
 4 or latest date each reasonable cost was incurred is set forth. Further, Plaintiffs are entitled to post-
 5 judgment interest at the statutory rate from the date of Entry of Judgment.
 6

7 **BIGHORN LAW MEMORANDUM OF COSTS AND DISBURSEMENTS**

8	Clark County Treasurer (<i>Video Recordings from Vickie Center v. Barry Rives</i>)	\$8.00
9		
10	Bruce T. Adornato, MD (<i>Expert Deposition Fee</i>)	\$1,750.00
11	Kim S. Erlich, MD (<i>Invoice 190723 - Expert Deposition Fee</i>)	\$2,500.00
12	Copies, Facsimiles, Runner, Phone Charges, etc.	\$350.00
13		
14	National Medical Consultants, P.C. (<i>Invoice No.: 27849 - Deposition Prep of Expert Alan Stein, M.D.</i>)	\$4,710.00
15		
16	Planet Depos, LLC (<i>Invoice No.: 289944 - Deposition of Bruce Adornato, M.D., Video Portion</i>)	\$1,005.00
17		
18	Planet Depos, LLC (<i>Invoice No.: 289932 - Deposition Transcript of Kim Steven Erlich, M.D.</i>)	\$828.80
19		
20	Planet Depos, LLC (<i>Invoice No.: 289943 - Deposition of Kim Steven Erlich, M.D., Video Portion</i>)	\$830.00
21		
22	National Medical Consultants, P.C. (<i>Invoice No.: 28475 - Deposition Prep of Expert Michael Hurwitz, M.D.</i>)	\$1,500.00
23		
24	Planet Depos, LLC (<i>Invoice No.: 289927 - Deposition Transcript of Bruce Adornato, M.D.</i>)	\$1,390.99
25		
26	National Medical Consultants, P.C. (<i>Invoice No.: 27498 - Deposition Prep of Expert Justin Willer, M.D.</i>)	\$3,250.00
27		
28	Planet Depos, LLC (<i>Invoice No.: 290970 - Deposition of Lance Stone, D.O., Video Portion</i>)	\$775.00
	Planet Depos, LLC (<i>Invoice No.: 290767 - Deposition Transcript of Lance Stone, D.O.</i>)	\$671.32

1	Legal Wings (Invoice No.: R-1908919.01 – E-Filing Motion on OST Charge)	\$10.00
2		
3	Litigation Services and Technologies of California, LLC (Invoice No.: 1337228 - Deposition Transcript of Michael B. Hurwitz, M.D.)	\$758.05
4		
5	Legal Wings (Invoice No.: R-1910077.01 - ROC of Motion to Strike on OST to Defense)	\$95.00
6		
7	DALOS Legal Services (Invoice No.: 250974 - Trial Exhibit Binders)	\$809.88
8		
9	Legal Wings (Invoice No.: R-1911808.01 - Runner Service - Filing and ROC of Plaintiffs' Motion to Strike Trial Briefs on OST)	\$80.00
10		
11	Legal Wings (Invoice No.: P-1911696.01 - Process Serve of Trial Subpoena on the COR for St. Rose Siena)	\$209.00
12		
13	Legal Wings (Invoice No.: P-1911097.01 - Process Serve of Trial Subpoena on Mary Jane Langan)	\$180.00
14		
15	Legal Wings (Invoice No.: P-1911694.01 - Process Serve of Trial Subpoena on the COR for Care Meridian)	\$204.00
16		
17	Dawn Cook Consulting, LLC (Invoice No.: 938 - Trial Testimony for Dawn Cook)	\$3,000.00
18		
19	Legal Wings (Invoice P-1911162.01 - Process Serve of Trial Subpoena on Bess Chang, M.D.)	\$134.00
20		
21	Legal Wings (Invoice No.: P-1911092.01 - Process Serve of Trial Subpoena on Naomi Chaney, MD.)	\$129.00
22		
23	Court Parking	\$18.00
24		
25	Legal Wings (Invoice No. R-1912062.01 - Run to Deliver Documents to Court)	\$59.04
26		
27	Legal Wings (Invoice No.: P-1911096.01 - Process Serve of Trial Subpoena on Lowell Pender)	\$134.00
28		
	National Medical Consultants, P.C. (Invoice No.: 28513 - Trial Appearance for Expert Alan Stein, MD)	\$9,000.00
	National Medical Consultants, P.C. (Invoice No.: 28712 - Trial Appearance for Expert Justin Willer, MD.)	\$10,000.00

1	Legal Wings (Invoice P-1911094.01 - Process Serve of Trial Subpoena on Sky Prince, M.D.)	\$129.00
2		
3	National Medical Consultants, P.C. (Invoice No.: 28711 - Trial Appearance for Expert Michael Hurwitz, MD)	\$8,000.00
4		
5	Legal Wings (Invoice No.: P-1911095.01 - Process Serve of Trial Subpoena on Addison Durham)	\$129.00
6		
7	Legal Wings (Invoice No.: R-1911871.01 - Plaintiffs' Renewed Motion to Strike on OST)	\$52.95
8		
9	Alex Barchuk, M.D. (Invoice No.: 2443 - Deposition Prep)	\$4,825.00
10		
11	Eighth Judicial District Court Portal (Copies of Complaint and Answer from Vickie Center v Barry Rives)	\$30.50
12		
13	Alex Barchuk, M.D. (Invoice No.: 2495. Trial Testimony Retainer)	\$6,000.00
14		
15	Domino's Pizza (Pizza for Jury)	\$85.80
16		
17	Greg Cochran (Invoice No.: 2019-00101 - Notary Service for Dr. Hurwitz for Audiovisual Consent)	\$50.00
18		
19	Legal Wings (Invoice No.: P-1911091.01 - Process Serve of Trial Subpoena on Barry Rives, MD)	\$129.00
20		
21	Legal Wings (Invoice No.: P-1911090.01 - Process Serve of Trial Subpoena on Vickie Center)	\$129.00
22		
23	Alex Barchuk, M.D. (Invoice No.: 2511 - Trial Testimony (Total Invoice is for \$12,670.00, minus \$6,000.00 Trial Testimony Retainer)	\$6,670.00
24		
25	Legal Wings (Invoice No. R-1912104.01 - Run to Deliver Documents to Court)	\$61.56
26		
27	Uber Ride	\$23.78
28		
	Uber Ride	\$14.62
	Uber Ride	\$8.08
	Uber Ride	\$8.08
	DALOS Legal Services (Invoice No.: 251033 - Video Editing and Powerpoint)	\$3,336.25

1	E-Filing Charges	\$70.00
2	TOTAL	\$74,138.70

3
4
5 **HAND & SULLIVAN, LLC MEMORANDUM OF COSTS AND DISBURSEMENTS**

6	Filing Fees	\$331.50
7	Service of Process	\$70.00
8	Courier/Filing Fees	\$235.50
9	Copies of medical and other records	\$435.47
10	Deposition/Expert Witness Fees	\$58,112.03
11	Reporters Fees for Depositions (Transcripts)	\$12,653.30
12	Postage, FedEx	\$252.55
13	Travel, Food, Lodging (Depositions, Hearings and Trial)	\$6,466.21
14	Parking (Depositions, Hearings and Trial)	\$423.00
15	TOTAL	\$78,979.56

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1 **DECLARATION OF KIMBALL JONES, ESQ., IN SUPPORT OF THE MEMORANDUM**
2 **OF COSTS AND DISBURSEMENTS**

3 KIMBALL JONES, ESQ., being duly sworn, states: that affiant is the attorney for Plaintiffs
4 TITINA FARRIS and PATRICK FARRIS, and has personal knowledge of the above costs and
5 disbursements expended; that the items contained in the above memorandum are true and correct to
6 the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily
7 incurred in this action.

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

10 Dated this 19th day of November, 2019.

11
12 /s/ Kimball Jones
13 **KIMBALL JONES, ESQ.**

DECLARATION OF GEORGE F. HAND, ESQ., IN SUPPORT OF THE MEMORANDUM OF COSTS AND DISBURSEMENTS

GEORGE F. HAND, ESQ., being duly sworn, states: that affiant is the attorney for Plaintiffs TITINA FARRIS and PATRICK FARRIS, and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant’s knowledge and belief; and that the said disbursements have been necessarily incurred in this action.

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

Dated this 19th day of November, 2019.

/s/ George F. Hand
GEORGE F. HAND, ESQ.

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CERTIFICATE OF SERVICE

Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 19th day of November, 2019, I served the foregoing **PLAINTIFFS'**

VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS as follows:

Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or

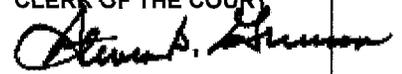
U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

Kim Mandelbaum, Esq.
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
&
Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825
Attorneys for Defendants

/s/ Erickson Finch
An employee of **BIGHORN LAW**

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Steven D. Grierson
CLERK OF THE COURT



1 **[OPPM]**
2 THOMAS J. DOYLE
3 Nevada Bar No. 1120
4 SCHUERING ZIMMERMAN & DOYLE, LLP
5 400 University Avenue
6 Sacramento, California 95825-6502
7 (916) 567-0400
8 Fax: 568-0400
9 Email: calendar@szs.com

6 KIM MANDELBAUM
7 Nevada Bar No. 318
8 MANDELBAUM CLARK NEWBERRY & ASSOCIATES
9 2012 Hamilton Lane
10 Las Vegas, Nevada 89106
11 (702) 367-1234
12 Email: filing@memlaw.net

10 Attorneys for Defendants BARRY J. RIVES,
11 M.D.; LAPAROSCOPIC SURGERY OF
12 NEVADA, LLC

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
15	Plaintiffs,	)	DEPT. NO. 31
16	vs.	)	DEFENDANTS BARRY J. RIVES, M.D.'S
17	BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND LAPAROSCOPIC SURGERY OF
18	SURGERY OF NEVADA, LLC, et al.,	)	NEVADA, LLC'S OPPOSITION TO
19	Defendants.	)	PLAINTIFFS' MOTION FOR FEES AND
20		)	COSTS
21)	
22)	

23 Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC
24 ("Defendants") hereby oppose plaintiffs TITINA FARRIS and PATRICK FARRIS'
25 ("Plaintiffs") Motion for Fees and Costs. As described in more detail below, Plaintiffs are
26 not entitled to an Order awarding attorney's fees associated with their June 5, 2019 Offer

1 of Judgment under the factors articulated in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268
2 (1983). In the event this Court is inclined to award attorney's fees under NRCPC 68,
3 Plaintiffs' attorney's fees must be compliant with NRS 7.095. Finally, Plaintiffs are not
4 entitled to an additional award of attorney's fees in the amount of \$109,500, because such
5 an award would violate NRS 7.095, assuming this Court awards attorney's fees pursuant
6 to NRCPC 68, and the requested sum of \$109,500 is not reasonable. Finally, while
7 Defendants do not dispute Plaintiffs' entitlement to reasonable and recoverable costs
8 under NRS 18.005, as described in Defendants' Motion to Re-Tax Costs, Plaintiffs are not
9 entitled to the total amount of \$153,118.26 requested in their Memorandum of Costs and
10 the Motion for Fees and Costs.

11 Defendants' Opposition is based upon the papers, pleadings and documents on file
12 herein, the Declarations of Thomas J. Doyle, Esq. and Robert L. Eisenberg, Esq., the
13 argument of counsel, and any such other evidence as may be presented.

14 Dated: December 2, 2019

15 **SCHUERING ZIMMERMAN & DOYLE, LLP**

16
17 By /s/ Thomas J. Doyle
18 THOMAS J. DOYLE
19 Nevada Bar No. 1120
20 400 University Avenue
21 Sacramento, CA 95825-6502
22 (916) 567-0400
23 Attorneys for Defendants BARRY J.
24 RIVES, M.D.; LAPAROSCOPIC SURGERY
25 OF NEVADA, LLC
26

DECLARATION OF THOMAS J. DOYLE, ESQ.

I, THOMAS J. DOYLE, declare as follows:

1. I am an attorney at law licensed to practice in the State of Nevada, and I am a partner of the law firm of Schuering Zimmerman & Doyle, LLP, attorneys of record for Defendants.

2. I am making this Declaration in support of Defendants' Opposition to Plaintiffs' Motion for Fees and Costs.

3. I am making this Declaration based upon my personal knowledge and if called to testify, I could and would do so competently.

4. Attached hereto as **Exhibit 1** is a true and correct copy of pertinent portions of Defendants' Initial Disclosure of Expert Witnesses.

5. Attached hereto as **Exhibit 2** is a true and correct copy of pertinent portions of Defendants' Rebuttal Expert Disclosures.

6. The jury was polled. The verdict was not unanimous.

7. Attached hereto as **Exhibit 3** is a true and correct copy of pertinent portions of the transcript for the October 10, 2019 hearing.

8. Attached hereto as **Exhibit 4** is a true and correct copy of pertinent portions of my firm's file copy of the 2004 Ballot Questions.

9. I did not receive any correspondence or documentation from Plaintiffs' counsel regarding the proposed amount of their attorneys' fees prior to the filing of the Motion for Fees and Costs.

10. Plaintiffs request sanctions in the form of attorneys' fees for five "areas" of "Defense misconduct." It remains Defendants' and my position there was no misconduct.

a. The first area is "The collateral source issue." I and Aimee Clark Newberry had only a limited amount of time to review the trial video recordings and trial transcripts because Plaintiffs' filed their motion on Friday, November 22, 2019 at 11:08

1 p.m. and both of us had prearranged Thanksgiving plans. My best estimate for the time
2 spent discussing this area is approximately 32 minutes. There is nothing more to add to
3 what has already been stated in Defendants' trial brief and during my oral arguments at
4 trial and after trial.

5 b. The second area is "Dr. [Naomi] Chaney's 'willingness' to attend
6 trial." Subject to the same caveat, my best estimate for the time spent discussing this area
7 is approximately 1 hour and 48 minutes. I still do not understand why this was an issue,
8 or why a payment to Dr. Chaney for her time away from her practice was an issue.
9 Concerning the latter, a treating physician is entitled to an hourly fee for testifying at a
10 deposition or trial. It was my intent before trial began, to compensate Dr. Chaney for her
11 time away from her practice to testify at trial. Neither I nor a member of my firm had a
12 discussion with Dr. Chaney about her hourly fee before she retained counsel. The first
13 such conversation was my conversation with her counsel.

14 Concerning Dr. Chaney's appearance at trial, Carrie Perrault in my office had email
15 communications with Dr. Chaney before trial, about testifying at trial; copies are attached
16 as **Exhibit 5**. Included in **Exhibit 5** is plaintiffs' objection to the first subpoena. The only
17 basis for the objection was the date for Dr. Chaney's appearance – the first day of trial. It
18 is my custom and practice to subpoena a witness for the first day of trial, then coordinate
19 with the witness an actual date for their appearance. After trial began, Riesa Rice in my
20 office had email communications with Dr. Chaney about her testimony; copies are
21 attached as **Exhibit 6**. No one in my office had any verbal communications with Dr.
22 Chaney about her testimony. I never spoke to Dr. Chaney about her testimony. Based on
23 the emails, it was my belief – a reasonable belief – Dr. Chaney was willing to testify at trial
24 and the subpoena was a formality. It remains my belief these issues raised by plaintiffs
25 were "Much Ado About Nothing."

26 ///

1 c. The third area is “the Deposition Transcript of Dr. [Michael] Hurwitz.”
2 There is only one comment to add to what I have already stated during oral arguments
3 at trial and after trial. The court has focused on my statement on October 18, 2019: “Well,
4 I can lodge the original deposition, or I have copies available. Plus the witness – well sorry
5 –.” I want to point out this statement was in response to a speaking objection by Plaintiffs’
6 counsel: “Your Honor, I object. There’s no – if he’s impeaching, we need the deposition
7 from the back, and I don’t believe there is one.”

8 I also want to address the notion Dr. Hurwitz had to testify a second day because
9 of my conduct. I believe Dr. Hurwitz was in Las Vegas and available to testify the morning
10 of October 18, 2019. Plaintiffs chose to spend the entire morning cross-examining
11 Dr. Barry Rives, instead of calling Dr. Hurwitz. His testimony began at approximately
12 1:30 p.m. There was a sidebar discussion from 2:25 p.m. to 2:40 p.m. (15 minutes),
13 another one from 2:58 p.m. to 3:05 p.m. (7 minutes) and then a break from 3:07 p.m. to
14 3:27 p.m. (20 minutes). There were arguments outside the presence of the jury from
15 3:27 p.m. to 3:38 p.m. (11 minutes) about his opinions concerning the medical expenses,
16 and Plaintiffs decided not to pursue those opinions. They said Dawn Cook would instead
17 offer opinions about the medical expenses. There was a sidebar discussion from
18 3:46 p.m. to 3:59 p.m. (13 minutes) and the jury was sent out at 4:00 p.m. for arguments
19 about Dr. Hurwitz’ opinion that the Center case “increases the negligence in my view.”
20 There was a recess from 4:32 p.m. to 4:36 p.m. (4 minutes) and the jury returned at
21 4:37 p.m. Plaintiffs passed Dr. Hurwitz and I began my cross-examination. I asked
22 Dr. Hurwitz if he remembered when I took his deposition, and if he remembered me
23 asking him a particular question. Plaintiffs objected, there was a sidebar discussion from
24 4:46 p.m. to 4:52 p.m. (6 minutes). The court instructed the jury to disregard my last
25 statement and I continued with my cross-examination. I asked a series of questions, there

26 ///

1 were a series of objections, there was a sidebar discussion from 4:55 p.m. to 4:56 p.m.
2 (one minute) and the jury was excused for the day.

3 The time spent at sidebar discussing the deposition transcript issue was
4 approximately 7 minutes. The questions on cross-examination, the objections and the
5 sidebar discussions were not the cause of Dr. Hurwitz returning (via video conference)
6 for a second day of testimony.

7 d. The fourth area is “Defendants’ post case resting offers of proof,”
8 which was not discussed at trial. I have nothing more to add to what I have already stated
9 during oral arguments after trial. For additional information on this area, see the
10 declaration of Robert Eisenberg, Esq.

11 e. The final area is “Defendants attempting to offer undisclosed,
12 unauthenticated office records of Dr. Rives.” There was not a substantial amount of time
13 spent discussing this area during trial. I still do not understand why this was an issue,
14 especially in light of Titina Farris’ response to Defendants’ special interrogatory No. 2,
15 which was served on December 29, 2016 and never supplemented; a copy is attached as
16 **Exhibit 7**. Defendants marked for identification Dr. Rives’ office records as Exhibit A; a
17 copy of Exhibit A is attached as **Exhibit 8**. If you look at each page of Exhibit A, toward the
18 bottom and left side is a Bates stamp that begins “PLTF.” It is obvious I used the records
19 Plaintiffs had obtained from Dr. Rives’ office and that they produced pursuant to
20 NRCPC 16.1. I therefore do not know why Plaintiffs are now saying I attempted to offer
21 “undisclosed” records.

22 Concerning the authentication of the records, Plaintiffs focused on the office notes
23 and the June 9, 2016 date. The date is found in two places: next to “electronically signed
24 by”; and at the bottom next to a long web address. As Dr. Rives explained, this date was
25 the date he printed the records so they could be produced pursuant to Plaintiffs’ request
26 for a copy of his office records. In addition, based on my experience in other medical

1 malpractice cases in which my clients used eClinicalWorks in their offices, the date that
2 appears next to "Electronically signed by" and next to the long web address is the date
3 my clients printed their office records. I confirmed this information by recently asking
4 Dr. Rives, as an example, to print the notes for July 31, 2014 and April 30, 2015. Instead of
5 the date June 9, 2016, the records had the date November 26, 2019. There was not enough
6 time before this opposition was due to obtain a declaration from an IT specialist familiar
7 with eClinicalWorks to confirm the meaning of the June 9, 2016 date. I will endeavor to
8 obtain a declaration from such an IT specialist to confirm what I confirmed. I therefore
9 request an opportunity to submit a supplement to Defendants' opposition if I can timely
10 locate an IT specialist.

11 I declare under penalty of perjury under the laws of the State of Nevada that the
12 foregoing is true and correct, and if called to testify, I could competently do so.

13 Executed this 2nd day of December, 2019, at Sacramento, California.

14
15 /s/ Thomas J. Doyle
16 THOMAS J. DOYLE, ESQ.

1 actions involving appeal matters; and I have testified regarding appellate matters and
2 work performed by appellate attorneys.

3 5. I have frequently planned, coordinated, moderated and otherwise participated
4 in numerous continuing legal education programs dealing with civil trial litigation and civil
5 appeals. I have also lectured several times regarding these subjects.

6 6. For approximately 15 years I have been an attorney member of the Nevada
7 Supreme Court Bench-Bar Committee.

8 7. In 2007, I was retained as an appellate consultant for the defendant in a major
9 Clark County personal injury product liability case, *Provenza v. LeMans*, No. A446708,
10 pending in the department of Hon. Elizabeth Gonzalez. The plaintiffs were represented
11 by Robert Eglet and two other experienced law firms. The defendant was represented
12 by local counsel John Gormley and by a highly experienced personal injury defense firm
13 from Texas. The jury trial lasted 15 days. Judge Gonzalez had excluded certain testimony
14 and witnesses proffered by the defense. In consultation with me, the defense team (five
15 attorneys) decided to file offers of proof, in order to preserve the record for a potential
16 appeal. Near the end of the trial, only one or two days before closing arguments, the
17 defense team filed approximately 15 offers of proof consisting of partial and/or complete
18 deposition transcripts. The defense team did not seek prior permission to file the offers
19 of proof, because, so far as I know, none of us thought such permission was necessary.

20 8. After the defense team filed the 15 offers of proof, neither attorney Eglet nor
21 any of the other attorneys representing the plaintiffs objected or in any way suggested that
22 the defense attorneys had done something wrong by filing the offers of proof without
23 permission near the conclusion of the trial. Further, I was personally present in court
24 during the last days of the trial, and to my recollection, Judge Gonzalez never said
25 anything to suggest that she thought the defense team had done anything wrong by filing
26 the offers of proof without permission shortly before the closing arguments.

1 9. The *Provenza* jury returned a verdict of approximately \$50 million, and the
2 defendant appealed. I was the lead appellate counsel. The appellate appendix I filed
3 with the Nevada Supreme Court contained the 15 offers of proof, and the parties referred
4 to the offers of proof in the briefs. During the appeal, former Clark County District Judge
5 Wall joined the Eglet firm, and as I recall, Judge Wall presented the Supreme Court oral
6 argument for the plaintiffs. The case settled shortly after oral argument. During the entire
7 time the appeal was pending, neither Mr. Eglet nor Judge Wall ever objected to the offers
8 of proof in the appellate record; nor did Mr. Eglet or Judge Wall in any way suggest that
9 the offers of proof were somehow improper. Further, the Nevada Supreme Court itself
10 never informed the parties that the Court thought there was anything improper with the
11 offers of proof that the defense had filed without permission shortly before closing
12 arguments at trial.

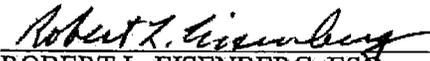
13 10. During the entire time I worked at the Nevada Supreme Court, in my thousands
14 of interactions with the justices, I never heard any of the justices express any criticism of
15 an attorney who filed an offer of proof to preserve the record for a potential appeal.
16 Additionally, in the thousands of appellate briefs I have read over the years, and in the
17 dozens of continuing education programs which I have attended, I have never seen or
18 heard any criticism of an attorney who attempted to preserve an appellate record by filing
19 an offer of proof consisting of a deposition transcript.

20 11. In the present case, I was retained as a consultant for a potential appeal by Dr.
21 Rives, in the event of a verdict for the plaintiffs. Late in the trial, I discussed with Mr. Doyle
22 the potential for filing offers of proof which would include deposition transcripts and
23 expert witness reports, to preserve the record for a potential appeal. I recalled my
24 experience in the *Provenza* case, and I informed Mr. Doyle of that experience (although
25 I do not believe I mentioned the name of the case), including the facts that (1) the offers
26 of proof in that case were filed shortly before the end of the trial, without first seeking

1 permission; (2) the law firms representing the plaintiffs never questioned the propriety of
2 the offers of proof; (3) Judge Gonzalez never raised an issue regarding the offers of proof;
3 and (4) the Supreme Court never raised an issue regarding the offers of proof. Based on
4 my personal experience in the *Provenza* case with Judge Gonzalez – as well as my nearly
5 40 years of experience dealing with Nevada litigation and appeals – I did not believe there
6 was anything improper with filing the offers of proof. And I advised Mr. Doyle of my
7 opinion.

8 I declare under penalty of perjury under Nevada law that the foregoing is true and correct,
9 to the best of my knowledge and belief, and if called to testify, I could competently do so.

10 Executed this 2nd day of December, 2019, at Reno, Nevada.

11 
12 ROBERT L. EISENBERG, ESQ.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTUAL BACKGROUND**

4 This medical malpractice action arose from the care and treatment Dr. Rives, a
5 general surgeon, provided to Titina Farris. Plaintiffs alleged Defendants breached the
6 standard of care.

7 On November 15, 2018, Defendants made their initial disclosure of expert
8 witnesses. *See*, Exhibit 1. In support of Defendants' position their care was within the
9 standard of care, Defendants disclosed Dr. Brian Juell, a general surgeon in Reno, Nevada,
10 and Dr. Bart Carter, a general surgeon in Arizona. It was Dr. Juell and Dr. Carter's opinion,
11 that all aspects of Defendants' care of Ms. Farris were within the standard of care.
12 Exhibit 1.

13 On December 19, 2018, Defendants made their rebuttal disclosure of expert
14 witnesses. Exhibit 2. Defendants disclosed Dr. Bruce Adornato, a neurologist, and Dr. Kim
15 Erlich, an infectious disease specialist, who commented on the issue of causation;
16 Dr. Erlich also commented that Defendants' care was within the standard of care.
17 Exhibit 2. Defendants also disclosed a number of damages expert witnesses, Dr. Lance
18 Stone, a physical medicine and rehabilitation specialist, Dr. Scott Kush, a life expectancy
19 specialist, Sarah Larsen, a life care planner, and Erik Volk, an economist. Exhibit 2.

20 On June 5, 2019, Plaintiffs served an Offer of Judgment in the amount of \$1,000,000.
21 Defendants did not accept the Offer of Judgment in light of their expert support.

22 Trial of this action commenced on October 14, 2019. On November 1, 2019, the jury
23 returned a verdict finding Defendants at fault and awarded Plaintiffs damages.

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1 **II.**

2 **ARGUMENT**

3 **A. Plaintiffs Are Not Entitled to an Award of Costs in the Amount of \$153,188.26.**

4 Plaintiffs seek an award of \$153,188.26 in costs as the prevailing party. While
 5 Defendants do not dispute Plaintiffs' status as the prevailing party, Defendants do, as
 6 outlined in their Motion to Re-Tax Costs, filed on November 22, 2019, dispute their
 7 entitlement to the sum of \$153,188.26. A number of cost items are either unreasonable
 8 or unrecoverable under NRS 18.005. Defendants herein incorporate all arguments and
 9 authorities made in their Motion to Re-Tax Costs, and in support of their position that
 10 Plaintiffs are not entitled to the entire sum of \$153,188.26 as requested in their
 11 Memorandum of Costs and the Motion for Fees and Costs.

12 **B. Plaintiffs Are Not Entitled to an Award of Attorney's Under NRCP 68 Because**
 13 **the *Beattie* Factors Do Not Support an Award of Attorney's Fees.**

14 Plaintiffs are not entitled to an award of attorney's fees under NRCP 68 or under
 15 *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983). An award of attorney's fees based
 16 on NRCP 68 is discretionary with the Court. *Bidart v. American Title Ins., Co.*, 103 Nev. 175,
 17 734 P.2d 732 (1987). The Nevada Supreme Court held in *Beattie*, the trial court must
 18 carefully weigh the following factors ("*Beattie* Factors") in exercising its discretion to
 19 award attorney's fees under NRCP 68:

- 20 (1) Whether the plaintiffs' claim was brought in good faith;
- 21 (2) Whether the offerors' offer of judgment was brought in good faith;
- 22 (3) Whether the offeree's decision to reject the offer and proceed with trial was
 23 grossly unreasonable or in bad faith; and,
- 24 (4) Whether the fees sought by the offeror are reasonable and justified in amount.

25 *Id.*

26 ///

1 Where the party making the offer of judgment is the plaintiff, the first factor is
2 whether the defendant's defense was brought in good faith. *Yamaha Motor Co., U.S.A. v.*
3 *Arnoult*, 114 Nev. 233, 251-252, 955 P.2d 661 (1998).

4 As a preliminary matter, Defendants note that Plaintiffs do not make any argument
5 in their Motion for Fees and Costs in support of their entitlement to attorney's fees under
6 *Beattie*. While there is a reference to *Beattie*, there is no argument or showing that under
7 the *Beattie* Factors, an award of attorney's fees is proper in connection with Plaintiffs'
8 Offer of Judgment.

9 In fact, 3 of the 4 *Beattie* Factors as modified by *Yamaha Motor Co.* weigh in favor
10 of denying Plaintiffs' request for attorney's fees. Defendants' defense was brought and
11 maintained in good faith (factor 1), Defendants rejection of the Offer of Judgment was not
12 in bad faith or grossly unreasonable (factor 3), and the attorney's fees sought by Plaintiffs
13 are unreasonable, unjustified and contrary to Nevada law (factor 4). Accordingly,
14 Plaintiffs' request for attorney's fees should be denied.

15 ***1. The First Beattie Factor Weighs Against an Award of Attorney's Fees***
16 ***Because Defendants' Defense Was Brought and Maintained in Good Faith.***

17 Plaintiffs have made no showing Defendants defended this case in bad faith. The
18 mere fact that the jury found in Plaintiffs' favor does not mean Defendants' defense was
19 brought or maintained in bad faith. This is not a case where Defendants maintained a
20 defense despite a lack of medical expert support for their care. In fact, Defendants had
21 substantial expert witness support of their care of Ms. Farris from well-qualified medical
22 experts. *See*, Exhibit 1. Dr. Juell and Dr. Carter, both general surgeon, were supportive of
23 all aspects of the care Defendants provided to Ms. Farris. Exhibit 1. So too was Dr. Erlich,
24 an infectious specialist. Exhibit 2. It was Dr. Juell and Dr. Carter's opinion that Defendants
25 complied with the standard of care at all times in their care of Ms. Farris. Exhibit 1.

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1 Additionally, Dr. Adornato, a neurologist, and Dr. Erlich supported Defendants' causation
2 defense. Exhibit 2.

3 Defendants had a good faith basis for defending their care in this case, as such care
4 was supported by several expert witnesses. Additionally, the jury's verdict was not
5 unanimous. Declaration of Thomas J. Doyle, ¶ 6. The first *Beattie* Factor weighs against
6 an award of attorney's fees because Defendants' defense was brought and maintained
7 in good faith.

8 **2. *The Third Beattie Factor Weighs Against an Award of Attorney's Fees***
9 ***Because Defendants' Rejection of the Offer of Judgment was not Grossly***
Unreasonable or in Bad Faith.

10 In determining whether an award of attorney's fees is proper under NRCP 68, the
11 trial court must carefully analyze whether the offeree's decision to reject the offer and
12 proceed with trial was grossly unreasonable or in bad faith. *Beattie v. Thomas*, 99 Nev.
13 579, 668 P.2d 268 (1983). Here, the third *Beattie* Factor weighs against an award of
14 attorney's fees because there can be no showing Defendants rejected the Offer of
15 Judgment in bad faith or their rejection of the Offer of Judgment was grossly
16 unreasonable. Defendants' rejection of the \$1,000,000 Offer of Judgment was reasonable
17 given the expert support Defendants received in the case. As of the timing of the Offer of
18 Judgment on June 5, 2019, the parties had disclosed expert witnesses. Defendants were
19 in a position at that time, to evaluate the strength of their expert witness support
20 compared to that of Plaintiffs. Defendants had strong expert witness support in June 2019,
21 and throughout this case. In addition, at this point in time there was not even an inkling
22 the Center case would become part of this case. It was therefore reasonable for
23 Defendants to determine their chance of doing better at trial than a judgment of
24 \$1,000,000 was very good. Accordingly, there is no showing Defendants' failure to accept
25 the Offer of Judgment was in bad faith or grossly unreasonable and Plaintiffs are therefore
26 not entitled to an award of attorney's fees under NRCP 68.

1 **3. *The Fourth Beattie Factor Weighs Against an Award of Attorneys' Fees Because Plaintiffs' Requested Attorney's Fees Are Unreasonable and Contrary to Nevada Law.***
2

3 The Court must assess whether the fees sought by the offeror are reasonable and
4 justified in amount before an award of attorney's fees is appropriate. *Beattie v. Thomas*,
5 99 Nev. 579, 668 P.2d 268 (1983). Here, Plaintiffs' request for \$2,547,122.21 (40% of the
6 \$6,367,805.52 judgment and without the limitation set by NRS 7.095) in attorneys' fees is
7 unreasonable and is contrary to Nevada law in medical malpractice cases. Additionally,
8 Plaintiff's alternative request for \$1,026,835.83 in fees if NRS 7.095 is applied is contrary to
9 Nevada law.

10 **a. Plaintiffs' Request for a Waiver of NRS 7.095 is Unreasonable and Contrary to Nevada Law.**
11

12 Nevada law, as enacted as part of the Keep Our Doctors in Nevada Initiative in
13 2004, dictates how a contingency fee must be calculated in a medical malpractice action.
14 *See*, NRS 7.095.

- 15 1. An attorney **shall not contract for or collect** a fee contingent on an
16 amount of recovery for representing a person seeking damages in
17 connection with an action for injury or death against a provider of
18 health care based upon professional negligence in excess of:
19 (a) Forty percent of the first \$50,000.00 recovered;
20 (b) Thirty-three and one-third percent of the next \$50,000.00
21 (c) Twenty-five percent of the next \$500,000.00 recovered; and
22 (d) Fifteen percent of the amount of recovery that exceeds
23 \$600,000.00.

23 NRS 7.095(1) (emphasis added).

24 The limitations set forth in subsection 1 of NRS 7.095 apply to all forms of recovery,
25 including, without limitation, settlement, arbitration and judgment. NRS 7.095(2). Under
26 NRS 7.095, the term "recovered" means the net sum recovered by the plaintiff after

1 deducting any costs or disbursements incurred in connection with the prosecution of the
2 action. NRS 7.095(3).

3 Plaintiffs claim they are entitled to an award of attorney's fees contrary to
4 NRS 7.095, because Plaintiffs waived the limitations of NRS 7.095. Not only is such a
5 position not supported by the cases cited by Plaintiffs in their Motion for Fees and Costs
6 but it is contrary to Nevada law and the purpose of NRS 7.095.

7 Plaintiffs claim "case law is clear that a client may waive this limitation on fees, so
8 long as the waiver is 'knowing, voluntary, and intelligent.'" In support of this statement,
9 Plaintiffs cite to an Order signed by the Honorable Jim Crockett in the unrelated case of
10 *Mendoza v. Johnson*. First, the Order attached as Exhibit 3 to Plaintiffs' motion is a district
11 court order in a fee dispute between the attorney and his clients, which is not binding
12 authority in this case, and it is distinguishable on its facts. In that case, the physician
13 settled, and there was no attempt to obtain a fee award against the defendant physician
14 in excess of the statutory limit. The attorney claimed the clients waived the limits; the
15 clients denied it. After an evidentiary hearing, Judge Crockett found a waiver had
16 occurred, and the attorney was allowed to recover a full uncapped contingency fee from
17 the settlement money the physician had paid. *Mendoza* is irrelevant here, because in that
18 case there was no attempt to obtain a fee award against the defendant physician in
19 excess of the statutory limit.

20 Additionally, the cases cited by Plaintiffs do not stand for the proposition that
21 NRS 7.095 can be waived. *Udevco Inc. v. Wagner*, 100 Nev. 185, 678 P.2d 679 (1984) did
22 not involve a waiver of NRS 7.095; it was not a medical malpractice action. Instead,
23 *Udevco Inc.* was an action to recover on perfected liens by a subcontractor against a
24 developer. *Udevco Inc. v. Wagner*, 100 Nev. 185, 190 (1984). It had nothing to do with a
25 waiver of the limitation on fees as stated in Plaintiffs' motion. Similarly, it did not deal with

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1 a waiver of statutory protections or provisions. It involved a wavier of a provision in a
2 construction contract. *Id.*

3 Similarly, *McKeeman v. General Am. Life Ins.*, 111 Nev. 1042, 899 P.2d 1124 (1995)
4 did not involve a waiver of NRS 7.095; it was not a medical malpractice action. Instead,
5 *McKeeman* was an action for a breach of an insurance contract. *McKeeman v. General*
6 *Am. Life Ins.*, 111 Nev. at 1045-1047. The insurance company alleged a wavier of a
7 provision in its own policy. *Id.* It had nothing to do with a waiver of the limitation on fees
8 as stated in Plaintiffs' motion. *See, Id.* Similarly, it did not deal with a waiver of statutory
9 protections or provisions. *See, Id.* Contrary to Plaintiffs' representation in their Motion for
10 Fees and Costs, the case law is not clear, or even suggestive that a plaintiff can waive the
11 limitations on fees under NRS 7.095.

12 A waiver of the limitations of NRS 7.095 would undermine the purpose and
13 legislative intent behind the statute. *See*, 2004 Ballot Questions, Exhibit 4, p. 14-22. When
14 the attorney's contingency fees provisions under NRS 7.095 were enacted, as a part of the
15 Keep Our Doctors in Nevada Initiative in 2004, it was a response to a healthcare crisis in
16 our state. *See, Id.* At that time, the lack of certainty in medical malpractice awards,
17 unchecked by the types of tort reforms that existed in other jurisdictions, alienated
18 healthcare providers from the State of Nevada. To ensure our state was staffed with
19 quality and competent healthcare providers, the various limitations on a recovery in
20 medical malpractice actions and other reforms were enacted.

21 The limitations on recovery in medical malpractice actions, such as the cap on
22 non-economic damages under NRS 41A.035 and the abrogation of joint and several
23 liability under NRS 41A.045, were counterbalanced by provisions that ensured the injured
24 party received as much compensation for their injuries as possible within the framework
25 of the new tort reforms. One such provision was the limitation on the recoverable
26 attorney's contingency fees. NRS 7.095 ensures an injured party who prevails, can keep

1 as much of their award as possible, by limiting the portion of the award that goes to their
2 attorney, while adding an element of certainty to the total awards paid by defendant
3 healthcare providers.

4 The Nevada Supreme Court has recognized that the expressed goal of the KODIN
5 legislation was to “stabilize Nevada’s healthcare crisis and **provide protection for both**
6 **doctors and patients.**” *Tam v. District Court*, 131 Nev. 792, 798, 358 P.3d 234, 239 (2015)
7 (emphasis added). Allowing an attorney to obtain a waiver from the patient/client would
8 be contrary to this goal, from the patient’s standpoint. And allowing such a waiver to have
9 the effect of increasing a physician’s potential liability for attorneys’ fees, to an amount
10 greater than the statutory cap, would also be contrary to the goal of providing protection
11 to the physician—particularly when the physician had no input into the patient/client’s
12 waiver of the cap.

13 In upholding the cap on noneconomic damages, the *Tam* court noted the
14 legislative history of the statutes indicated “no exceptions” to the cap on noneconomic
15 damages. Similarly, nothing in the history of the cap on attorneys’ fees as a part of KODIN
16 indicates that there are any exceptions to the attorneys’ fee cap.

17 A court’s duty is to construe a statute in a manner that is consistent with the intent
18 and purpose of the legislation, and that also avoids absurd and unreasonable results. *S.*
19 *Nev. Homebuilders Ass’n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171 (2005). A court
20 should consider the “policy and spirit of the law.” *Fierle v. Perez*, 125 Nev. 728, 735, 219
21 P.3d 906, 911 (2009), overruled on other grounds by *Egan v. Chambers*, 129 Nev. 239, 299
22 P.3d 364 (2013). These rules of statutory interpretation—requiring a court to consider
23 the purpose of the legislation and to avoid an absurd result—apply to initiative petitions,
24 including the 2004 initiative petition dealing with medical malpractice. *Fierle*, 125 Nev. at
25 735-38.

26 ///

1 NRS 7.095 contains mandatory language expressly prohibiting contingency fee
2 percentages beyond specified limits in medical malpractice actions. “An attorney **shall**
3 **not** contract for or collect a fee” beyond the limits in the statute. NRS 7.095 (emphasis
4 added). The word “shall” in a statute is mandatory. *State v. American Bankers Ins. Co.*,
5 106 Nev. 880, 882, 802 P.2d 1276 (1990). The words “shall not” in a statute demonstrate
6 an intent to prohibit certain conduct. *Justin v. Second Jud. Dist. Ct.*, 132 Nev. 462, 468, 373
7 P.3d 869, 873 (2016). Statutory language creating a “shall not” prohibition is mandatory.
8 *Slattery v. Sheriff, Clark County*, 92 Nev. 19, 544 P.2d 894 (1976). Nothing in NRS 7.095
9 indicates the limit can be waived. But even if the limit can be waived by the patient/client,
10 this should only impact the amount of fees the attorney can collect from the client. It
11 should have no impact on the amount of the physician’s potential liability to the plaintiff
12 for attorneys’ fees. To hold otherwise would be directly contrary to the purpose of the
13 KODIN legislation. Accordingly, Plaintiffs’ request for this Court to disregard the law of this
14 state and waive NRS 7.095 should be denied.

15 **b. Plaintiffs’ Alternative Fees do not Comply with NRS 7.095.**

16 Plaintiffs’ alternative request for attorneys’ fees of \$1,026,835.83 purportedly under
17 the requirements of NRS 7.095 is improper as their calculations are incorrect under
18 NRS 7.095. To determine the total sum “recovered” by Plaintiffs, the total damages
19 awarded against Defendants after the application of NRS 41A.035 (\$6,367,805.52) would
20 then need to be reduced by Plaintiffs’ attorneys’ costs incurred in connection with the
21 prosecution of the action. According to Plaintiffs’ Memorandum of Costs, their costs are
22 \$153,188.26, however it is likely that Plaintiffs’ total costs include a number of items that
23 are not recoverable under NRS 18.005 and therefore were not included in the
24 Memorandum of Costs. Plaintiffs’ actual total costs must be first established before
25 calculating their appropriate fee under NRS 7.095(1).

26 ///

1 Additionally, under the factors articulated in *Brunzell v. Golden Gate Nat'l Bank*,
2 85 Nev. 345, 455 P.2d 31 (1969), Plaintiffs' request for \$1,026,835.83 in attorneys' fees is
3 unreasonable. In determining the reasonable value of an attorney's services, the Court
4 should look to the following factors: (1) the qualities of the advocate in terms of ability,
5 training, education, experience, professional standing and skill; (2) the character of the
6 work to be done in terms of its difficulty, its intricacy, its importance, time and skill
7 required, the responsibility imposed and the prominence and character of the parties
8 where they affect the importance of the litigation; (3) the work actually performed by the
9 lawyer and (4) the result: whether the attorney was successful and what benefits were
10 derived. Plaintiffs' argument the *Brunzell* factors support their request for \$1,026,835.83
11 in attorney's fees is based on the unreasonable argument that Plaintiffs' counsel is entitled
12 to an hourly fee of up to \$500 per hour, which is an unreasonable hourly fee in the context
13 of a medical malpractice action in Nevada. Plaintiffs' requested attorneys' fees are
14 unreasonable and therefore Plaintiffs' Motion for Attorney's Fees must be denied.

15 c. **Plaintiffs Are Only Entitled to Attorneys' Fees from the Date of the**
16 **Offer of Judgment.**

17 If the offerree rejects an offer of judgment and fails to obtain a more favorable
18 judgment, the offeree must pay the offeror's post-offer costs and expenses ... and
19 reasonable attorney fees *actually incurred by the offeror from the time of the offer.*
20 NRCP 68(f)(1)(B), *emphasis added*. Here, Plaintiffs' request attorneys' fees that relate to
21 the case in its entirety, and are not limited to the period of time from the date of the Offer
22 of Judgment of June 5, 2019. NRCP 68 does not allow the offeror to recover its entire
23 attorneys' fees for the case, but instead it allows the limited attorney's fees from the date
24 of the offer of judgment. Accordingly, Plaintiffs' requested attorneys' fees must be reduced
25 to an amount associated with the period of time starting on June 5, 2019, not the
26 beginning of this case.

1 **C. Plaintiffs' Request for Additional Attorneys' Fees as a Sanction are**
2 **Unreasonable**

3 In addition to their contingency fee under NRCP 68, Plaintiffs also requested two
4 categories of attorneys' fees as a sanction against Defendants: \$96,000 in attorneys' fees
5 associated with trial and \$13,500 in attorneys' fees associated with hearings on
6 September 26, 2019, October 7, 2019, November 7, 2019, November 13, 2019 and
7 November 14, 2019. As described in more detail below, Plaintiffs' request for additional
8 attorneys' fees should be denied as Plaintiffs failed to comply with this Court's Order
9 regarding the submission of proposed attorney's fees as a sanction against Defendants,
10 additional attorneys' fees violate NRS 7.095, and the total requested attorneys' fees are
11 unreasonable.

12 ***1. Plaintiffs failed to comply with this Court's Order regarding the***
13 ***submission of proposed attorneys' fees.***

14 On October 10, 2019, the measure of attorneys' fees for Plaintiffs' appearance at
15 hearings was discussed. The Court provided the following guidance on the procedures
16 for Plaintiffs relative to their requested attorney's fees for sanctions against Defendants.

17 Now, monetary fees. The Court – on monetary fees, the Court's going to find
18 that the fee amount is – I'm going to have Plaintiffs' counsel submit what
19 they feel is an appropriate reasonable fee broken down. We'll have defense
20 counsel look at that first. If defense counsel agrees, then the Court would
21 potentially sign off on it. If defense counsel disagrees, then you all are going
22 to be able to present it to the Court. I will tell you that the Court's general
23 inclination is the fee amount would count for Monday's hearing, part of
24 today's hearing, but not the part that we had to do the motion to strike
25 because that was independently having to be done.

26 But part -- the continuation of the sanction hearing for today, and part of the
hearing -- and then the time for the hearing on the 26th is really where the
Court was inclined to go, the reasonable breaking down of that. But not the
time that we otherwise had to do for your motion to strike, and not for the
calendar call items obviously, because the calendar call was separate and
apart. Okay.

So I'm looking for reasonable attorney's fees, and not for multiple attorneys.
I mean, the fact that she chose to have three attorneys at some point and
multiple attorneys at other points. The Court wasn't inclined to give -- I'm not
saying that means one. Just reasonable attorney's fees. Look at it, talk to
defense counsel, evaluate it. And then the Court's going to look at it. Okay.

1 MR. JONES: The preparation of the motion, Your Honor?

2 THE COURT: Including potentially the preparation of the motion. Once
3 again, I'm going to see what you have. Go to defense counsel
4 first. See what you object to. And then present it to the Court,
5 right.

6 Exhibit 3, p. 68:25-70:1.

7 Plaintiffs failed to comply with the procedural requirements for requesting
8 attorneys' fees as sanctions against Defendants. Defendants did not receive any
9 correspondence or documentation from Plaintiffs' counsel regarding the proposed
10 amount of their attorneys' fees prior to the filing of the Motion for Fees and Costs.
11 Declaration of Thomas J. Doyle, ¶ 8. Accordingly, Plaintiffs' request for additional
12 attorneys' fees for sanctions should be denied.

13 **2. Plaintiffs' request for additional attorneys' fees would violate NRS 7.095.**

14 Attorneys' fees in a medical malpractice action are limited by NRS 7.095(1). The
15 limitations set forth in subsection 1 of NRS 7.095 apply to all forms of recovery.
16 NRS 7.095(2).

17 Here, Plaintiffs' request attorney's fees in the amount of \$96,000 for attorneys' fees
18 at trial and \$13,500 for attorneys' fees at various hearings, in addition to the approximately
19 \$1,000,000 in attorneys' fees requested as their contingency fee in this case. NRS 7.095
20 limits the total attorneys' fees recovered by a medical malpractice plaintiff's attorney, and
21 Plaintiffs' requested fees, in addition to the maximum fees allowable under NRS 7.095,
22 violate the limitation set on total attorneys' fee awards in a medical malpractice action.
23 Accordingly, Plaintiffs' request for additional attorneys' fees beyond the amount allowed
24 for their contingency must be denied.

25 **3. Plaintiffs' requested additional attorneys' fees are unreasonable.**

26 This Court advised, when discussing the issue of attorneys' fees for various
hearings, that an award of attorneys' fees would need to be for reasonable fees:

1 So I'm looking for reasonable attorney's fees, and not for multiple attorneys.
2 I mean, the fact that she chose to have three attorneys at some point and
3 multiple attorneys at other points. The Court wasn't inclined to give – I'm
not saying that means one. Just reasonable attorney's fees. Look at it, talk
to defense counsel, evaluate it.

4 Exhibit 3, p. 69:16-21.

5 Here, Plaintiffs have requested fees for both the various hearings and trial, that in
6 addition to violating the limitations under NRS 7.095(1), are also unreasonable. Plaintiffs
7 requested \$96,000 in attorneys' fees for trial, at \$500 per hour, for three attorneys, for
8 16 hours per day, for four days, based on Plaintiffs' unsupported claim four additional trial
9 days were necessary given Defendants' and their attorneys' trial conduct.

10 It is unreasonable for Plaintiffs to recover attorneys' fees for three attorneys. As
11 highlighted in the declarations submitted by Plaintiffs in support of their Motion for Fees
12 and Costs, each of Plaintiffs' three trial attorneys, have significant trial experience. It was
13 unnecessary given Plaintiffs' attorneys' trial experience, and the issues in this case, for
14 three attorneys to try this case. Defendants were represented by a single attorney at trial.
15 Plaintiffs' recovery for attorneys' fees for trial as sanctions against Defendants, if any,
16 therefore must be based on the number of attorneys necessary to try the case which is
17 one attorney.

18 It is also unreasonable for Plaintiffs to estimate that a total of four days of 16 hours
19 per day were spent on trial matters associated with events precipitated by actions taken
20 by Defendants or their attorney at trial. The time spent during trial addressing the
21 collateral source issue, Dr. Naomi Chaney's trial testimony, the deposition transcript of
22 Dr. Michael Hurwitz, and the medical records from Dr. Rives was substantially less than
23 four 16 hour days. Under Plaintiffs' proposed fee calculation, an additional 64 hours of trial
24 time was created by Defendants or their attorney, which is incorrect.

25 Based on a review of the trial video recordings and transcripts for the four trial
26 issues addressed in Plaintiffs' motion, approximately 32 minutes were spent on arguing

1 the collateral source issue. Declaration of Thomas J. Doyle, ¶ 10(a). Approximately 1
2 hour and 48 minutes were spent on the issue of Dr. Chaney's testimony. Declaration of
3 Thomas J. Doyle, ¶ 10(b). Approximately 7 minutes were spent on the issue of Dr. Hurwitz'
4 deposition transcript. Declaration of Thomas J. Doyle, ¶ 10(c). The issue of Dr. Rives' chart
5 and the printed date did not consume a substantial amount of time. Declaration of
6 Thomas J. Doyle, ¶ 10(e). There was no time spent on the issue of Defendants' Offers of
7 Proof that extended trial. Declaration of Thomas J. Doyle, ¶ 10(d).

8 Finally, the total time spent in trial is within range of the estimated length of trial.
9 Plaintiffs' counsel estimated resting their case-in-chief on Tuesday, October 22, 2019.
10 Exhibit 3, p. 110:5-7. Defendants therefore, on October 10, 2019, advised the Court they
11 anticipated trial lasting approximately two days longer than the initial estimate of trial
12 ending on October 28, 2019. *See*, Exhibit 3, p. 108:7-11. Accordingly, prior to the start of
13 trial, it was Defendants' trial estimate the case would conclude on approximately
14 October 30, 2019. The parties finished with evidence on October 31, 2019 and made their
15 closing arguments on November 1, 2019. Accordingly, additional time associated with the
16 four issues addressed in Plaintiffs' Motion for Fees and Costs, at most, enlarged trial by ½
17 to 1 day. Plaintiffs are not entitled to an unreasonable award of attorneys fees for trial in
18 the amount of \$96,000, based on the work of three attorneys, at \$500 per hour, for four
19 days of trial, at 16 hours per day. And as an aside, Defendants want to remind the Court
20 of the total time spent by Plaintiffs in voir dire and their cross-examination of Dr. Rives –
21 substantial amounts of time.

22 Plaintiffs' also seek \$13,500 in attorney's fees associated with their appearances at
23 various hearings. Plaintiffs' calculate their requested fee for two attorneys, at \$500 per
24 hour, for a total of 13.5 hours (1.5 hours for the September 26, 2019 hearing, 2.0 hours for
25 the October 7, 2019 hearing, 2.0 for the November 7, 2019 hearing, 2.0 hours for the
26 November 13, 2019 hearing, 3.5 hours for the November 14, 2019 hearing and 2.5 hours

1 for the November 20, 2019 hearing.) It is unreasonable for Plaintiffs to request attorney's
2 fees for two attorneys at these hearings. And as discussed above, Plaintiffs did not comply
3 with the Court's order concerning the pretrial hearings. Accordingly, Plaintiffs are not
4 entitled to an award of attorneys' fees for trial in the amount of \$13,500, for their
5 appearance at various hearings.

6 III.

7 CONCLUSION

8 As described in more detail above, Plaintiffs are not entitled to an Order awarding
9 attorney's fees associated with their June 5, 2019 Offer of Judgment under the factors
10 articulated in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983). In the event this Court
11 is inclined to award attorney's fees under NRC 68, Plaintiffs' attorney's fees must be
12 limited to fees incurred after the date of the offer of judgment, and the fees must be
13 compliant with NRS 7.095. Finally, Plaintiffs are not entitled to an additional award of
14 attorney's fees in the amount of \$109,500, because such an award would violate NRS
15 7.095, assuming this Court awards attorney's fees pursuant to NRC 68, and the requested
16 sum of \$109,500 is not reasonable. Finally, while Defendants do not dispute Plaintiffs'
17 entitlement to reasonable and recoverable costs under NRS 18.005, as described in
18 Defendants' Motion to Re-Tax Costs, Plaintiffs are not entitled to the total amount of
19 \$153,118.26 requested in their Memorandum of Costs and the Motion for Fees and Costs.
20 Accordingly, Defendants request this Court deny Plaintiffs' Motion for Fees and Costs.

21 Dated: December 2, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

22
23 By /s/ Thomas J. Doyle

THOMAS J. DOYLE

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Attorneys for Defendants BARRY J. RIVES,
M.D.; LAPAROSCOPIC SURGERY OF
NEVADA, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 2nd day of December, 2019, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S OPPOSITION TO PLAINTIFFS' MOTION FOR FEES AND COSTS was served as indicated below:

- served on all parties electronically pursuant to mandatory NEFCR 4(b);
- served on all parties electronically pursuant to mandatory NEFCR 4(b) , exhibits to follow by U.S. Mail;
- by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- by facsimile transmission; or
- by personal service as indicated.

Attorney	Representing	Phone/Fax/E-Mail
George F. Hand, Esq. HAND & SULLIVAN, LLC 3442 North Buffalo Drive Las Vegas, NV 89129	Plaintiffs	702/656-5814 Fax: 702/656-9820 hsadmin@handsullivan.com
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 Kimball@BighornLaw.com Jacob@BighornLaw.com

/s/ Jodie Chalmers
an employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

EXHIBIT 1

1 Dr. Carter is a general surgeon and will testify as to the issues relating to the
2 standard of care, causation and damages, if any. Dr. Carter's report, Curriculum Vitae
3 including publication history, fee schedule and list of deposition/trial testimony are
4 attached hereto as Exhibit A.

5 Dr. Carter charges \$2,000 for deposition testimony.

6 Dr. Carter charges \$3,500 a day of trial testimony.

7 2. Brian E. Juell, M.D.
8 6554 S. McCarran Blvd., Suite B
9 Reno, Nevada 89509

10 Dr. Juell is a general surgeon and will testify as to the issues relating to the standard
11 of care, causation and damages, if any. Dr. Juell's report including fee schedule and list
12 of deposition/trial testimony and Curriculum Vitae including publication history are
13 attached hereto as Exhibit B.

14 Dr. Juell charges \$1,000 an hour for deposition testimony (with a one hour
15 minimum).

16 Dr. Juell charges \$1,500 an hour for trial testimony (with an eight hour minimum).

17 **NON-RETAINED EXPERTS**

18 1. See NRCP 16.1 disclosures.

19 Defendants reserve the right to call any experts identified by any other party to this
20 action.

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EXHIBIT A

Chad Couchot
Scheuring Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825-6502

Expert Report Re: Farris v. Rives

Dear Mr. Couchot:

Per your request, I have reviewed materials in conjunction with a lawsuit filed by Titina Farris and Patrick Farris against Barry Rives M.D., and Laparoscopic Surgery of Nevada LLC. Based upon my review of those materials, as well as my education, training, and experience as a board-certified general surgeon, it is my opinion to a reasonable degree of medical probability that Dr. Rives complied with the standard of care in the care and treatment provided to Mrs. Farris.

QUALIFICATIONS AND BACKGROUND

I obtained my medical degree from the University of Arizona College of Medicine, located in Tucson, Arizona, in 1986. From 1986 to 1987, I completed my categorical surgical residency/internship at Phoenix Integrated Surgical Residency. I then completed my residency in general surgery at the same facility from 1987 to 1991, and was the Chief Resident from 1990 to 1991. I was also a Lieutenant Commander, Medical Corp., in the United States Navy Reserve from 1987 to 1992.

I first received my board certification from the American Board of Surgery in March 1992, and have been recertified in 1989 and 2009. I have received special training in Microvascular Techniques (1991), Operative Laparoscopy (1991), and Endogastric Solutions (2010). I have been in private practice since 1991 in Phoenix (1991–1996) and Safford, Arizona (1996 – present), and was a Trauma Surgeon at Good Samaritan Regional Medical Center in Phoenix, Arizona from 1992–1996. I have performed thousands of laparoscopic surgeries during my years of practice. A copy of my curriculum vitae and fee schedule are attached to this report.

I have reviewed the following documents in order to formulate my opinions in this case:

1. Laparoscopic Surgery of Nevada; and
2. St. Rose Dominican Hospital - San Martin Campus.

SUMMARY OF CARE

Dr. Rives first saw Mrs. Farris in July 2014, for evaluation of an abdominal mass/lipoma. In August 2014, Dr. Rives performed an excision of the abdominal wall lipoma/mass and repaired an incarcerated ventral hernia with mesh. Mrs. Farris tolerated the procedures well and there were no complications.

Mrs. Farris did not follow-up with Dr. Rives until April 2015, when another abdominal mass reported. On April 30, 2015, Mrs. Farris presented to Dr. Rives complaining of a suspected

hematoma on the abdomen. Mrs. Farris reported doing well after surgery in August 2014. However, over the prior few months the abdominal mass had been noticed and increased in size. On palpation of the abdomen, Dr. Rives noted what felt like a recurrent hernia. It was mostly reducible and had a non-reducible component that felt slightly solid. His assessment was a ventral hernia. The plan was to order a CT scan to consider surgical intervention.

On June 12, 2015, Dr. Kevin Chang reviewed a CT scan of the abdomen and pelvis. Dr. Chang's impressions were:

Weakening/hernia of the right paracentral anterior abdomen with opening measuring 5.7 cm in the hernia portion measuring 7.7 x 0.9 cm. Contains large bowel, no evidence of obstruction.

On June 23, 2015, Mrs. Farris presented to Dr. Rives for follow-up. Mrs. Farris noted her symptoms were "pretty much the same," aside from a slight increase in tenderness. Mrs. Farris felt the hernia was increasing in size and it made her "nervous regarding her activity level." Dr. Rives noted the CT scan demonstrated "a recurrent abdominal wall hernia that likely has slipped around the prior mesh repair." There was large bowel in the hernia. However, the bowel did not appear to be obstructed. Dr. Rives recommended a laparoscopic ventral hernia repair with mesh. He explained the risks, benefits, and alternatives in his customary fashion including possible open repair. Mrs. Farris elected to proceed with surgery.

On July 3, 2015, Dr. Rives performed a laparoscopic reduction and repair of an incarcerated incisional hernia with mesh. During the procedure, he repaired two injuries to the colon. The pertinent portion of the operative note read:

We began by reducing the hernia, taking down the omentum, the transverse colon was severely stuck and adhered to the prior mesh. Taking this down, we used a LigaSure device to extract it from the mesh as the mesh would not come free from the skin. In doing so, this created a small tear in the colon using an Endo-GIA blue load. We were able to staple across the small colotomy. There was a second small colotomy also noticeable, also repaired with an Endo-GIA 45 tissue load. After successful firings, the staple lines appeared to be intact. There were no further serosal or full thickness injuries to the colon.

Dr. Rives noted Mrs. Farris tolerated the procedure well.

On July 3, 2015, Dr. Tanveer Akbar, a hospitalist, saw Mrs. Farris. Mrs. Farris complained of pain which Dr. Akbar described as postsurgical. On examination, Dr. Akbar noted the abdomen was soft and distended, with no bowel sounds. The plan was to continue nothing by mouth, per Dr. Rives' postprocedure orders. Dr. Akbar ordered Dilaudid for pain.

On July 4, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris complained of shortness of breath, abdominal pain, and bloating while drinking a SoBe beverage. Mrs. Farris had been transferred

to the intensive care unit, for a glucose greater than 500, with a reference range of 74 to 106 mg/dL, and a heart rate greater than 130. Dr. Rives noted the abdomen was slightly firm, distended, and tympanic. The bowel sounds were hypoactive. The abdominal incisions were clean, dry, and intact. Dr. Rives noted the heart rate and glucose level were unstable. He described Mrs. Farris' condition as worsening. The plan was to place an NG tube to decompress the gastrointestinal tract. Dr. Rives advised Mrs. Farris she was strict NPO. He noted she could have a small amount of ice and water after the NG tube was placed.

On July 4, 2015, Dr. Akbar saw Mrs. Farris. Mrs. Farris reported worsening anxiety. The white blood cell count was elevated at 21,700. The glucose level was elevated at 517. The creatinine was slightly elevated at 1.27. The BUN was high at 26. Dr. Akbar's assessments were atrial flutter with a rapid ventricular rate, hyperkalemia, hyperglycemia, probable sepsis, and an acute kidney injury. He ordered broad-spectrum antibiotics and requested consultations by an infectious disease specialist and a nephrologist.

On July 4, 2015, Dr. Yann-Bor Lin, a pulmonology and critical care specialist, performed an emergent intubation for acute respiratory failure.

On July 4, 2015, Dr. Akbar authored an addendum to his earlier note. At some point that day, Mrs. Farris became tachypneic and tachycardic. She reported decreased anxiety after Dilaudid was administered. However, her heart rate remained in the 160s, despite intravenous Cardizem. Dr. Akbar noted Mrs. Farris might need intravenous insulin. The plan was for further management by a critical care specialist.

On July 5, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris was intubated and sedated. According to nursing staff, she had recently been placed on a heparin drip. She had recently undergone a CT scan of the chest, abdomen, and pelvis, however, the results were not yet available. On examination, Dr. Rives noted the abdomen was softer and less distended than it was during the previous day. The hernia sac had expected seroma. An NG tube was in place. Dr. Rives described the NG tube output as "> 100." Dr. Rives reviewed laboratory test results. He noted the glucose was not well-controlled. The plan was to review the CT scan of the chest, abdomen, and pelvis, to consider an exploratory laparotomy.

On July 5, 2015, Dr. Thomas Gebhard reviewed a CT scan of the chest, abdomen, and pelvis, with contrast. His impressions were:

1. No central pulmonary embolism. Respiratory motion limits evaluation of the segmental and subsegmental vessels.
2. Small right pleural effusion. Bilateral areas of consolidation in the lungs bilaterally likely represent atelectasis. Pneumonia is not excluded.
3. Recent repair of incisional hernia. A small hernia remains over the anterior abdomen contains free air and free fluid.
4. Small amount of free fluid in the abdomen with no drainable fluid collection identified.

On July 5, 2015, Dr. Rives authored an addendum to his earlier report. He reviewed the CT scan of the chest, abdomen, and pelvis. He noted:

Trace free fluid around the liver, as expected, air fluid and hernia sac, no other free air no obstruction of bowel no pulmonary emboli.

The plan was to monitor Mrs. Farris. If she did not improve in the next 24 hours, Dr. Rives would consider surgical intervention.

On July 6, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and sedated. On examination, Dr. Rives noted the abdomen was soft, distended, and developing anasarca. The bowel sounds were hypoactive. The white blood cell count was 25,800. The hemoglobin was 8.20. The hematocrit was 24.80%. The CO₂ was 16, with a reference range of 23 to 29 mEq/L. The calcium was 7.5, with a reference range of 8.5 to 10.2 mg/dL. Dr. Rives noted Mrs. Farris was more stable, with decreased bandemia, a decreased heart rate, and decreased urine output. The plan was to continue to consider surgical options.

On July 7, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris remained intubated and sedated. Dr. Rives noted the vital signs were stable and Mrs. Farris was stable. The white blood cell count was 26,700. The left shift was 7%. The glucose was 193. The lactic acid level was 1.11. The urine output continued to increase. There was no bowel activity. Dr. Rives noted anasarca at the abdominal incision sites. The plan was to consider performing a CT scan in 24 to 48 hours, to evaluate for any new changes and free air, abscesses, or fluid collections.

On July 8, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris remained intubated and sedated. Nursing staff advised Dr. Rives that CPAP trials were unsuccessful due to tachypnea, an elevated blood pressure, and low lung volumes. The white blood cell count had decreased to 22,600. The hemoglobin was 8.90. The hematocrit was 26.50. The glucose was 169. Dr. Rives described Mrs. Farris as slowly improving. He suspected there may be a bowel obstruction. The plan was to continue efforts to wean Mrs. Farris off the ventilator and to review an x-ray of the abdomen and pelvis to evaluate for a possible bowel obstruction. If there was no bowel obstruction seen on the x-ray, Dr. Rives would consider ordering a CT scan of the abdomen and pelvis with oral contrast.

On July 8, 2015, Dr. Rives authored the following addendum:

Discussed patient progress of events with husband again with nurse present, explained prognostic signs and symptoms we are looking for and goals trying to achieve and indications that she might need reexploration. Have discussed this with the husband over the last four days numerous times. Overall explained patient's situation continues to improve and now trying to get fluid off the patient and get her extubated.

On July 9, 2015, Dr. Gregg Ripplinger, a general surgeon, saw Mrs. Farris for a second opinion. Dr. Ripplinger noted Mrs. Farris underwent an incarcerated incisional hernia repair with

placement of mesh by Dr. Rives on July 3, 2015. During the procedure, two injuries to the colon were repaired using an Endo GIA stapler. After the procedure, Mrs. Farris did poorly. She was tachycardic. Her white blood cell count was greater than 20,000, and as high as 26,000 on a couple of occasions. She had been on a ventilator since the evening of July 4, 2015. On examination, Dr. Ripplinger described the abdomen as obese and quite distended. There was some fluctuance in the area of the incisional hernia, which Dr. Ripplinger suspected was fluid or air between the mesh and the skin. Dr. Ripplinger reviewed laboratory test results and the CT scan of the chest, abdomen, and pelvis from July 5, 2015. Dr. Ripplinger noted he was concerned for possible leak from one of the two colon repairs or an early aggressive infection of the mesh. He recommended a CT scan of the abdomen and pelvis with oral and rectal contrast to rule out a leak from the colon.

On July 9, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris remained intubated and sedated. On examination, Dr. Rives observed anasarca at the abdominal incisions. The bowel sounds were hypoactive. The white blood cell count was 22,900. The hemoglobin was 9.40. The hematocrit was 28.00. The glucose was 176. Dr. Rives reviewed an x-ray of the abdomen and pelvis. The study showed no free air or obstructive signs. Dr. Rives noted Mrs. Farris was stable with no signs or symptoms of SIRS. An order for a CT scan with oral and rectal contrast was pending.

On July 9, 2015, Dr. Matthew Treinin reviewed a CT scan of the abdomen and pelvis with oral, rectal, and intravenous contrast. His impressions were:

1. Small amount of abdominal ascites.
2. There is a right supra umbilical parasagittal ventral hernia. Hernia sac contains fluid and free air. Component of free air has decreased.
3. There is no extravasation of oral contrast from the bowel.
4. Small right and trace left pleural effusions with bibasilar atelectasis.
5. Anasarca.

On July 10, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and sedated. Nursing staff advised Dr. Rives that propofol had recently been discontinued and fentanyl had been started. On examination, Dr. Rives noted anasarca on the abdomen. The white blood cell count was 25,400. The hemoglobin was 8.90. The hematocrit was 26.60. The glucose was 199. Dr. Rives reviewed the CT scan from July 9, 2015. He noted there were no signs of an abscess, or a leak. There was decreased paracolic fluid compared to the prior studies. Dr. Rives had a long discussion with Mrs. Farris' husband and brother regarding indications for and against an additional surgical procedure.

On July 11, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and sedated. Nursing staff advised Dr. Rives a recent sedation vacation had resulted in increased agitation and severe tachypnea. Dr. Rives noted Mrs. Farris had a fever that morning, for the first time during the hospitalization. The temperature was 102.3°F. On examination, Dr. Rives noted decreased anasarca on the abdomen. The white blood cell count was 24,200. The hemoglobin was 8.60. The hematocrit was 26.20. The platelet count was 410. The glucose was 235. The BUN was 34. The

plan was to perform an x-ray of the abdomen and pelvis the following day. Dr. Rives noted Mrs. Farris would need an enema if she did not begin passing the contrast, to prevent the contrast from becoming inspissated.

On July 12, 2015, Dr. Rives saw Mrs. Farris. She remained intubated on decreased sedation. She had begun to spontaneously open her eyes. On examination, Dr. Rives noted slightly less anasarca on the abdomen. The white blood cell count was 23,200. The hemoglobin was 7.90. The hematocrit was 24.20. The platelet count was 137. The glucose was 364. The BUN was 36. Dr. Rives reviewed an x-ray of the abdomen and pelvis. He noted there were no signs of obstruction and the contrast in the colon remained unchanged. Dr. Rives described Mrs. Farris as progressing as expected. The plan was to administer a suppository to stimulate the colon, in an effort to clear out the contrast.

On July 13, 2015, Dr. Rives saw Mrs. Farris. She remained intubated. Earlier that day, she had tolerated a CPAP trial for four minutes. There was not yet any bowel activity. On physical examination, Dr. Rives noted the abdomen was improving. It was softer, with less anasarca and there was a decreasing seroma. The white blood cell count was 17,900. The hemoglobin was 7.40. The hematocrit was 23. The platelet count was 437. The glucose was 299. The BUN was 37. Dr. Rives described Mrs. Farris as progressing as expected. He noted Mrs. Farris would likely need a tracheostomy, due to failed CPAP trials.

On July 14, 2015, Dr. Rives saw Mrs. Farris. She remained intubated. Dr. Rives noted the sedation was mostly off. Mrs. Farris was responding by nodding her head. Dr. Rives described the abdomen as a bit worse. It was more firm and there was ongoing anasarca. Dr. Rives noted increased pressure in the hernia sac, but no discharge from the incisions. The temperature was 101.4°F. The white blood cell count had "trended back up" to 21,100. The hemoglobin was 10.50. The hematocrit was 32. The platelet count was 498. The CO₂ was 33. The glucose was 257. The BUN was 31. There was no bowel activity, despite Mrs. Farris receiving a Fleet enema. Mrs. Farris was scheduled for tracheotomy later that day. The plan was to perform a CT scan, to look for an increase in free fluid, an abscess, a bowel obstruction, or free air.

On July 14, 2015, Dr. Ashraf Osman, a cardiothoracic surgeon, placed a tracheostomy tube, performed a bronchoscopy and placed a gastrostomy tube.

On July 15, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and lightly sedated. She tolerated the tracheostomy procedure well and was showing improved ventilatory compliance. Dr. Rives noted the urine output was good, but there was not yet any stool output. On examination, Dr. Rives noted the abdomen was slightly improved. The hernia sac was softer. The white blood cell count was 20,800. The hemoglobin was 10.30. The hematocrit was 32.20. The platelet count was 491. The glucose was 218. The BUN was 29. Dr. Rives noted the CT scan had not yet been performed.

On July 15, 2015, Dr. Ravishankar Konchada reviewed a CT scan of the abdomen and pelvis. His impressions were:

Pneumoperitoneum with free fluid in the abdomen predominately

in the right perihepatic and subphrenic space. Large air-fluid level in the supraumbilical mid-abdomen not entirely clear if this is a dilated loop of bowel versus a peritoneal collection of air fluid level. Ventral hernia containing large pocket of air due to gas-filled bowel loop versus extraluminal gas. Subcutaneous air/fluid along the right lateral abdominal wall.

On July 15, 2015, Dr. Rives saw Mrs. Farris. He noted the CT scan was concerning for a possible leak and/or abscess. He recommended an exploratory laparotomy with explantation of the mesh, an abdominal washout, and a thorough inspection of the entire small and large bowel. He discussed the risks, benefits, and alternatives of the proposed surgical procedures with Mrs. Farris' husband. Mr. Farris did not want to proceed with the surgery at that time. He wanted to see how Mrs. Farris fared overnight before making a decision.

On July 16, 2015, Dr. Rives had an hour-long conversation with Mrs. Farris' husband and sons regarding the urgent need for surgery. He described Mrs. Farris' hospital course including the acute changes in the prior 2 to 3 days and new findings on CT scan. Mrs. Farris' family indicated they were uncomfortable with Dr. Rives as Mrs. Farris' surgeon, and they requested a second surgical opinion. Shortly thereafter, Dr. Rives signed off the case.

On July 16, 2015, Dr. Elizabeth Hamilton performed an exploratory laparotomy, removal of prosthetic mesh and washout of abdomen, a partial colectomy and right ascending colon end ileostomy, extensive lysis of adhesions, retention suture placement, decompression of stool from the right colon into the ostomy, and fecal disimpaction of the rectum.

In the operative note, Dr. Hamilton stated the abdomen was incredibly taut to the point where it was tympanic. Dr. Hamilton opined there was likely a perforation of the colon from the previous intraoperative colon injuries— "I think I felt the second staple line described in the first operation more proximal to this area that had not healed and had led to the colotomy." Her findings included "Approximately, a quarter-size or 3 cm hole in the transverse colon anteriorly associated with staples in the colon wall."

Dr. Darren Wheeler performed a pathological analysis of the surgical samples. The pathology report described three perforations of the colon:

Three transmural defects identified along the length of the colon. The first defect is located roughly within the mid aspect, measures 2.0 x 1.6 cm. ... The second defect is located within a markedly thin area of wall with an overall measurement of 3.7 x 3.5 cm; the wall within this area measures less than 0.1 cm and the defect measures 0.9 x 0.5 cm. ... The third defect measures 1.0 x 0.4 cm.... This defect is contiguous with a 1.7 cm staple line which grossly appears to be a possible side-to-side anastomosis site.

Mrs. Farris' condition slowly improved after the laparotomy. Two abdominal drains were placed by an interventional radiologist, on July 29, 2015 and July 30, 2015. On August 11, 2015, she

was discharged to a rehabilitation facility.

EXPERT OPINIONS

All of my opinions expressed in this report are held to a reasonable degree of medical probability. At the outset and foremost, it is my opinion to a reasonable degree of medical probability that all of the care and treatment Dr. Rives provided to Mrs. Farris met the applicable standard of care, including his pre-operative care, his performance of the laparoscopic reduction and repair of an incarcerated incisional hernia with mesh and his post-operative care.

This is a complicated case which was managed appropriately. Dr. Rives made the correct preoperative decision, to perform a repair of an incarcerated incisional hernia with mesh. The procedure was complicated by two perforations of the colon (colotomies), which are known risks of this type of procedure.

There was not a third colotomy during the hernia repair. The CT scan of the abdomen and pelvis performed on July 5, 2015, post-operative day two, showed "minimal free air, which continued to decrease on the subsequent CT scans performed on July 9, 2016. Increased air was not seen until July 15, 2015. If the perforation observed during the laparotomy on July 16, 2015 had been present since the hernia repair on July 3, 2015, Mrs. Farris' condition would be more rapidly deteriorating. Dr. Rives' decision making met the standard of care.

As noted above, the opinions have expressed in his report held to a reasonable degree of medical probability. I reserve the right to supplement my opinions if new and/or additional information is provided to me.

Sincerely,

Bart. J Carter, M.D., F.A.C.S.

CURRICULUM VITAE

Bart J. Carter, M.D., F.A.C.S.

2240 West 16th Street
Safford, Arizona 85546
(928) 348-4030

Personal data:

Birth Date: February 6, 1958

Birthplace: Mesa, Arizona

Marital Status: Married

Spouse: Vicki Elizabeth Elledge

Children: Steven Jay; Michael John;
Bryce Joel; Allisen Janae;
Alexis Jae.

Military Association: Lieutenant Commander, Medical Corp,
United States Navy Reserve 1987 to 1992.

Pre-Medical Education:

1972-1976 Pima High School, Pima, Arizona
Valedictorian

1976-1977 Eastern Arizona College, Thatcher, Arizona

1979-1980 Eastern Arizona College, Thatcher, Arizona
A.A., Valedictorian

1980-1982 University of Arizona, Tucson, Arizona
B.A., With Distinction

Medical Education:

1982-1986 University of Arizona College of Medicine,
M.D. Tucson, Arizona,

Internship:

1986-1987 Phoenix Integrated Surgical Residency
Phoenix, Arizona,
Categorical Surgery Residency

Residency:

1987-1990 Resident in General Surgery, Phoenix Integrated
Surgical Residency, Phoenix, Arizona

Chief Surgical Resident:

1990-1991 Chief Resident in General Surgery,
Phoenix Integrated Surgical Residency,
Phoenix, Arizona

Private Practice:

1991-1996 Private Practice in Phoenix, Arizona
Hospital privileges:
Good Samaritan Regional Medical Center
St. Joseph's Hospital
Healthwest Hospital
Phoenix Memorial Hospital
St. Luke's Hospital
Surgicenter
Osborn Ambulatory Surgical
VenCor Phoenix

1992-1996 Trauma Surgeon
Good Samaritan Regional Medical Center
Phoenix, Arizona

6/1996 to present Private Practice in Safford, Arizona
Hospital privileges:
Mt Graham Regional Medical Center

Special Training: Microvascular Techniques
Dr. Gerald Schmitz
Phoenix, Arizona
May 1991

Operative Laparoscopy
Dr. Eddie J. Redick
Atlanta, Georgia
March 1991

EndoGastric Solutions
EsophyX/TIF 2 procedure
Dr. Tanja Gunsberger
Phoenix, Arizona
January 2010

Licensure: Arizona #19854 (issued 02-01-91) current

DEA Number: BC2622430 (current)

Board Certification: The American Board of Surgery, March 30,
1992, certificate no. 37092
Recertified December 1999, American
Board of Surgery certificate no.047689
Recertified December 2009, American
Board of Surgery certification no.047689

Professional Membership: American Medical Association (Jan 1983-1994)
Arizona Medical Association (Jan 1983-present)
Maricopa County Medical Association
(July 1991-present)
Society of Critical Care Medicine (Aug 1991-present)
Fellow, American College of Surgeons
(Oct 1994-present)

CV BART J. CARTER, M.D.
5/15/2013

3

Association of Military Surgeons of the
U.S. (July 1990-1996)

Naval Reserve Association (July 1990-1996)

Society of Laparoendoscopic Surgeons

Fellow, Southwestern Surgical Congress
(April 1994-present)

Phoenix Surgical Society (June 1994-present)

Fellow, American College of Surgeons
(March 2002-present)

Society of American Gastrointestinal and Endoscopic
Surgeons
(October 2010-present)

Appointment:

Surgery Clinical Attending
Teaching Surgical Service
Good Samaritan Hospital
Phoenix Integrated Surgical Residency Program
1992- 1997

Attending Vascular Surgeon
Carl T. Hayden
Veterans Administration Hospital
Phoenix, Arizona
1991-1994

Associate Clinical Professor of Surgery
Surgery Department
University of Arizona
2000-present

Course Director, Surgical Techniques:
1990, Phoenix Integrated Surgical
Residency, August 1990-November 1990

Search Committee, for Director of
Phoenix Integrated Surgical Residency

CV BART J. CARTER, M.D.
5/15/2013

4

**Surgical Grand Rounds Coordinator,
Phoenix Integrated Surgical Residency,
1990-1991**

**Chairman, Credential Committee
Phoenix Memorial Hospital 1995-1996**

**Chairman, Emergency Services Committee
Good Samaritan Regional Medical Center
1995-1996**

**Chairman, Surgery Committee
Director, Surgery Department
Mt Graham Regional Medical Center
1998-current**

**Medical Executive Committee
Mt Graham Regional Medical Center
1998-2003**

**Team Physician
Sports Medicine Advisory Team,
Eastern Arizona College
1997-present**

**Chief of Staff
Mt Graham Regional Medical Center
1999-2000**

**Preceptor to College of Medicine
Longitudinal Clinic Curriculum Program
University of Arizona 2000**

**Chairman, Credential Committee
Mt Graham Regional Medical Center
2000-present**

**Director, Cardiopulmonary Services
Mt Graham Regional Medical Center
2001-present**

**Director, Intensive Care Department
Mt Graham Regional Medical Center
Jan 2002-present**

Preceptor
Western University of Health Sciences
February 2013

Community: Mt Graham Regional Medical Center
Governing Board
Jan 1997-present

Mt Graham Regional Medical Center
District Board
1998-present

Mt Graham Regional Medical Center
Chairman, District Board
2008-present

Certificates: Advanced Trauma Life Support Instructor
1989-1993

Advanced Trauma Life Support Provider
1986-10/2003

Advanced Cardiac Life Support
1981-current

Awards: 1991 Upjohn Achievement Award
Phoenix Integrated Surgical Residency

The University of Arizona College of Medicine
Rural Health Professions
Preceptor Award
2001

The University of Arizona College of Medicine
Rural Health Professions
Preceptor Award
2006

- Presentations:**
1. Adenocarcinoma of the Stomach,
Phoenix Integrated Surgical Residency
Grand Rounds, GSRMC, Phoenix,
Arizona, March 1987.
 2. Gastroschisis: An Overview, Phoenix
Integrated Surgical Residency Grand
Rounds, GSRMC, Phoenix, Arizona,
February 1989.

3. **Advanced Trauma Life Support; Head Trauma, Cervical Spine Trauma, Invasive Skills Laboratory and Practical Skills Testing, Flagstaff, Arizona, July 1989.**
4. **Advanced Trauma Life Support: Head Trauma, Head Trauma Practical Skills, Practical Skills Testing, GSRMC, Phoenix, Arizona, September 1989.**
5. **Lobular Carcinoma in situ of the Breast, Phoenix Integrated Surgical Residency Grand Rounds, GSRMC, Phoenix, Arizona, October 1989.**
6. **Ballistics and Gun Shot Wounds, Phoenix Fire Department Paramedics, GSRMC, Phoenix, Arizona, February 1990.**
7. **Trauma Overview: Kinematics of Trauma, Airway Management, Thoracic Trauma, Abdominal Trauma, Pediatric Trauma, Trauma in the Pregnant victim & Head Trauma, National Parks Medics course, Prehospital Life Support, Phoenix College, Phoenix, Arizona, February 1990.**
8. **Emergent Treatment and Management of the Burned Patient, Paramedics, Prehospital Life Support Course, Phoenix College, Phoenix, Arizona, April 1990.**
9. **Traumatic Rupture of the Thoracic Aorta, Phoenix Integrated Surgical Residency Grand Rounds, GSRMC, Phoenix, Arizona, April 1990.**
10. **Advanced Trauma Life Support Course: Head Trauma, Cervical Spine Radiographs, Injuries due to Burns and Hypothermia, Invasive Skills Laboratory, Practical Skills Testing, Phoenix College, Phoenix, Arizona, May 1990.**
11. **Fluid and Electrolytes, Phoenix Integrated Surgical Residency Core Curriculum, Veterans Administration Hospital, Phoenix, Arizona, July 1990.**

12. Fluid and Electrolytes, Phoenix
Integrated Surgical Residency Grand Rounds, GSRMC, Phoenix, Arizona, July 1990.
13. Advanced Trauma Life Support Course: Head Trauma, Invasive Skills Laboratory, Cervical Spine Radiographs, Injuries due to Burns and Hypothermia, Practical Skills Testing, Flagstaff, Arizona, July 1990.
14. Trauma Overview: Kinematics of Trauma, Management of the Airway, Thoracic Trauma, Abdominal Trauma, Pediatric Trauma, Trauma in the Pregnant Victim, Prehospital Life Support Course, Paramedics Certification, Phoenix College, Phoenix, Arizona, July 1990.
15. Cystic Disease of the Biliary Tract, Phoenix Integrated Surgical Residency, Farewell Chief Resident Presentation, Good Samaritan Regional Medical Center, Phoenix, Arizona, 13 June 1991.
16. Trauma Overview: Kinematics of Trauma, Airway Management, Thoracic Trauma, Abdominal Trauma, Pediatric Trauma, Trauma in the Pregnant victim and Head Trauma, National Parks Medics course, Prehospital Life Support, Phoenix College, Phoenix, Arizona, January 1992.
17. Advanced Trauma Life Support; Head Trauma & skills station. Phoenix, Arizona, May 1994.
18. Advanced Trauma Life Support; Skills animal lab instructor and skills station. September 1994.
19. Surgery Experience in Rural Arizona; AZ Chapter of American College of Surgeons. Tucson, Arizona. Nov 2006

Publications:

CV BART J. CARTER, M.D.
5/15/2013

1. "Vascular Adrenergic Neuroeffector Function Does

8

Not Decline in Aged Rats," Circulation Research,
Vol. 56, No. 1, January, 1985, pp. 109-116.

2. "An Unusual Complication of Perforated Appendix,"
Complications in Surgery, May, 1992.
3. Good Samaritan Regional Medical Center Trauma
Service Guidelines, Policies and Procedures
Manual, principal Author and Editor, Published for
local distribution only, January, 1990, 150 pages.
4. Editor, Phoenix Integrated Surgical Residency
Program, Recruitment Brochure, August, 1990.
5. "A Prospective Multicenter Registry of Patients
With Chronic Gastroesophageal Reflux Disease
Receiving Transoral Incisionless Fundoplication,"
Journal of the American College of Surgeons,
December 2012, vol 215, no. 6, ppg 794-809.

BART J. CARTER, M.D., P.C.
Bart J. Carter, M.D., F.A.C.S.
2240 WEST 16TH STREET
SAFFORD, ARIZONA 85546
928-348-4030
928-348-4033 fax
email: bjcmd@cableone.net

Legal services fee schedule (effective date 01/01/08)

Records review: \$ 500.00 / hour for first hour
 \$ 250.00 / hour for each additional hour

Deposition testimony: \$2,000.00
 Prep time \$ 250.00 / hour

Trial testimony: \$3,500.00 / day
 Travel time, prep time \$ 250.00 / day
 All associated expenses reimbursement @ 100%

Telephone calls: \$ 250.00 / hour (\$50.00 minimum)

Scheduled meetings: \$ 500.00 / hour (\$150.00 minimum)

Cancellation within 48 hours of an appointment day for testimony or deposition
 \$1,000.00
(Cancellations must occur at least 3 days before the scheduled day)

Additional charges and expenses reimbursed at 100%:

 Telephone calls
 Mail
 Fax
 Special delivery charges

BART J. CARTER, M.D., F.A.C.S.
Diplomate, American College of Surgeons
General Surgery
Laparoscopic Surgery

2240 West 16th Street
Safford, Arizona 85546
(928) 348-4030
(928) 348-4033 Fax

DEPOSITIONS

Boblett v. Kingman Hospital, Inc.
September 1, 2015

Cheng v. Spring Valley
August 10, 2017

TRIALS

Marx v. Lipton
January 2014

EXHIBIT B



Premiere Surgical Specialists
General, Vascular, Trauma & Laparoscopic Surgery

Alvaro H. Devia, M.D., F.R.C.S.
Certified
American Board
of Surgery

Brian E. Juilli, M.D., F.R.C.S.
Certified
American Board
of Surgery and
Surgical Critical Care

Thomas E. Rembetski, M.D.
Certified
American Board
of General and
Vascular Surgery

NOVEMBER 6, 2018

Chad Couchot
400 University Ave.
Sacramento, Ca. 95825-6502

Dear Mr. Couchot,

I have reviewed the records supplied to me regarding the care of MS Titina Farris provided by Barry Rives MD and others from 7/2014 -8/2015 (Records from St. Rose Dominican Hospital – San Martin Campus and Laparoscopic Surgery of Nevada). The question posed is whether Dr Rives' care was outside accepted surgical standards and specifically did that care constitute malpractice.

Titina Farris (TF) presented on referral to Dr Rives in July 2014 with an abdominal wall connective tissue tumor. She was a moderately obese female with systemic inflammatory syndrome, i.e. hypertension, diabetes type 2, hyperlipidemia. She fortunately did not smoke. She agreed to and underwent excision of a lipoma and repair of a coincidentally discovered ventral hernia at the time of surgery. A prosthetic mesh reconstruction was performed to reduce the risk of recurrence. This surgery was performed in August 2014.

TF returned to Dr Rives 9 months later with a recurrent mass. A CT scan of the abdomen was obtained and demonstrated a recurrent incisional hernia containing non-obstructed colon. Dr Rives recommended a laparoscopic repair and TF agreed to proceed. Surgery was performed 7/3/2015. Mobilizing and freeing the colon from the previously placed mesh, scar tissue and hernia was complicated by an injury to the colon. Dr Rives elected to repair the colon injuries with a laparoscopic gastrointestinal stapler. Satisfied with these repairs he completed the hernia repair with an intraperitoneal on-lay prosthetic mesh implantation secured with concentric rows of fixation tacks. Dr Rives weighed the risks and benefits of this procedure taking into account knowledge of this relatively high-risk patient for complications and hernia recurrence and his perceived quality of surgical repair. Dr Rives admitted TF to the hospital for post-operative care. He consulted a medical specialist to assist him with TF's management.

TF fared poorly in the early postoperative period. She had poor respiratory parameters and required increasing oxygen administration. She had low urine output and required IV fluid boluses. She developed a tachycardic arrhythmia and required transfer to the ICU and cardiology consultation. Her renal function deteriorated and a nephrology consultant was called in. She developed a high white blood cell count and a lactic acidosis and an Infectious Disease specialist was consulted. Her respiratory status continued to decline and she ultimately was intubated, sedated and placed on mechanical ventilatory support. Her condition was stabilized with fluid administration, antibiotics, correction of her tachycardia and improved oxygenation. The operating diagnosis was fecal peritonitis related to her surgical complication, though she did have a chest x-ray following intubation showing a right upper lobe infiltrate. I believe the clinical picture is most consistent with a



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pulmonary aspiration syndrome. The patient's rapid early decline was primarily respiratory with hypoxemia and increasing obtundation. The patient was intubated and in ICU on the first post-operative day. This rapid deterioration is inconsistent with intraabdominal infection as this would take longer to develop.

Dr Rives ordered and obtained a CT scan of the abdomen on 7/5/2015. This demonstrated an air fluid level in the space previously occupied by the hernia, a small amount of fluid in the pelvis and edema or tissue swelling of the abdominal wall. There was no "bowel wall thickening". These findings are those to be anticipated 2 days postop. By then the patient's condition was beginning to improve. Her abdomen was difficult to assess due to the postoperative state, her obesity and necessary sedation on the ventilator. There was no evidence of bowel perforation and vigilant surveillance was the elected and appropriate course.

TF's condition stabilized. Dr Rives and multiple consultants continued to evaluate her on daily basis. She remained dependent on the ventilator, had low grade fever and persistent elevated though improving blood count. Dr Ripplinger was brought in for a second surgical opinion on 7/9/2015. By then her acidosis had resolved, her renal function was normalizing and her blood sugar and heart rate had been controlled. TF's abdomen was found to be distended with some fluctuance in the area of the hernia but there was no wound drainage or redness. He recommended a repeat CT scan and surgery if indicated. He declined to follow as a second opinion consultant. The CT scan was promptly obtained with IV and enteral contrast. The oral contrast reached the rectum fully opacifying the bowel and revealed no leaks. There remained a small amount of free fluid in the abdomen with less air in the hernia sack. This was actually thought to represent an improvement compared to the previous CT scan. There was no evidence of extravasation of contrast from the bowel or leak. Supportive care was indicated and continued.

The patient languished on the ventilator and had ongoing low-grade fevers and white cell elevation. She was failing to improve clinically. Her abdomen remained tightly distended without other redness or drainage. On 7/15/2015 Dr Rives ordered and obtained a repeat CT scan of the abdomen. The CT now had findings of an intestinal leak in the area of the colon repairs and infection. Dr Rives recommended prompt reoperation. The family refused and requested a change in surgeons. Dr Hamilton, a partner of Dr Ripplinger, was brought in and ultimately TF was returned to the operating room 2 days later on 7/17/2015. Findings included established peritonitis, dense inflammatory scarring and a leaking colon at the site of previous repair. The colon and mesh were removed and the fecal stream was diverted to control the infection. TF required a temporary exteriorization of the bowel or colostomy. The patient survived the operation. She required several CT guided procedures to drain intraabdominal abscesses but ultimately her condition improved. She was subsequently weaned from the ventilator, was discharged from the hospital and recovered.

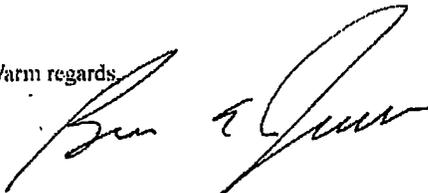
TF is a patient who had significant risk for surgical intervention. She had demonstrated poor wound healing by failing to heal her initial hernia repair. She was at increased risk for infectious complications due to her diabetes. Obesity is a recognized risk factor for poor healing as well. Dr Rives recommended a minimally invasive approach to mitigate risk for TF. Patient tolerated surgery poorly as evidenced by her early postoperative pulmonary and cardiovascular collapse. Though there was concern for intraabdominal infection throughout her course, she was diligently followed by Dr Rives and seen independently by Dr Ripplinger as well as multiple medical specialist consultants. The risk of reoperation was weighed on a daily basis against the patient's condition. TF had multiple CT scans. Sometime between 7/9/2015 and 7/15/2015 the bowel perforated. By 7/17/2015 there was well established peritonitis. Subsequent surgery and recovery were difficult. When bowel perforation was established Dr Rives was the first to recommend reoperation. The family's decision to replace him only added to the difficulty of the delayed subsequent surgery.

This type of case of delayed anastomotic or suture line failure does occur particularly in patients with pulmonary and cardiac complications following surgery. TF was also at risk for poor wound healing and infection as noted above. Dr Rives was confident in his repair of the initial colon injuries and no doubt weighed the risk of converting the laparoscopic procedure to open in Ms. Farris's case carefully before proceeding to completing the procedure laparoscopically. Implanting permanent mesh in a contaminated field certainly can lead to late prosthetic infection, but many patients can successfully incorporate the prosthetic without infection. This comes down to surgical judgement and risk management. The surgical decisions made by Dr Rives do not traverse commonly accepted standards of practice or constitute malpractice. Dr Rives diligently followed TF in the postoperative period. Such patients may be difficult to evaluate for any surgeon as evidenced by Dr Ripplinger's consultation. Ultimately when objective evidence mandated reoperation the patient was returned to the operating room.

My opinion to a reasonable degree of medical certainty is that Dr Rives' care is within the prevailing standards for surgical care and there is no evidence of malpractice in this difficult case.

I understand Dr. Rives' deposition was recently taken and the transcript is not yet available. After I receive the deposition transcript, I will review it and prepare a supplemental report.

Warm regards,



Brian E. Juell MD FACS

BRIAN E. JUELL MD, FACS
CURRICULUM VITAE
UPDATED 7/20/2018

CURRENT PRACTICE: Juell Surgical Associates DBA Premiere Surgical Specialists
6554 South McCarran Blvd. #B Reno, Nevada
Phone: 775-324-0288 Fax: 775-323-5504
Tax ID 88-0266640
bjuell@premieresurgical.net

PERSONAL:
Birth date: October 22nd, 1953
Birth place: Philadelphia, Pennsylvania
Citizenship: USA
Social Security #: 518-68-0412

EDUCATION:
College: University of Utah, Salt Lake City, Utah 1975
Honors Baccalaureate of Science
Magna Cum Laude

Medical School: University of Utah College of Medicine
Salt Lake City, Utah 1979
Alpha Omega Alpha

Internship: University of Michigan, Ann Arbor, Michigan 1979-1980
General Surgery

Residency: University of Michigan 1980-1981
General Surgery
University of Utah 1981-1984
General Surgery

BOARD CERTIFICATIONS:

American Board of Surgery May 1985
General Surgery
Expires July 1st, 2025

American Board of Surgery October 1993
Surgical Critical Care
Expires July 1st, 2024

LICENSURE:

Nevada #5075 Expires June 30th, 2019
California G87061 October 31, 2019

Confidential

**SCIENTIFIC
PAPERS:**

“Computerized Tomography in the Evaluation of Blunt Abdominal Trauma’ American Journal of Surgery 146;751, December 1983 Presented before the Southwest Surgical Conference, Phoenix, Arizona, May 1983

**EMPLOYMENT
HISTORY:**

Juell Surgical Associates July 1998 to Present
 Brian E. Juell, MD FACS October 1996 to July 1998
 Western Surgical Group January 1996 to September 1996
 Brian E. Juell, MD FACS January 1991 to January 1996
 Maclean, Tappan, Guisto and Schultz MD CTD.
 June 1984 to January 1991

**ACADEMIC
APPOINTMENTS:**

Clinical Assistant Professor of Surgery, University of Nevada School of Medicine June 1985 to Present

**HOSPITAL
AFFILIATIONS:**

Northern Nevada Medical Center, Sparks, NV. Senior Active Staff
 Saint Mary’s Regional Medical Center, Reno, NV. Active Staff
 Renown Regional Medical Center, Reno, NV. Active Staff
 Renown South Meadows, Reno, NV. Active Staff

**STAFF
APPOINTMENTS:**

Renown Regional Medical Center,
 Trauma Panel 1989 to Present
 Critical Care Panel 2009 to Present
 Vice Chief of Surgery 1986 to 1988
 Director of Renown Breast Center 2009 to present
 Saint Mary’s Regional Medical Center
 Chief of Medical Staff 1998 to 2000
 Member Board or Trustees, Saint Mary’s Health Network 1998 to 2000
 President Health Plan Committee 2001 to 2003
 Chairman ER Liaison Committee 1985 to 1998
 Executive Committee Member 1985 to 2000
 Library and Continuing Education ED Committee 1994 to 1998
 Chairman of Library and Continuing Education ED Committee
 1993 to 1995
 Trauma Director 1987 to 1990
 ICU Committee 1988 to Present
 Credentials and Privileges Committee 1994 to 1998
 Vice Chief of Staff 1994 to 1998
 Physicians Aid Committee 1997

Confidential

**PROFESSIONAL
ASSOCIATIONS:**

Washoe County Medical Society
Nevada State Medical Society
Fellow American College of Surgeons since 1987
American College of Surgeons, State of Nevada Trauma Committee
1987 to Present
American Trauma Society
Southwestern Surgical Society
Society of Critical Care Medicine
American Hernia Society
Director Western Physicians Alliance 1998 to present
Western Physicians Alliance Chairman 2000 to 2001

CERTIFICATIONS: Advanced Trauma Life Support Instructor



Premiere Surgical Specialists
General, Vascular, Trauma & Laparoscopic Surgery

Alvaro H. Davio, M.D., F.R.C.S.
Certified
American Board
of Surgery

Brian E. Juell, M.D., F.R.C.S.
Certified
American Board
of Surgery and
Surgical Critical Care

Thomas E. Rembetski, M.D.
Certified
American Board
of General and
Vascular Surgery

Current Legal Deposition Rates (Effective January 2018)

Tax ID 88-0266640

Prep Time- \$250/hour

Includes reviewing any documents prior to depositions or prep time to render an opinion regardless if a deposition is conducted. Payment is expected when the deposition or opinion is scheduled.

Out of Court Deposition (in Reno). \$1000/hour (1 hour minimum)

There is a 1 hour minimum paid in advance when scheduled. Additional time is charged in 15 minute increments after the first hour or portion of 15 minutes (\$250/15 minutes). Additional time will be billed to the attorney who signs this document and that attorney will be held liable for payment. Payment is expected within 10 business days. Late charges of \$25/day will apply.

Court Appearances (In Reno) \$1500/hour (4 hour minimum)

A deposit of \$500 is required to schedule. The deposit is non-refundable if the case is cancelled less than 5 business days prior to the court date. There is a minimum of 4 hours charged. Additional time is charged in 15 minute increments after the fourth hour for any portion of 15 minutes (\$375/15 minutes). Payable within 10 business days. Late charges of \$25/day will apply.

Court Appearances (Out of Town) \$1500/hour (8 hour minimum)

A deposit of \$1500 is required to schedule. The deposit is non-refundable if the case is cancelled less than 5 business days prior to the court date. There is a minimum of 8 hours charged per day. Travel time is not included and will be charged at a rate of \$250/ hour. Payable within 10 business days. Late charges of \$25/day will apply. All travel and hotel are at the expense of the attorney and reimbursed to the physician when receipts are provided.

This document is to be considered a written contract between Premiere Surgical Specialists and the attorney who signs this document. Signature will indicate acceptance of the terms above. Failure to comply will result in actions to collect a debt. All checks should be made to : Premiere Surgical Specialists.

Attorney (Print Name)

Signature

Date

Law Firm (Print)



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November 15, 2018

Brian E. Juell MD FACS

Depositions during the last 5 Years:

11/7/2016 Glen Myers vs Dr Devia Dr Juell was a treating physician for a patient who sued one of his partners (Dr Devia). The case was a cut bile duct in a cholecystectomy. Dr Juell did the operation to fix the duct and was called to testify. The case was settled in favor of Dr Devia. Attorney for the defense was Ed Lemmons, attorney for the plaintiff was Peter Durney

10/28/2013 Dr Juell received a subpoena and was called to testify as a fact witness in a workers compensation case where he had offered his opinion. Attorney Trent McAuliffe, Reno, Nevada

10/09/2013 Dr Juell was the treating physician for an inmate in a federal case in Sacramento. Hannum was the victim. Dr Juell was called to testify by the Assistant United States Attorney; Michael Beckwith. The case involved other inmates who had injured Mr Hannum.

(Criminal Case, State of California)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 15th day of November, 2018, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY J. RIVES, M.D. AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S INITIAL DISCLOSURE OF EXPERT WITNESSES AND REPORTS

was served as indicated below:

- served on all parties electronically pursuant to mandatory NEFCR 4(b);
- served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- by facsimile transmission; or
- by personal service as indicated.

Attorney	Representing	Phone/Fax/E-Mail
George F. Hand, Esq. HAND & SULLIVAN, LLC 3442 North Buffalo Drive Las Vegas, NV 89129	Plaintiff	702/656-5814 Fax: 702/656-9820 hsadmin@handsullivan.com


An employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

EXHIBIT 2

1 **[DOE]**
 2 THOMAS J. DOYLE
 Nevada Bar No. 1120
 3 CHAD C. COUCHOT
 Nevada Bar No. 12946
 4 SCHUERING ZIMMERMAN & DOYLE, LLP
 400 University Avenue
 Sacramento, California 95825-6502
 5 (916) 567-0400
 Fax: 568-0400
 6 Email: calendar@szs.com

7 KIM MANDELBAUM
 Nevada Bar No. 318
 8 MANDELBAUM ELLERTON & ASSOCIATES
 2012 Hamilton Lane
 9 Las Vegas, Nevada 89106
 (702) 367-1234
 10 Email: filing@memlaw.net

11 Attorneys for Defendants BARRY RIVES, M.D.;
 12 LAPAROSCOPIC SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

15	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
		)	DEPT. NO. 31
16	Plaintiffs,)	
		)	DEFENDANTS BARRY J. RIVES, M.D.
17	vs.	)	AND LAPAROSCOPIC SURGERY OF
		)	NEVADA, LLC'S REBUTTAL
18	BARRY RIVES, M.D.; LAPAROSCOPIC	)	DISCLOSURE OF EXPERT WITNESSES
	SURGERY OF NEVADA, LLC, et al.,	)	AND REPORTS
19)	
	Defendants.)	
20)	

21

22 Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC

23 ("Defendants") hereby disclose pursuant to Nevada Rules of Civil Procedure Rule 26 and

24 16.1 the name of their rebuttal expert witnesses who may be called at trial.

25 ///

26 ///

RETAINED EXPERTS

- 1
2 1. Bart Carter, M.D., P.C.
3 2240 West 16th Street
4 Safford, AZ 85546

5 Dr. Carter is a general surgeon and will testify as to the issues relating to the
6 standard of care, causation and damages, if any. Dr. Carter's initial report, curriculum
7 vitae including publication history, fee schedule and testimony history were previously
8 disclosed. His rebuttal report is attached hereto as Exhibit A.

- 9 2. Brian E. Juell, M.D.
10 6554 S. McCarran Blvd., Suite B
11 Reno, Nevada 89509

12 Dr. Juell is a general surgeon and will testify as to the issues relating to the standard
13 of care, causation and damages, if any. Dr. Juell's initial report, curriculum vitae including
14 publication history, fee schedule and testimony history were previously disclosed. His
15 rebuttal report is attached hereto as Exhibit B.

- 16 3. Lance Stone, D.O.
17 484 Lake Park Avenue
18 Oakland, CA 94610

19 Dr. Stone is a physician medicine and rehabilitation specialist. Dr. Stone is a
20 rebuttal witness. He will provide opinions rebutting the opinions of plaintiffs' experts, Dr.
21 Alex Barchuk and Dawn Cook. His opinions are described in his attached report and the
22 life care plan prepared by Sarah Larsen. Dr. Stone's report, curriculum vitae including
23 publication history, and fee schedule are attached hereto as Exhibit C. Dr. Stone was
24 asked to identify the matters he has testified in during the prior four years. Dr. Stone
25 indicated he does not maintain a list of testimony. He recalled having given
26 approximately five depositions during the past four years. The only matter in which he
could recall the name of the case was *Baxter v. Dignity Health*.

4. Sarah Larsen, RN
Olzack Healthcare Consulting
2092 Peace Court
Atwater, CA 95301

1 Ms. Larsen is an life care planner. Ms. Larsen is a rebuttal witness. She will provide
2 opinions rebutting the opinions of plaintiffs' expert, Dawn Cook. Ms. Larsen's report,
3 curriculum vitae including publication history and list of deposition/trial testimony and fee
4 schedule are attached hereto as Exhibit D.

5 5. Bruce Adornato, M.D.
177 Bovet Road, Suite 600
6 San Mateo, CA 94402

7 Dr. Adornato is a neurologist. Dr. Adornato is a rebuttal witness. He will provide
8 opinions rebutting the opinions of plaintiffs' expert, Dr. Justin Willer. Dr. Adornato's
9 report, Curriculum Vitae including publication history, list of deposition/trial testimony and
10 fee schedule are attached hereto as Exhibit E.

11 6. Kim Erlich, M.D.
1501 Trousdale Drive, Room 0130
12 Burlingame, CA 94010

13 Dr. Erlich is an infectious disease expert. Dr. Erlich is a rebuttal witness. He will
14 provide opinions rebutting the opinions of plaintiffs' expert, Dr. Alan Stein. Dr. Erlich's
15 report, Curriculum Vitae including publication history, list of deposition/trial testimony,
16 and fee schedule are attached hereto as Exhibit F.

17 7. Scott Kush, M.D.
101 Jefferson Drive
18 Menlo Park, CA 94025

19 Dr. Kush is a life expectancy expert. Dr. Kush is a rebuttal witness. He will provide
20 opinions rebutting the opinions of plaintiffs' expert, Dr. Alex Barchuk, as they pertain to
21 life expectancy. Dr. Kush's report, Curriculum Vitae including publication history, list of
22 deposition/trial testimony and fee schedule are attached hereto as Exhibit G.

23 8. Erik Volk
1155 Alpine Road
24 Walnut Creek, CA 94596

25 Mr. Volk is an economist. Mr. Volk is a rebuttal witness. He will provide opinions
26 rebutting the opinions of plaintiffs' expert, Dr. Terrence Clairtie. Mr. Volk's report,

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curriculum vitae including publication history, list of deposition/trial testimony and fee schedule are attached hereto as Exhibit H.

NON-RETAINED EXPERTS

1. See NRCP 16.1 disclosures.

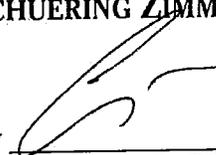
Defendants reserve the right to call any experts identified by any other party to this action.

The above expert witnesses may not be the only ones called by defendants to testify. Defendants reserve the right to later name other expert witnesses prior to trial. Defendants also reserve the right to call to testify at trial expert witnesses not named whose testimony is needed to aid in the trial of this action and/or to refute and rebut the contentions and testimony of plaintiff's expert witnesses.

Dated: December 19, 2018

SCHUERING ZIMMERMAN & DOYLE, LLP

By



CHAD C. COUCHOT
Nevada Bar No. 12946
400 University Avenue
Sacramento, CA 95825-6502
(916) 567-0400
Attorneys for Defendants BARRY J. RIVES,
M.D.; LAPAROSCOPIC SURGERY OF
NEVADA, LLC

EXHIBIT A

2240 WEST 16th STREET
SAFFORD, ARIZONA 85546
(928) 348-4030
(928) 348-4033

BART J. CARTER, M.D., F.A.C.S.

Diplomate, American Board of Surgery
General Surgery
Laparoscopic Surgery

December 19th, 2018

Dear Mr. Couchot:

Per your request, I reviewed the deposition of Dr. Barry Rives and the expert reports by Dr. Michael Hurwitz and Dr. Alan Stein. I continue to believe the surgical care Dr. Rives provided to Titina Farris was within the standard of care, as discussed in my previous report.

Dr. Hurwitz' report does not include any reference to the findings of the CT scan of the abdomen and pelvis from July 9, 2015. That study was important, because it did not demonstrate an increase in free air or significant fluid collections. There was no ct evidence in this important CT for air acute intra-abdominal process.

In both their reports, Dr. Hurwitz and Dr. Stein included an incomplete quote from Dr. Greg Ripplinger's note for his second opinion examination performed on July 9, 2015, which seems to take Dr. Ripplinger out of context. Dr. Hurwitz and Dr. Stein both stated that Dr. Ripplinger "suspected a bowel leak and stated there should be a fairly low threshold for reoperation." implying Dr. Ripplinger thought Mrs. Farris should be taken to surgery at that time. What Dr. Ripplinger actually said, after discussing his recommendation for a CT scan with intravenous oral and rectal contrast was:

"I think there should be a fairly low threshold for at least a diagnostic laparoscopy or even laparotomy if there are any significant abnormalities noted on the CT scan especially if there is increase in fluid in the abdomen, I would be concerned for a possible bowel leak."

In other words, Dr. Ripplinger's recommendation to return Mrs. Farris to surgery was contingent upon observing significant abnormalities on the CT scan performed on July 9, 2015. There were no such abnormalities on the CT scan.

Dr. Hurwitz noted the two colotomies "should have put Dr. Rives' on notice of a potential problem and the source of the infectious process." It is clear from both the records of Dr. Rives' care, and his deposition testimony, that Dr. Rives was aware of a potential failure of the repair of the colostomies. Dr. Rives testified in deposition that a failure of the repair was considered when Mrs. Farris' condition began to deteriorate. Appropriate imaging studies were ordered to evaluate for such a possibility and that examination was negative.

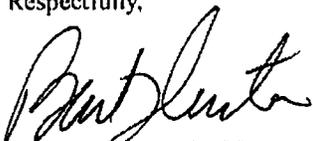
The "signs of infection" Dr. Hurwitz describes are also signs of the acute inflammatory condition which may also occur following surgery. Only in retrospect are we able to clearly see that the failure of this colotomy repair may have been the primary culprit. Further, Mrs. Farris' postoperative deterioration is more consistent with pulmonary complications than an intra-abdominal infection. Acute pulmonary edema pulmonary embolism or pulmonary aspiration are all significant items on the differential diagnosis. On postoperative day one, Mrs. Farris became short of breath. Later that day, she required intubation for acute respiratory failure. The CT scan of the chest, abdomen, and pelvis, performed on July 5, 2015 showed a small right pleural effusion, as well as bilateral pulmonary consolidation. There was no clear evidence of a bowel perforation or any other acute intra-abdominal process until July 15, 2018. At that point, the third post-operative CT scan showed findings concerning for a leak and the appropriate decision was made to return to surgery.

Dr. Hurwitz noted "the stapled repairs were inadequate and did not hold, resulting in leakage of fecal material into the abdominal cavity." I agree that the repair failed. It appears the suture line for one or both of the colotomies did ultimately fail. But the fact that a repair fails does not mean there is a breach of the standard of care. Stapled repair of the bowel is a commonly utilized technique for repair with or without over sewing of the stapled line. Stapled repairs are acceptable and are clearly within the standard. In other words, repairs can and will fail even when the standard of care is met. The description of the repairs Dr. Rives gave during his deposition demonstrates the repairs were performed properly. Dr. Rives repaired both colotomies with an Endo-GIA stapler. Before firing the stapler, Dr. Rives inspected the surrounding tissue and determined it was healthy enough to hold staples. After the repairs, he inspected the staple sites and squeezed the colon with a clamp to see if any air bubbles arose or stool exuded out. There was no sign of leakage from the repairs and there was no fecal contamination observed. Before the procedure was completed, the repairs were irrigated and the abdomen was drained, per Dr. Rives' custom and practice. In addition, Dr. Rives inspected the mesenteric side of the colon to assure there was no injury.

If the repair of the colotomies failed immediately, as Dr. Hurwitz seems to suggest, one would expect to see extravasation of contrast from the bowel on the CT scan performed on July 9, 2015. There was no such extravasation. Accordingly, one or both of the colotomy repairs most likely failed at some point between July 9, 2015, and July 15, 2015, when the subsequent CT scan showed increased free air.

The opinions I have expressed in this report are held to a reasonable degree of medical probability. I reserve the right to supplement my opinions as new and/or additional information is provided to me.

Respectfully,



Bart Carter MD, FACS

EXHIBIT B



Premiere Surgical Specialists

General, Vascular, Trauma & Laparoscopic Surgery

Alvaro H. Devia, M.D., F.A.C.S.
Certified
American Board
of Surgery

Brian E. Juell, M.D., F.A.C.S.
Certified
American Board
of Surgery and
Surgical Critical Care

Thomas E. Rembetski, M.D.
Certified
American Board
of General and
Vascular Surgery

12/16/2018

I have been asked to review the deposition transcript of Dr. Barry Rives and to respond to reports of expert witnesses in the case of Farris v. Rives.

Response to Expert Report of Michael B. Hurwitz, MD

Dr Hurwitz indicates that he regards himself to be an expert in hernia repair and management of infections. He does not explicitly indicate his experience in the diagnosis of anastomotic leaks. Patient presentations from bowel and stomach spontaneous perforations and from leaks from surgical repairs and anastomoses present in highly variable patterns. I frequently see patients with perforated colon who have been sick for days and sometimes weeks before presenting to the ER. The response to sepsis by the patient is also highly variable. Some patients are genetically prone to sepsis and may have rapidly fatal courses despite heroic medical and surgical intervention. Other patients seem to be able to withstand major intestinal perforations and infections and survive despite diagnostic delays. Surgical bowel repairs and anastomoses fail with some regularity. All surgeons who perform these surgeries have such failures. Some failures can be managed without reoperation. These failures may be immediate early or quite delayed. All surgeons performing these surgeries have a high index of suspicion for these complications when the patient has complications after surgery. Diagnosis can be vexing. Reoperation has inherent risks in and of itself. Dr Hurwitz from the position of a Monday Morning Quarterback supports the allegations of the plaintiff but fails to make the case that intervention was explicitly warranted based on the collective data at hand at any one time in Ms. Farris's course. Patient was attended to and evaluated by multiple physicians and surgeons and until a leak was diagnosed on post op day #12 a decision for reoperation based the inherent risks vs benefits was unclear.

Ms. Farris underwent laparoscopic hernia repair complicated by colon injury and repair. The use of an energy device to free the colon from the adherent mesh has been associated with an increased risk of bowel perforation and delayed leak development. The use of sharp dissection has similar complications. Dr Rives was aware of this, recognized and repaired the resulting injuries and inspected the adequacy of the repairs.

Ms. Rives had surgery. Postoperatively she had pain and developed abdominal and bowel distension. She developed a tachycardia and increasing respiratory failure and hypoxia. She had an elevated WBC count and a moderate lactic acidosis. She had hypovolemia and required vigorous fluid resuscitation and developed acute kidney injury. She was admitted to ICU and ultimately required intubation and ventilator support. She did not have bacteremia. She did have septic syndrome criteria but also could have had respiratory failure due to progressive hypoventilation and atelectasis or more likely pulmonary aspiration syndrome. The Infectious Disease specialist operational diagnosis of fecal peritonitis is supported primarily from the events in surgery and supported the use of broad-spectrum



antibiotics. Abdominal pain following surgery is expected. An elevated WBC is nonspecific and could be due to stress. CT scan on post op day 2 had findings expected following the surgery performed but no incontrovertible evidence of bowel leak. Physical findings did support such diagnosis. As Dr Rives stated in his deposition there was no bowel contents leaking out of her wounds. Her condition was stabilized. Dr Hurwitz states that the patient continued to deteriorate. This in fact is not true. She was sick but her condition actually improved. Her tachycardia and lactic acidosis resolved. She had no significant fever. Her abdominal exam did not progress adversely. She has a persistently elevated WBC count but that is a nonspecific finding. Her overall failure to improve led to a second surgical opinion by Dr Ripplinger on POD #6. He like Dr Rives felt there should be a low threshold for considering reoperation. In fact, he did not state there was an absolute indication to proceed to surgery based on his examination of the patient, her clinical course and all available data. Dr Ripplinger recommended that another CT scan be obtained. One was this time with radio-opaque contrast in the intestine. The CT scan showed no leak of contrast from the bowel and no adverse changes from the previous pathognomonic for bowel leak. Is this the point where Dr Hurwitz felt that reoperation was mandatory?

Ms. Farris remained relatively stable until POD #12 when her condition did deteriorate. CT done then demonstrated findings consistent with a leak. She did not have surgery until the next day by Dr. Hamilton. Findings at surgery were both acute and chronic inflammation and leaking surgical repairs. She had a protracted course but ultimately survived and recovered. MS Farris had significant comorbidities. It is open to speculation that a any earlier operation would have altered her necessary surgery or subsequent recovery.

Dr Hurwitz concludes that Dr Rives fell below the standard of care on 4 counts:

1. Intraoperative technique; Dr Hurwitz does not specify which techniques. Use of thermal energy in approximation to the bowel is relatively contraindicated but may have been unavoidable was successful, and the resulting injuries were reasonably repaired. These repairs were later inspected before the conclusion of surgery. The subsequent suture line disruption cannot be directly linked to a technical failure.
2. Failure to adequately repair the colon injuries on initial operation. Dr Rives was satisfied. Dr Hurwitz does not indicate why stapling the holes closed was inadequate.
3. Failure to timely diagnose and treat feculent peritonitis. It is abundantly unclear when there was an absolute indication to reoperate based on the patient's course and subsequent favorable outcome. Surgical decision making was difficult for multiple surgeons. It is unclear that Ms. Farris's course would have significantly different.
4. Poor post-operative management; redundant at best.

Dr Hurwitz supports the allegations of the plaintiff. He fails to make the case for a smoking gun for earlier reoperation or a technical error by Dr Rives constituting an act of malpractice.

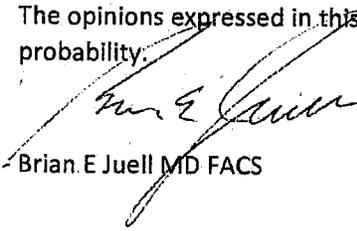
Response to Expert Report of Dr Alan J. Sein, MD

Dr Stein is an Infectious Disease specialist practicing in New York. Clearly, he is not an expert in surgery. He retrospectively states that Dr Rives fell below the standard of care regarding a decision for reoperation. He correctly reiterates Ms. Farris's failure to progress on a day to day basis. Ms. Farris certainly was in critical condition. His statement that other causes of her early postoperative deterioration were eliminated is clearly open to debate. Bowel perforation and abdominal sepsis were

always on the list but the precise point where surgery was necessary is not specified. He does not make a case that Ms. Farris outcome, which was favorable would have been significantly improved by earlier intervention. Dr. Stein statement that CT scans are not sensitive to determine sources of intra-abdominal sources of infection in the early postoperative period is a misleading statement at best.

Ms. Farris had an unusually confounding postoperative course but likely had the same operation she would have received had the indications for reoperation been mandated at an earlier point in her care. These experts fail to make a case that her clinical course and recovery would have been significantly altered to point constituting malpractice on the part of Dr Rives.

In conclusion, I continue to believe the care Mrs. Farris received from Dr. Rives met the standard of care. The opinions expressed in this report and my original report are held to a reasonable degree of medical probability.



Brian E Juell MD FACS

EXHIBIT C

Chad C. Couchot, Esq.
12/19/18
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, CA 95825-6502

Dear Mr. Couchot

RE: Titina Marie Farris

I was retained by your office as a Board Certified Physical Medicine and Rehabilitation (PMR) physician expert. You requested I review the Life Care Plan (LCP) authored by Dr. Alex Barchuck and attest to any separate and divergent opinions I may hold. In preparation I reviewed the LCP document and also Titina Marie Farris medical records provided by your office.

I maintain a current full time clinical and prior academic medicine practice within the specialty of Physical Medicine and Rehabilitation as a healthcare provider for disabled individuals including but not limited to those with critical illness polyneuropathy. I am a qualified rehabilitation medical expert due to my professional training and clinical experience. I have not examined Ms. Farris notwithstanding I reserve the possibility my opinions may evolve if the opportunity to examine her availed itself. Based upon the documents I reviewed listed below I am confident in submitting an opinion of her future medical and rehabilitation care. My opinions are expressed below and within a separate LCP document jointly prepared with Sarah Larson, RN.

**ADVANCED ORTHOPEDICS SPORTS MEDICINE
ALEX BARCHUCK, M.D.'S LCP evaluation
BARRY RIVES, M.D.
BESS CHANG, M.D.
CARE MERIDIAN (MEDICAL BILLING
CTE STONE RE RECORDS FOR REVIEW
DAWN COOK'S LIFE CARE PLAN
DESERT VALLEY THERAPY
DR. CHANEY
DR. HAMILTON
DR. STEVEN Y. CHINN MEDICAL BILLING
ELIZABETH HAMILTON, M.D.
JUSTIN WILLER, M.D.'S REPORT
LAPAROSCOPIC SURGERY OF NEVADA
PATRICK FARRIS
PHOTOGRAPHS OF PLAINTIFF
ST. ROSE DOMINICAN - SIENA CAMPUS
ST. ROSE DOMINICAN HOSPITAL**

The following are the list of diagnosis Dr. Barchuck documented following his clinical examination of plaintiff:

“Ms. Titina Marie Farris is a 55-year-old married female with history of a perforated viscus with intra-abdominal sepsis with numerous sequelae who was seen at Kentfield Rehabilitation & Specialty Hospital on 3/20/2018 at which time a history was obtained and a physical examination was performed”.

- 1. Reducible ventral hernia**
- 2. Bilateral hand Dupuytren’s Contracture**
- 3. Probable bilateral Carpal Tunnel Syndrome**
- 4. Probable left rotator cuff tendonitis**
- 5. Chronic left heel stage 3 decubitus**
- 6. Situational depression, anxiety and sleep disturbance**
- 7. Viscus perforation with intra-abdominal sepsis status post exploratory laparotomy and removal of prosthetic mesh**
- 8. Acute respiratory failure status post tracheostomy placement**
- 9. History of incarcerated incisional hernia status post laparoscopic repair with mesh**
- 10. Encephalopathy secondary to sepsis and medications**
- 11. Acute blood loss anemia**
- 12. Acute kidney injury**
- 13. Neuropathy from prolonged immobilization**

- 14. Severe sensory loss and motor weakness below the knees bilaterally involving the Tibial and Peroneal nerves**

- 15. Right ankle contracture with bilateral foot drop
- 16. Weight gain
- 18. Chronic neuropathic musculoskeletal myo-fascial pain
- 19. High fall risk
- 20. Impaired mobility and ADL status
- 21. Impaired avocational status

Based upon my independent review of Ms. Farris medical records I agree in general with Dr. Barchuck's diagnosis. However, the medical records I reviewed support my conclusions that several medical problems were pre-existing or unrelated to surgery

1. Ventral hernia- Pre-existing condition
2. Bilateral Dupuytren contracture- May be inherited and develops more commonly within diabetic patient population. Dupuytren is unrelated to her procedure and surgical complications
3. Probable Carpal Tunnel Syndrome- Unconfirmed. Pre-existing related to diabetic polyneuropathy
4. Probable left rotator cuff tendonitis- Records reflect this was a pre-existing condition
5. Chronic left heel Stage 3 Decubitus- Inaccurate diagnosis. Wounds are no longer diagnosed or staged as "Decubitus". Ms. Farris most likely has a calcaneal pressure wound that requires accurate staging by a certified wound care specialist
6. Situational depression, anxiety and sleep disturbance- Pre-existing condition with exacerbation following surgery
7. Viscus perforation with intra-abdominal sepsis status post exploratory laparotomy and removal of prosthetic mesh- Related to surgery
8. Acute respiratory failure status post tracheostomy placement- Complication of the surgery. Decannulated
9. History of incarcerated incisional hernia status post laparoscopic repair with mesh
10. Encephalopathy secondary to sepsis and medications- Resolved complication no longer requiring care
11. Acute blood loss anemia- Resolved complication no longer requiring care
12. Acute kidney injury- Resolved complication no longer requiring care
13. Neuropathy from prolonged immobilization- Pre-existing diabetic polyneuropathy exacerbated by surgical complication
14. Severe sensory loss and motor weakness below the knees bilaterally involving the Tibia and Peroneal nerves- Pre-existing diabetic polyneuropathy exacerbated by surgical complication
15. Right ankle contracture with bilateral foot drop- Surgical complication related to

- prolonged bed rest and polyneuropathy
16. **Weight gain- BMI is unchanged from pre hospital weight. Obesity was present prior to surgery**
 17. **Chronic neuropathic musculoskeletal myofascial pain- Pre-existing. Exacerbated following surgery**
 18. **Neuropathy from prolonged immobilization- Polyneuropathy was pre-existing condition secondary to diabetes**
 19. **High fall risk- No supporting standard fall risk assessment, for example, Morse Fall Risk Scale to support conclusion**
 20. **Impaired mobility and ADL status- Surgical complication**
 21. **Impaired avocational status- Pre-existing exacerbated by surgical complication**

Dr. Barchuck future care recommendations:

1. **Physical Medicine & Rehabilitation specialist**
2. **Primary care physician**
3. **Podiatrist**
4. **Orthopedic, Hand Surgery**
5. **Psychology/Psychiatry**
6. **Dietician**
7. **Physical and Occupational Therapy**
8. **Massage therapy and acupuncture therapy**
9. **Wound clinic**
10. **Adaptive aquatic swim therapy program**
11. **Carpal Tunnel surgery**
12. **Joint and trigger point injections**
13. **MRI left shoulder**
14. **Electrodiagnostic studies of upper and lower extremities**
15. **Electric wheelchair**
16. **Bilateral custom AFO's**
17. **Heel protector boots**
18. **Single point cane**
19. **Four-wheeled seated walker**
20. **Reacher**
21. **Abdominal binder**
22. **Four to six hours of daily attendant/chore care services**
23. **Fully wheelchair accessible home in 5-10 years.**

Based upon my independent review of Ms. Farris medical records, images and video I have formed conclusions that both share and differ from Dr. Barchuck's future recommendations:

1. **Physical Medicine and Rehabilitation specialist- Ms. Farris has an acquired disability as a result of her post surgical complications. I support future PMR sub specialty care**
2. **Primary Care physician- Ms. Farris has several major pre existing medical co-morbidities and was receiving primary physician care that should continue. The medical necessity and frequency was due to pre-existing condition unchanged following surgery**
3. **Podiatrist- Ms. Farris has pre existing diabetic polyneuropathy. Consequently, the standard of care is Podiatric treatment. The medical necessity was pre- existing**
4. **Orthopaedic/Hand Surgery- Ms. Farris has polyneuropathy and perhaps Carpal Tunnel Syndrome which is speculative. The Dupuytren contractures are unrelated to her surgery and post surgical complications. Hand Surgery Orthopaedic care is therefore unrelated to her surgery and post surgical complications**
5. **Psychology/ Psychiatry- Ms. Farris mood disorder has been impacted by her acquired disability and functional impairment. I would support episodic behavioral health services**
6. **Dietician- Ms. Farris was and currently a non-compliant obese diabetic and the need for nutritional care and counseling was pre-existing**
7. **Physical and Occupational Therapy- Ms. Farris has an acquired disability as a consequence of her surgery and I would support episodic therapy services**
8. **Massage and acupuncture therapy- Ms. Farris had pre-existing chronic pain disorder related to her shoulder and polyneuropathy. Chronic pain was pre-existing. Furthermore, there is no proven advantage of complementary therapy over standard physical therapy, exercise and pharmacologic care. For these reasons I do not support massage and acupuncture**
9. **Wound clinic- Ms. Farris likely developed a calcaneal pressure wound due to pre-existing polyneuropathy, skin care non compliance. The exacerbation of her neuropathy, improper fitted bracing and improper limb positioning likely contributed to her acquired wound. I support a comprehensive wound care center or home health nurse**
10. **Carpal Tunnel surgery- I am unable to identify confirmation of Carpal Tunnel Syndrome and if present is likely due to pre-existing diabetic polyneuropathy. At this time, I cannot support surgery without a confirmed diagnosis based upon EMG/NCV studies**
11. **Joint and trigger point injections- Ms. Farris was receiving care for pre-existing shoulder pain with injection therapy. Pre-existing condition**
12. **Adaptive aquatic swim therapy program- Ms. Farris has an open wound and is not medically appropriate for aquatic therapy. Furthermore, there is no proven advantage of aquatics for her condition. I do not support this recommendation**
13. **MRI Left shoulder- The shoulder injury and related disability are pre-existing**
14. **Electrodiagnostic studies of upper and lower extremities- EMG studies have been performed of the LE. The polyneuropathy was pre-existing**
15. **Electric wheelchair- I support the need for a future powered mobility device**
16. **Bilateral custom AFO- Bilateral foot drop is a new acquired disability and I support the need for bilateral custom AFO**
17. **Single point cane, reacher, abdominal binder heel protector boots (PRAFO), 4 WW-**

- I support providing these assistive devices which are standard care for the disability**
- 18. Four to six hours of daily attendant/chore care services- Ms. Farris had pre-existing medical co-morbidities, non compliance with medical care and in all probability would have needed future attendant care. The onset of the need for a caregiver and number of hours has changed as a result of her disability**
 - 19. Fully wheelchair accessible home in 5-10 years- Ms. Farris had pre-existing medical co-morbidities, chronic pain and non compliance with her medical care. In all probability she would have become wheelchair dependent regardless of her surgical complications**

In addition to this supplemental report I shared specific medical, rehabilitation and equipment recommendations in a separate detailed life care plan prepared jointly with Sarah Larsen, RN. I do not endorse Dr. Barchuck's life expectancy projection and defer to medical researcher and life expectancy expert Scott J. Kush, MD who has provided a separate analysis

Lance R. Stone, DO

Lance R. Stone, DO

LANCE R STONE, D.O.

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PROFESSIONAL ACTIVITIES

2018- current	<p>Medical Director</p> <p>Santa Rosa Memorial Hospital-ARU Santa Rosa, California</p>
2011 - 2017	<p>Chair</p> <p>Department of Rehabilitation Medicine Alameda Health Systems Oakland, California</p> <p>Health Information Management Committee</p>
2010 - 2011	<p>Associate</p> <p>The Neurology Center of Southern California Physician Group The Rehabilitation Center at Scripps Memorial Hospital / Encinitas</p>
2010 - 2012	<p>Voluntary Faculty Instructor</p> <p>Department of Neurology University of California San Diego, San Diego, California</p>
1994 - 2010	<p>Medical Director</p> <p>San Diego Rehabilitation Institute Alvarado Hospital, San Diego, California</p>
2006 - 2010	<p>Medical Director</p> <p>Rehabilitation Services Scripps-Mercy Medical Center, San Diego, California</p>
1997 - 2010	<p>Medical Director</p> <p>Rehabilitation Services UCSD Medical Center / Hillcrest, San Diego, California</p>
1989 - 1991	<p>Assistant Medical Director</p> <p>Rancho Los Amigos National Rehabilitation Center University of Southern California, Downey, California</p>
1988 - 1992	<p>Service Chief, Adult Brain Injury Program</p> <p>Rancho Los Amigos National Rehabilitation Center University of Southern California, Downey, California</p>

ACADEMIC APPOINTMENTS

1992 - 1993	Chairman, Department of Neurosciences Rancho Los Amigos National Rehabilitation Center University of Southern California, Downey, California
1987 - 1992	Residency and Fellowship Program Director Physical Medicine and Rehabilitation Rancho Los Amigos National Rehabilitation Center/USC Affiliation - Wadsworth Veteran's Administration Medical Center, Department of Physical Medicine and Rehabilitation Los Angeles, California
1987 - 1992	Clinical Assistant Professor Department of Neurology University of Southern California Los Angeles, California
1997 - 2011	Clinical Assistant Professor Department of Orthopedics University of California San Diego San Diego, California

EDUCATION

Fellowship	Neurologic Rehabilitation Rancho Los Amigos National Rehabilitation Center University of Southern California, Downey, California 1988 – 1989
Residency	Physical Medicine and Rehabilitation University of Colorado Health Sciences Center and Craig Hospital Denver, Colorado 1984 – 1987, Chief Resident 1985 – 1986
Internship	Beaumont Hospital Farmington Hills, Michigan 1981 – 1982
Medical School	Midwestern University Chicago, Illinois 1977 – 1981, Doctor of Osteopathy
Undergraduate	Michigan State University East Lansing, Michigan 1976 – 1977, Baccalaureate of Science Tulane University New Orleans, Louisiana 1975 – 1976 New England College Henniker, New Hampshire 1974 – 1975
High School	Cranbrook High School Bloomfield Hills, Michigan

1970 – 1973

LICENSURE & BOARD CERTIFICATION

Licensure, California 1987

Board Certification, American Osteopathic Board of Rehabilitation Medicine 1992

PUBLISHED ARTICLES

Ramachandran VS, Altschuler EL, Stone LR: Can mirrors alleviate visual hemi neglect?

The Journal of Medical Hypothesis, 1999, Volume 52, No. 4, 303-305

Stone LR, Friedlund P: Trauma top ten: Acute rehabilitation of the tetraplegic patient.

Journal of Trauma Nursing, October/December 1998, Volume 5, Issue 4, 105-107

Altschuler EL, Wisdom SB, Stone LR, Ramachandran VS: Rehabilitation of Hemiparesis after stroke with a mirror. The Lancet, 1999, Volume 353, No. 9169, 2035-2036.

Kim SJ, Shin DY, Stone L: Cranial nerve injuries in the adult with traumatic brain injury.

Journal of Korean Academy of Rehabilitation Medicine, 1993, Volume 17, No. 2, 194-201.

Stone LR, Keenan MAE: Deep Venous thrombosis of the upper extremity following traumatic brain injury.

Archives of Physical Medicine & Rehabilitation Medicine, 1992, Volume 73, No. 5, 486-489

Druitt S, Kramer WG, Howard NW, Keenan MAE, Stone LR, Waters RL, Gellman H: Carpal tunnel syndrome secondary to wrist and finger flexor spasticity. The Journal of Hand Surgery, 1990, Volume 15, No. 6, 940-944

Keenan MAE, Haider TT, Stone LR: Dynamic electromyography to assess elbow spasticity.

The Journal of Hand Surgery, 1990, Volume 15, No. 6, 940-944.

Young S, Keenan MAE, Stone L: The treatment of spastic plano valgus foot deformity in the neurologically impaired adult. Foot and Ankle, 1990, Volume 10, No. 6.

Keenan MAE, Tomas SE, Stone L, Gersten LM: Percutaneous phenol block of the musculocutaneous nerve to control elbow flexor spasticity.

The Journal of Hand Surgery, 1990, Volume 15A, No. 2, 340-346

Stone LR, Keenan MAE, Shin DY: Acquired limb loss following traumatic brain injury.

American Journal of Physical Medicine and Rehabilitation, 1990, Volume 69, No. 3, 135-139.

Aboulafia AJ, Keenan MAE, Stone LR: An uncommon cause of fever in a brain injured patient.

Brain Injury, Volume 4, Issue 3, July 1990, 307-309.

Hurvitz SA, Stone LR, Keenan MAE, Waters RL: Acute subdural hematoma mimicking an epidural hematoma on a CT scan. Brain Injury, 1989, Volume 3, No. 1, 63-65.

Stone L, Keenan MAE: Peripheral nerve injuries in the adult with traumatic brain injury.

Clinical Orthopedics and Related Research, No. 233, August 1988, 136-144.

PUBLISHED ABSTRACTS

Stone LR, Fanchiang SP, Keenan MAE, Young S: Outcome of traumatic brain injured patients with delayed admission to inpatient rehabilitation.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-35.

Stone LR, Keenan MAE, Stewart CA, Hardy SE: Diagnosis and incidence of reflex sympathetic dystrophy in traumatic brain injury.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-35

Keenan MAE, Ahearn R, Stone LR: Selective release of spastic elbow flexor muscles in the brain injured adult.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-10

Orcutt SA, Stone LR, Keenan MAE, Waters RL, Gellman H: Carpal tunnel syndrome secondary to wrist and finger flexion spasticity.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-14.

Payne WK, Keenan MAE, Stone LR: Foot complications in non-ambulatory spastic patients.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-15.

Stone LR, Cohen SA, Keenan MAE, Waters RL: Rehabilitation of combined severe traumatic brain and spinal cord injury. American Spinal Injury Association Annual Meeting, 1989.

Hardy S, Stewart CA, Stone L, Keenan MAE, Hung G: Incidence of diagnosis of reflex sympathetic dystrophy in traumatic brain injury: Use of bone scintigraphy.

Clinical Nuclear Medicine, Volume 13, No. 9, 16.

Jamieson K, Stone L, Keenan MAEL Preventable complications and missed injuries in patients with severe head trauma.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Keenan MAE, Stone L, Thomas B, Gersten LM: Percutaneous phenol block of the musculocutaneous nerve.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

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Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Keenan MAE, Haider T, Stone L: Electromyographic assessment of hand placement in brain injured adults.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Keenan MAE, Romanelli RR, Lunsford MS, Stone L: Evaluation of motor control in the hands of adults with spasticity from brain injury using dynamic EMG.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

SCIENTIFIC PRESENTATIONS

Introduction to Transcranial Direct Current Stimulation (TDCS) in Neuropsychiatric Research.

Course Co-Director

Highland Hospital. Oakland California. *October 20, 2012.*

Neural Repair: Current Trends in Restorative Therapies Following Traumatic Brain Injury.

Faculty

Scripps Memorial Hospital - 6th Annual Brain Injury Rehabilitation Conference. Carlsbad, California. *March 17 and 18, 2011.*

Late Physical Complications Following Stroke and Traumatic Brain Injury.

Medical Grand Rounds. John F. Kennedy Memorial Hospital. Indo, California. *February 16, 1994.*

Management of Pain and Reflex Sympathetic Dystrophy Following Traumatic Brain Injury.

International Congress of Orthopaedic Rehabilitation. Anaheim, California. *June 22, 1990.*

Pathophysiology of Traumatic Brain Injury.

Neurology Grand Rounds. Harbor UCLA Medical Centers, Department of Neurology. Torrance, California. *February 26, 1990.*

SCIENTIFIC PRESENTATIONS (continued)**The Treatment of Spastic Plano valgus Foot Deformity in the Neurologically Impaired Adult.**

The 57th American Academy of Orthopedic Surgeons. New Orleans, Louisiana. *February 10, 1990.*

Diagnosis and Incidence of Reflex Sympathetic Dystrophy in Traumatic Brain Injury.

The 51st Annual Assembly, American Academy of Physical Medicine and Rehabilitation. San Antonio, Texas. *November 6, 1989.*

Outcome of Traumatic Brain Injured Patients with Delayed Admission to Inpatient Rehabilitation.

The 51st Annual Assembly, American Academy of Physical Medicine and Rehabilitation. San Antonio, Texas. *November 6, 1989.*

Rehabilitation of Trauma Patients.

Eighth Annual Modern Concepts in Trauma Care Symposium. Orange, California. *April 27, 1989.*

Incidence and Diagnosis of Reflex Sympathetic Dystrophy in Traumatic Brain Injury:

Use of bone Scintigraphy. First Biennial World Congress, International Association of the Study of Traumatic Brain Injury. San Jose, California. *April 9, 1989.*

Pathophysiology of Traumatic Brain Injury.

Medical Grand Rounds Rancho Los Amigos Medical Center. Downey, California. *March 2, 1989.*

Peripheral Nerve Injuries in the Adult with Traumatic Brain Injury.

50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. *November 3, 1988.*

Percutaneous Phenol Block of the Musculocutaneous Nerve.

50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. *November 3, 1988.*

Evaluation of Motor Control in the Hand of Adults with Spasticity from brain Injury using

Dynamic Electromyography. 50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. *November 3, 1988.*

Intrinsic Release for Spastic Hand Deformity.

American Association for Surgery of the Hand, Annual Meeting. Toronto, Canada. *October 1988.*

POSTER EXHIBIT PRESENTATIONS**Foot Complications in Non-ambulatory Spastic Patients.**

The 58th Annual Meeting of the American Academy of Orthopaedic Surgeons. Anaheim, California. *March 7, 1991.*

Autonomic Dysfunction Syndrome (ADS): Report of a case with observations at necropsy.

The 52th Annual Assembly of the American Academy of Physical Medicine and Rehabilitation. Phoenix, Arizona. *October 23, 1990.*

Posterior Tibial Nerve Phenol Block to Control Spastic Equinus Deformity.

The 57th Annual Meeting of the American Academy of Orthopaedic Surgeons. New Orleans, Louisiana. *February 8-12, 1990.* Course Objectives.

COURSE FACULTY

Critical Care Summer Session 99.

UCSD School of Medicine. Rehabilitation in the Critically Ill Patients. San Diego, California. August 5, 1999. Faculty.

Spinal Cord Injury Rehabilitation.

Third Annual Neurotrama Nursing Conference. UCSD Medical Center. San Diego, California. November 10, 1998.

Acute Rehabilitation of the Tetraplegic Patient.

Trauma Grand Rounds. UCSD Medical Center, Department of Surgery. San Diego, California. October 13, 1998

Neuropathology As a guide to Rehabilitation Following Traumatic Brain Injury.

Trauma Grand Rounds. UCSD Medical Center, Department of Surgery. San Diego, California. May 23, 1997

Sociedad Occidental de Medicina de Rehabilitacion Annual Internal Meeting.

Peurto Vallarta, Mexico. May 15-19, 1995. Faculty.

San Diego Head Injury Foundation, Mild Traumatic Brain Injury: The Reconstruction Phase.

San Diego, California.

American Academy of Neurology, Traumatic Brain Injury Rehabilitation Course.

Daniel Freeman Memorial Hospital and Rancho Los Amigos Medical Center. October 14-18, 1991. Faculty.

Third International Symposium, Neuro-Orthopaedic Management of the Traumatic brain Injured

Adult. Anaheim, California. June 21-23, 1990. Course Director.

VOLUNTEER ACTIVITIES

2005 - 2011: Red Cross Physician Volunteer (Comprehensive Combat and Casualty Care CC5) Balboa

Naval Medical Center

San Diego, California

LETTERS TO THE EDITOR

New England Journal of Medicine. Editorials and Conflicts of Interest. Volume 336: 728-729, No. 10., March 6, 1997

BOOKS

Neuro-Orthopaedic Complication Following Traumatic Brain Injury.

Physical Medicine and Rehabilitation: State of the Art Reviews. Publisher Hanley and Belfus, Inc. 1993, Volume 7, No. 3, Editor.

CHAPTERS

Spasticity: Management Using Nerve Blocks.

Physical Medicine and Rehabilitation: State of the Art Reviews 1993, Volume 7, No. 3, 527-558.

WRM/PPR
②

Fee Schedule

- *Medical Record Review-300.00/hour*
- *Telephone Consultation-400.00/hour*
- *Physician Examination-400.00/hour**
- *Preparation of Written Life Care Plan Report-500.00/hour*
- *Deposition-750.00/hour*
- *Expert Trial Testimony-2,000.00 half day, 5,000.00 full day ***
- *Retainer Fee-2,000.00*

**Office*

***Excluding travel expenses, including preparation*

Tax ID 364522096

Billing Address

**484 Lake Park Avenue #9
Oakland, California 94610
E-Irstone@acmedctr.org
F-510-895-4511
C-619-840-6297**

EXHIBIT D



Olzack Healthcare Consulting

2092 Peace Court, Atwater, CA 95301
Phone: 209-358-8104 Fax: 209-358-8115
olzackhealthcare@gmail.com

December 19, 2018

Chad Couchot, Esq.
Schuering, Zimmerman & Doyle
400 University Avenue
Sacramento, CA 95825

Re: Titina Farris v. Barry Rives, M.D.; Laparoscopic Surgery of Nevada, LLC, et al.

Mr. Couchot:

Pursuant to your request, I have prepared a Life Care Plan Report in connection with the above entitled matter based on my review of the expert reports, depositions and medical records provided, and upon the recommendations of Lance Stone, M.D. The Life Care Plan Report has been prepared in accordance with Federal Rules of Civil Procedure - Rule 26 and is attached.

Opinions and Life Care Plan:

My opinions, which are set forth in the Life Care Plan Report for Ms. Farris, are based upon the review of expert reports, my 19 years of experience in nursing, academia and life care planning, and the current costs associated from the Las Vegas and Henderson, Nevada areas for the outlined recommendations for medical care, treatment and supplies. I have consulted with Dr. Stone regarding his opinions of future care needs for Ms. Farris. I have outlined the recommendations of Dr. Stone in the Life Care Plan Report. I reserve the right to modify my report in the event additional information is provided.

Records Reviewed:

A list of the expert reports, depositions and medical records reviewed is attached.

Qualifications:

I have been working in the nursing field since 1999. As a Master's prepared Registered Nurse and Family Nurse Practitioner my experience includes, but is not limited to, the following: (1) Medical – Surgical Nursing for Adult and Pediatric patients in the acute care setting; (2) Skilled Nursing care for critically ill patients in the Pediatric Intensive Care Unit of the hospital, including trauma patients and patients with

2

cardiac, neurological, surgical, hematological and respiratory problems; (3) Supervision and instruction of student nurses in classroom, hospital and home care settings in all areas of patient care; (4) Supervision and training of Registered Nurses, Licensed Vocational Nurses, and Nursing Assistants in Adult Acute and Long Term care, and Neonatal and Pediatric Acute and Long Term care; (5) Medical assessment, management, and education of adult and pediatric patients in the specialty ambulatory care / primary care settings with acute and chronic comorbidities; (6) Continuing Education units for individual licensure and certification; (7) Life Care Planning and Legal Nurse Consulting. My current Curriculum Vitae is attached.

Compensation:

My fee for Trial or Deposition Testimony is \$400.00 an hour. My fee for preparation of the Life Care Plan Report, record review and all other services is \$275.00 an hour. A copy of my fee schedule is attached.

List of Previous Cases:

A list of cases in which I have testified in depositions, arbitrations and trials is attached.

Resources for Life Care Plan:

A list of resources used for the costs in the Life Care Plans is attached.

After your review of this report, please do not hesitate to contact me if you have any questions or comments.

Sincerely,



Sarah Larsen, R.N., MSN, FNP, C.L.C.P.
Olzack Healthcare Consulting, Inc.

SL:bc
Enclosures

LIFE CARE PLAN

FOR

TITINA FARRIS

*** * ***

Dated: December 19, 2018

Prepared by:

**OLZACK HEALTHCARE CONSULTING, INC.
Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P.
2092 Peace Court, Atwater, CA 95301
Phone: 209-358-8104 / Fax: 209-358-8115**

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Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPc, CLCP
 2092 Peace Ct, Atwater, CA 95301

OPTION I - HOME CARE (DIRECT HIRE)					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option I Home Care Trained Attendant Direct Hire - 90% and Agency Hire - 10% (Hourly)	Age 56 to Life	2-4 hours / day	To assist Ms. Farris with activities of daily living and day to day chore work	Trained Attendant Direct Hire - 90% \$13.00 to \$15.00 per hour and 18% Employer Taxes and Agency Hire - 10% \$21.50 / hour	Option I Annually \$13,806.45 \$2,485.16 \$2,355.86
Option I Payroll Service	1 x Only	1 x Only	To manage payroll services for the trained attendant	Initial Fee \$200.00	Option I One Time Only \$200.00
	1 x / 2 weeks	1 x / 2 weeks		Bi-Weekly \$44.00 to \$68.00	Annually \$1,456.00
Option I Advertising, Agency Referral Fee Allowance	1 x / year	1 x / year	To cover costs for advertising/referral service for trained attendant	\$1,000.00 / year	Option I Annually \$1,000.00

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LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
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 2092 Peace Ct, Atwater, CA 95301

OPTION I - HOME CARE (DIRECT HIRE) - Continued					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option I Housekeeping	Age 56 to Life	2-4 hours / month	For heavy housekeeping including scrubbing, vacuuming, mopping, etc.	\$65.77 / hour	Option I Annually \$2,367.72
Option I Case Management	Age 56 to Life	4-8 hours / year	Coordinates care and communicates with Ms. Farris and her health care providers as necessary	\$105.00 / hour	Option I Annually \$630.00
TOTALS:					Option I One Time Only \$200.00 Annually \$24,101.19
Resources: Paychex, Inc. United States Department of Labor - Occupational Wage and Salary Data					

Name: Titina Farris
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LIFE CARE PLAN

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 2092 Peace Ct, Atwater, CA 95301

OPTION II - HOME CARE (AGENCY HIRE)					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option II Home Care Trained Attendant Agency Hire 100%	Age 56 to Life	2-4 hours / day	To assist Ms. Farris with activities of daily living and day to day chore work	Trained Attendant Agency Hire - 100% \$21.50 / hour	Option II Annually \$23,558.63
Option II Housekeeping	Age 56 to Life	2-4 hours / month	For heavy housekeeping including scrubbing, vacuuming, mopping, etc.	\$65.77 / hour	Option II Annually \$2,367.72
Option II Case Management	Age 56 to Life	4-8 hours / year	Coordinates care and communicates with Ms. Farris and her health care providers as necessary	\$105.00 / hour	Option II Annually \$630.00
TOTALS:					Option II Annually \$26,556.35

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Name: Titina Farris
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LIFE CARE PLAN

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FUTURE MEDICAL CARE					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Physical Medicine and Rehabilitation Specialist	Age 56	1 Evaluation	To evaluate and manage issues related to mobility, pain and orthotics	Evaluation \$254.00 to \$500.00	One Time Only \$377.00
	Age 56 to Life	4 x / year		Follow Up Visit \$100.00 to \$154.00	Annually \$508.00
Podiatrist	Age 56	1 Evaluation	To evaluate and manage wound care/foot care for Ms. Farris	Evaluation \$75.00 to \$175.00	One Time Only \$125.00
	Age 56 to 57	6-12 x / year x 1 year		Follow Up Visit \$45.00 to \$50.00	Annually To Age 57 \$427.50
	Age 57 to Life	4-6 x / year			Age 57 to Life \$237.50

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LIFE CARE PLAN

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FUTURE MEDICAL CARE - Continued					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Psychologist	Age 56 to Life	10-20 x / Life	For individual and family therapy related to adjusting to health care needs	Session \$100.00 to \$225.00	One Time Only \$2,437.50
Dietician	Age 56 Age 56 to Life	1 Evaluation 1 x / year	For dietary counseling related to weight, blood pressure and diabetes management	Evaluation \$75.00 to \$130.00 Follow Up Visit \$45.00 to \$90.00	One Time Only \$102.50 Annually \$67.50
Wound Clinic	Age 56	2 x / week x 3-6 months	For the evaluation and treatment of wound to left heel	Visit \$249.24	One Time Only \$9,720.36

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FUTURE MEDICAL CARE - Continued			
	Annual Cost		
	One Time Only \$12,762.36		
	Annually To Age 57 \$1,003.00		
	Age 57 to Life \$813.00		
TOTALS:			
<p>Resources:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy </td> <td style="width: 50%; vertical-align: top;"> Bree Mullin, Psy.D. – Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection </td> </tr> </table>		Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy	Bree Mullin, Psy.D. – Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection
Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy	Bree Mullin, Psy.D. – Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection		

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Name: Titina Farris
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 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPc, CLCP
 2092 Peace Ct, Atwater, CA 95301

WHEELCHAIR NEEDS					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Power Scooter or Power Wheelchair	Age 56 to Life	1 x / 7 years	For distance and community mobility	\$1,678.17	Annually \$239.74
Manual Wheelchair	Age 56 to Life	1 x / 7 years	For community mobility	\$179.75	Annually \$25.68
Wheelchair Cushion	Age 56 to Life	1 x / 2 years	For increased safety when using scooter or wheelchair	\$31.29	Annually \$15.65
Portable Ramps	Age 56 to Life	1 x / 7 years	For increased safety and mobility	\$100.85	Annually \$14.41
TOTALS:					Annually \$295.47

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Name: Titina Farris
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LIFE CARE PLAN

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 2092 Peace Ct, Atwater, CA 95301

DURABLE MEDICAL EQUIPMENT AND SUPPLIES					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
4-Wheeled Walker	Age 56 to Life	1 x / 5 years	For increased safety and independence with ambulation	\$65.83	Annually \$13.17
Reacher	Age 56 to Life	1 x / 5 years	For increased safety and independence in the home and community	\$11.56	Annually \$2.31
Handheld Shower Head	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$25.19	Annually \$5.04
Shower Bench	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$56.08	Annually \$11.22
Grab Bars	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$14.66	Annually \$2.93
Single Point Cane	Age 56 to Life	1 x / 5 years	For increased safety and independence with ambulation	\$14.81	Annually \$2.96

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DURABLE MEDICAL EQUIPMENT AND SUPPLIES - Continued	
TOTALS:	Annual Cost
	Annually \$37.63

Name: Titina Farris
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LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
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 2092 Peace Ct, Atwater, CA 95301

PROJECTED THERAPEUTIC MODALITIES					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Physical Therapy Evaluation	Age 56 to Life	1 x / year	To evaluate and assist in formulating a home exercise program	Evaluation \$85.00 to \$120.00	Annually \$102.50
Occupational Therapy Evaluation	Age 56 to Life	1 x / year	To evaluate for any needs related to activities of daily living and assistive devices	Evaluation \$85.00 to \$120.00	Annually \$102.50
Gym Membership with Pool	Age 56 to Life	Enrollment Fee 1 x Only Annual Fee 1 x / year Monthly Membership Fee 1 x / month	For physical activity to improve overall health and cardiovascular status, assist with weight management	Enrollment Fee \$40.00 to \$99.00 Annual Fee \$0.00 to \$45.00 Monthly Membership Fee \$23.00 to \$45.00	One Time Only \$69.50 Annually \$22.50 Annually \$408.00

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LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPC, CLCP
 2092 Peace Ct, Atwater, CA 95301

PROJECTED THERAPEUTIC MODALITIES - Continued	
TOTALS:	Annual Cost
	One Time Only \$69.50
	Annually \$635.50
Resources: Select Physical Therapy ATI Physical Therapy Matt Smith Physical Therapy Tim Soder Physical Therapy Tru Physical Therapy Leavitt Physical Therapy Affiliated Therapy Skyview YMCA Las Vegas Athletic Clubs Anytime Fitness Desert Inn	

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Name: Titina Farris
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LIFE CARE PLAN

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 2092 Peace Ct, Atwater, CA 95301

ORTHOTICS					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Bilateral Custom Fit AFO	Age 56 to Life	1 pair / 3-4 years	To maintain anatomical and functional positioning of ankles and feet	\$66.30 / each	Annually \$37.89
PRAFO	Age 56 to Life	1 x / 3-4 years	For nighttime use to help prevent pressure sores on feet	\$236.30	Annually \$67.51
TOTALS:					Annually \$105.40

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LIFE CARE PLAN

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TRANSPORTATION					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Wheelchair Accessible Van (Conversion Package)	Age 56 to Life	1 x / 7 years	To transport wheelchair or power scooter for community mobility	\$22,240.00	Annually \$3,177.14
TOTALS:					Annually \$3,177.14

Name: Titina Farris
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RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
2092 Peace Ct, Atwater, CA 95301

Payroll Service / Bookkeeping

Paychex, Inc.
(855) 973-2408 / National Sales Line
Set-Up Fee: \$200.00 *one-time fee
Bi-Weekly: \$44.00 - \$68.00 / pay period
*payroll fees for 1-5 employee; prices range based on complexity of payroll (for example if wages need to be garnished)

Physical Medicine and Rehabilitation

Desert Orthopedic Center
Andrew Kim D.O. – Physiatrist
2800 East Desert Inn Road, Suite 100
Las Vegas, NV 89121
(702) 731-4088 / Caren
Evaluation: \$300.00 - \$500.00
Follow Up Visit: \$ 100.00

Advance Orthopedics and Sports Medicine
Matthew HC Otten M.D. – Physiatrist
8420 West Warm Springs Road, Suite 100
Las Vegas, NV 89113
(702) 740-5327 / Anette
Evaluation: \$254.00
Follow Up visit: \$154.00

Dynamic Pain Rehabilitation
Alexander Imas, M.D. – Physiatrist
1358 Paseo Verde Parkway, Suite 100
Henderson, NV 89012
(702)982-7100 / Stephanie
Evaluation: \$ 275.00
Follow Up visit: \$ 100.00

McKenna, Ruggeroli & Helmi
6070 South Fort Apache Road 100
Las Vegas, NV 89148
702) 307-7700 / Daisy
Evaluation: \$400.00
Follow Up Visit: \$100.00

Physical Medicine and Rehabilitation - Cont.

Innovative Pain Center
Eric Brimhall, M.D.- Physiatrist
503 South Rancho Drive, Suite G44
Las Vegas, CA 89106
(702) 684-7246 / Jesiree
Evaluation: \$455.00
Follow Up Visit: \$100.00

Name: Titina Farris
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RESOURCES

Olzack Healthcare Consulting, Inc.
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2092 Peace Ct, Atwater, CA 95301

Podiatry

Eastern Podiatry
3777 Pecos-McLeod, Suite 103
Las Vegas, NV 89121
(702) 434-2023 / Perala
Evaluation: \$120.00
Follow Up Visit: \$45.00

Jerry T Henry, DPM
341 North Buffalo Drive, Suite A
Las Vegas NV 89145
(702) 242-3870 / Heather
Evaluation: \$75.00
Follow Up Visit: \$45.00

Foot Care Clinic
3650 South Eastern Avenue, Suite 200
Las Vegas, NV 89169
(702) 420-7970 / Cindy
Evaluation: \$97.00
Follow Up Visit: \$50.00

Apache Foot and Ankle Specialist
Lee Wittenberg, DPM
4840 South Fort Apache Road, Suite 101
Las Vegas, NV 89147
(702) 362-6634 / Jasmine
Evaluation: \$110.00
Follow Up Visit: \$45.00

Podiatry - Cont.

Foot and Ankle Specialist of Nevada
7135 West Sahara Avenue, Suite 201
Las Vegas, NV 89117
(702) 878-2455 / Yolanda
Evaluation: \$175.00
Follow Up Visit: \$50.00

Swenson Foot and Ankle
5380 Rainbow Boulevard, Suite 318
Las Vegas, NV 89118
(702) 873-3556 / Yarcely
Evaluation: \$120.00-\$140.00
Follow Up Visit: \$45.00

Psychology

Danielson Therapy
Melissa Danielson, Ph.D. – Psychologist
9480 South Eastern Avenue, Suite 258
Las Vegas, NV 89123
(702) 339-5663 / Melissa Danielson
Session: \$125.00 - \$150.00

Bree Mullin, Psy.D. – Psychologist □
1820 East Warm Springs Road, Suite 115
Las Vegas, NV 89119
(702) 270-4357 / Cassidy
Session: \$225.00

Life Quest Behavioral Health Quest
4780 Arville Street
Las Vegas, NV 89103
(720) 830-9740 / Carla
Sessions: \$100.00

Name: Titina Farris
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RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

Dietician

Anders and Dunaway Nutrition Consultants, Inc.
2121 East Flamingo Road, Suite 110
Las Vegas, NV 89119
(702) 382-8841 / Brenda
Evaluation: \$75.00
Follow Up Visit: \$45.00

Your Dietician for Diabetes and Weight Control
7655 West Sahara Avenue, Suite 110
Las Vegas, NV 89117
(702) 525-1105 / Lydia
Evaluation: \$85.00
Follow Up Visit: \$45.00

Nutrition Moves
Geri Lynn Grossan, Med, RDN, CDE, HTCP
7721 Leavorite Drive
Las Vegas, NV 89128
(702) 242-5730
Evaluation: \$130.00
Follow Up Visit: \$90.00

Nutrition by Joey
8275 South Eastern Avenue #118
Las Vegas, NV 89123
(702) 878-5639 / Cecelia
Evaluation: \$95.00
Follow Up Visit: \$55.00

Dietician - Cont.

The Food Connection
4215 South Grand Canyon
Las Vegas, NV 90147
(702) 664-1204 / Stephanie
Evaluation: \$95.00
Follow Up Visit: \$45.00 - \$90.00

Physical Therapy

Select Physical Therapy
821 North Nellis Boulevard, Suite 130
Las Vegas, NV 89110
(702) 452-4563 / Liz
Evaluation: \$120.00

ATI Physical Therapy
7301 Peak Drive, Suite 101
Las Vegas, NV 89128
(702) 940-3000 / Kandra / Sherry
Evaluation: \$85.00

Matt Smith Physical Therapy
1505 Wigwam Parkway, Suite 240
Henderson, NV 89074
(702) 568-0195 / Brent, Donna
Evaluation: \$85.00

Tim Soder Physical Therapy
2779 West Horizon Ridge Parkway, Suite 100
Henderson, NV 89052
(702) 897-1222 / Chelsea
Evaluation: \$95.00

Tru Physical Therapy
70 East Horizon Ridge Parkway Suite 180
Henderson, NV 89002
(702) 856-0422 / Kylie / Tayslie
Evaluation: \$120.00

Name: Titina Farris
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RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

Physical Therapy - Cont.

Leavitt Physical Therapy
3037 West Horizon Ridge Parkway, Suite 120
Henderson, NV 89052
(702) 263-4993 / Jeff
Evaluation: \$120.00

Affiliated Therapy
9050 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
(702) 209-0069 / Carol
Evaluation: \$100.00

Occupational Therapy

Affiliated Therapy
9050 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
(702) 209-0069 / Carol
Evaluation: \$100.00

Select Physical Therapy
821 North Nellis Boulevard, Suite 130
Las Vegas, NV 89110
(702) 452-4563 / Liz
Evaluation: \$120.00

Matt Smith Physical Therapy
1505 Wigwam Parkway, Suite 240
Henderson, NV 89074
(702) 568-0195 / Brent, Donna
Evaluation: \$85.00

ATI Physical Therapy
7301 Peak Drive, Suite 101
Las Vegas, NV 89128
(702) 940-3000 / Kandra / Sherry
Evaluation: \$85.00

Gym Membership with Pool

Skyview YMCA
3050 East Centennial Parkway
North Las Vegas, NV 89081
(702) 522-7500 / Crystal
Monthly Membership: \$39.00

Las Vegas Athletic Clubs
2655 South Maryland Parkway
Las Vegas, NV 89109
(702) 734-5822 / Tony
Enrollment Fee: \$49.00 - \$99.00
Monthly Fee: \$23.00 - \$31.00
Annual Fee: \$0.00

Anytime Fitness Desert Inn
8490 West Desert Inn Road
Las Vegas, NV 89117
(702) 820-0660 / Steve
Enrollment Fee: \$40.00 - \$50.00
Monthly Fee: \$35.99 - \$44.99
Annual Fee: \$45.00

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RESOURCES

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UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
Home | Subjects | Data Tools | Publications | Economic Releases | Students | Beta

Occupational Employment Statistics Query System

Occupational Employment Statistics

Multiple occupations for one geographical area

[Back to results](#)

Area: Las Vegas-Henderson-Paradise, NV
Period: May 2017

Occupation (SOC code)	Hourly mean wage
Home Health Aides(311011)	13.83
Personal Care Aides(319902)	13.27

Footnotes:
SOC code: Standard Occupational Classification code - see <http://www.bls.gov/soc/home.asp>
Data extracted on December 17, 2018

12A.App.2660

12A.App.2660

**LIST OF RECORDS REVIEWED FOR
TITINA FARRIS**

Depositions:

- Deposition of Patrick Farris taken 10-11-18
- Deposition of Titina Farris taken 10-11-18

Medical Reports:

- PM&R Life Care Planning Evaluation Report by Alex Barchuk, M.D. dated 3-20-18
- Life Care Plan Report by Dawn Cook, R.N. dated 6-6-18; Includes:
 - Past Medical Bill Review by Dawn Cook, R.N. dated 11-15-18
- Expert Report by Justin Aaron Willer, M.D. dated 10-22-18

Medical / Billing Records:

- Medical and Billing Records from Advanced Orthopedics Sports Medicine
- Medical and Billing Records from Barry Rives, M.D.
- Medical and Billing Records from Bess Chang, M.D.
- Medical and Billing Records from Care Meridian
- Medical and Billing Records from Desert Valley Therapy
- Medical and Billing Records from Naomi Chaney, M.D.
- Medical and Billing Records from Elizabeth Hamilton, M.D. (x2)
- Medical and Billing records from Steven Y. Chinn, M.D.
- Medical and Billing Records from Laparoscopic Surgery of Nevada
- Medical and Billing Records from St. Rose Dominican - Siena Campus
- Medical Records from St. Rose Dominican Hospital

Miscellaneous Records and Reports:

- 15 Wound Photos
- Video "M2U00211" (00:48 seconds)
- Video "M2U00212" (01:03 minutes)
- Video "M2U00213" (01:07 minutes)
- Video "M2U00214" (01:17 minutes)

- Video "M2U00215" (00:42 seconds)
- Video "M2U00216" (00:27 seconds)
- Video "M2U00217" (00:44 seconds)
- Video "M2U00218" (00:10 seconds)
- Video "M2U00219" (00:59 seconds)
- Video "M2U00220" (00:37 seconds)
- Video "M2U00221" (00:18 seconds)
- Video "M2U00222" (00:11 seconds)
- Video "M2U00223" (00:10 seconds)
- Video "M2U00224" (00:33 seconds)
- 2 Photos - In LCP File

SARAH LARSEN, RN, MSN, FNP, LNC, CLCP

1120 Commerce Avenue #15 | Atwater, CA 95301 | 661-205-6917 | slarsen@olzackhealthcare.com

EDUCATION AND DEGREES

- University of Florida Life Care Planning Post Graduate Certification Program - Completion August, 2014
- National Association of Legal Nurse Consultants Certification Program - December, 2012
- California State University Bakersfield, Bakersfield, CA, Masters of Science in Nursing - 2004
- California State University Bakersfield, Bakersfield, CA, Bachelors of Science in Nursing - 1999
- California State University Fresno, Fresno, CA, General Education 1993-1995

CERTIFICATIONS AND LICENSURES

- Certified Life Care Planner, August 2014
- Legal Nurse Consultant, December 2012
- Nurse Practitioner, California Board of Registered Nursing, 2004
- Registered Nurse, California Board of Registered Nursing, 1999
- Pediatric Advanced Life Support - ongoing certification

EMPLOYMENT HISTORY

1/20/2017 - current

California State University, Bakersfield – Nursing Professor

Bakersfield, CA

- Lecturer, content expert, and lead instructor for pediatric nursing - Educate students at the baccalaureate degree RN level in both didactic and clinical instruction
- Comply with regulatory board standards
- Developed lectures, assignments and exams relating to pharmacology and pediatric didactic content
- Coordinate and conduct clinical and simulation laboratory experiences for nursing students
- Participate in faculty meetings

October 2016 – March 2017

All Season's Hospice – Nurse Practitioner

Lancaster, CA

- Home / Site visits with hospice patients under service of All Season's Hospice
- Conduct physical assessments, assess for any changes in client's status
- Prescribing medications and necessary supplies for self-care and medical management
- Collaborate with the patient care team for plan of care
- Documentation of client progress in the medical chart

January 2014 - current

Oizack Healthcare Consulting - Life Care Planner

Atwater, CA

- Medical record review, summarization, and chronologies for litigation
- Participate in independent medical examinations
- Development of life care plans
- Medical – legal consulting for litigation
- Expert witness testimony

June 2012 - current

SS Legal Consulting - Legal Nurse Consulting

Bakersfield, CA

- Medical record review, summarization, and chronologies for litigation
- Participate in initial intake interviews and provide professional nursing opinion on standard of care
- Participate in independent medical examinations

8/2/2001 – 11/2015

Bakersfield Memorial Hospital – Registered Nurse

Bakersfield, CA

- Registered nurse working in pediatric acute care and pediatric intensive care
- Continually assess patients in the inpatient setting with acute and chronic healthcare needs

- Develop and implement individualized plan of care for each patient including medication administration, procedures, equipment and various treatment modalities and therapies
- Evaluate patient response to treatment and therapies
- Work collaboratively with multidisciplinary team of physicians, dieticians, respiratory therapists, case managers, and occupational and physical therapists
- Precept, mentor and educate new graduate nurses in the clinical and classroom settings

8/1/2007 - 7/31/2013

Bakersfield College – Nursing Professor

Bakersfield, CA

- Tenured professor, content expert, and lead instructor for pediatric nursing - Educated students at the associate degree RN and LVN level in both didactic and clinical instruction
- Complied with regulatory board standards
- Developed lectures, assignments and exams relating to medical surgical and pediatric didactic content
- Coordinated and conducted clinical and simulation laboratory experiences for nursing students
- Participated in faculty meetings and committees

12/30/2004 - 8/1/2007

Kaiser Permanente – Nurse Practitioner

Bakersfield, CA

- Coordinator of pre and post bariatric surgery/weight management clinic
- Coordinated care and case management for pre and post bariatric patients through the Health Education Department
- Instructed classes for weight management and pre and post bariatric healthcare information
- Examined adult and pediatric patients, evaluated and managed care and comorbid conditions while in the weight management program
- Collaborated with primary care physicians, specialty services and case management as needed for patient care
- Ordered and interpreted diagnostic tests, and ordered medications to manage comorbid conditions
- Initiated referrals to specialty care providers as necessary for medical conditions

8/1/2004 - 7/31/2007

California State University, Bakersfield – Lecturer, Clinical Instructor

Bakersfield, CA

- Tenured professor, content expert, and lead instructor for pediatric nursing - Educated students at the baccalaureate degree RN level in both didactic and clinical instruction
- Complied with regulatory board standards
- Developed lectures, assignments and exams relating to pediatric didactic content
- Conducted clinical and simulation laboratory experiences for nursing students
- Participated in faculty meetings

7/6/1999 - 8/1/2001

Mercy Southwest Hospital – Registered Nurse

Bakersfield, CA

- Registered nurse for inpatient medical surgical and pediatric units
- Continually assess patients in the inpatient setting with acute and chronic healthcare needs
- Develop and implement individualized plan of care for each patient including medication administration, procedures, therapies and various treatment modalities
- Evaluate patient response to treatment and therapies
- Work collaboratively with multidisciplinary team of physicians, dieticians, respiratory therapists, case managers, and occupational and physical therapists
- Precept, mentor and educate new graduate nurses in the clinical and classroom setting

PROFESSIONAL ORGANIZATIONS

- AANLCP America Association of Nurse Life Care Planners
- AALNC American Association of Legal Nurse Consultants
- Sigma Theta Tau International Honor Society for Nursing



Olzack Healthcare Consulting, Inc.

1120 Commerce Avenue #15, Atwater, CA 95301

Phone: 209-358-8104 Fax: 209-358-8115

olzackhealthcare@gmail.com

FEE SCHEDULE

To Whom It May Concern:

Effective November 1, 2017:

Fee Schedule for Professional Services rendered by Sarah Larsen, R.N., C.L.C.P.:

Review of Medical Records, Life Care Plans,
Depositions, Responses to Interrogatories;
Research; Preparation of Life Care Plans and
Reports; Evaluation of Facilities for Placement;
Patient Evaluations; Consultation; and Travel:
(Travel rate same as hourly rate) \$275.00 per hour

**ALL REPORTS (VERBAL OR WRITTEN)
REQUESTED WITHIN 8 WEEKS OF DUE
DATE WILL BE BILLED AT A RUSH RATE:** \$325.00 per hour

Deposition, Arbitration and Trial Testimony: \$400.00 per hour
1 hour minimum

Printing Fee: \$0.10 per page

Scanning Fee: \$0.15 per page
(We request all case material be sent to us electronically,
i.e. CD, flash drive, email or secure website. All hard copy
material will be scanned by our office)

Make checks payable to: **Olzack Healthcare Consulting, Inc. Tax ID#46-1649947**



Olzack Healthcare Consulting

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 olzackhealthcare@gmail.com

DEPOSITIONS

2015 to 2018

Name	Year	Name	Year
Corey Abrahms (D)	2015	Heather Campbell (D)	2017
Mikala Osborn (D)	2015	Elizabeth Bolden (D)	2017
Florence Kuhlmann (D)	2015	Steven Handrop (D)	2017
Paulette Johnson (D)	2015	Steven Meier (D)	2017
Linda Crete (D)	2016	Patricia Colombo (D)	2017
Charles Draper (D)	2016	Robert Fisher (D)	2017
Alexa Simpson (D)	2016	Mason Banuelos (D)	2017
Michael Crump (P)	2016	Anthony Ford (D)	2017
Bai Quan Su (D)	2016	Banuelos, Mason (D)	2018
Steven Kennedy (D)	2016	Winstead, Porche (D)	2018
Leslie Topping (D)	2017	Ramirez, Sonia (D)	2018
D.M. (D)	2017	Smith, Paul (D)	2018
Jorge Frias (D)	2017	Su Kyong Pae (D)	2018
Sabrina Zavala (D)	2017	Culinane, Karan (P)	2018
Ali, Tehezzeb (D)	2017		
Total Depositions			29

ARBITRATIONS

2015 to 2018

Name	Year	
Veronica Bland (D)	2016	
Su Kyong Pae (D)	2018	
Total Arbitrations		2



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TRIALS 2015 to 2018

Name	Year
Florence Kuhlmann (D)	2015
Linda Crete (D)	2016
Alexa Simpson (D)	2016
Jorge Frias (D)	2017
Steven Meier (D)	2017
Steven Kennedy (D)	2017
Stephen Handrop (D)	2017
Culinane, Karen (P)	2018
Total Trials	8

EXHIBIT E

December 18, 2018

Chad C. Couchot, esq.
Schuering, Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

RE: FARRIS VERSUS RIVES

Dear Mr. Couchot:

Per your request, I reviewed this matter to rebut the opinions of Dr. Justin Willer and to comment on the cause of Titina Farris' injuries.

My qualifications to offer an opinion are detailed in my attached Curriculum Vitae. I am a physician licensed to practice medicine in the State of California. I earned a medical degree from UC San Diego in 1972. From 1973 to 1976 I attended residencies in internal medicine and neurology at the University of California, San Francisco Hospitals. From 1976 to 1978, I was a fellow at the National Institutes of Health in Neuromuscular Disease and served as a lieutenant commander in the United States Public Health Service. I am board certified in internal medicine, neurology, electrodiagnostic medicine and sleep medicine. I have practiced neurology for nearly 40 years and I have been on the adjunct clinical faculty at Stanford School of Medicine since 1978. I am currently an adjunct clinical professor at Stanford University School of Medicine and have active privileges as attending physician at the Palo Alto Veterans Administration Hospital.

I have extensive experience in diagnosing and treating patients with peripheral neuropathy, having completed a fellowship in peripheral nerve and muscle disease and being board certified in electrodiagnostic medicine. In addition, I have conducted independent research in the area of diabetic neuropathy and I have published several papers in that area. I was Director of the Stanford Neuromuscular Laboratory for five years and have performed and reviewed hundreds of peripheral nerve biopsies.

My publication history is included in my attached CV. My fee schedule is attached as is also a statement of my court and deposition testimony in the past 4 years.

With respect to this matter, I have reviewed extensive medical records including those of Advanced Orthopedics and Sports Medicine, Desert Valley Therapy, the medical records of Dr. Naomi Chaney, St. Rose Dominican Hospital records, and records of Dr. Beth Cheng, and the report of plaintiff's expert Dr. Justin Willer.

RE: FARRIS, Titina
December 18, 2018
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My review of the records has revealed the following pertinent facts: Ms. Farris has longstanding diabetes mellitus, which, according to her physician, historically been "poorly controlled" and "the patient continues to engage in dietary indiscretion".

Her history of diabetes mellitus is recorded in the 09/16/14 office note of Dr. Naomi Chaney. At the time, her symptoms included foot pain as a result of her diabetic neuropathy. In 2014, a year prior to the events in question, Ms. Farris was treated with substantial amounts of oral narcotics in the form of Norco and was also taking gabapentin for nerve pain.

In her intake questionnaire in her visits to the orthopedists, she in her own hand describes "nerve pain" ... "since 2012".

With respect to her hospitalization in 2015 and her clinical care therein, I believe that the attending physicians are correct in that she most likely did suffer what is termed critical care neuropathy, a poorly understood, but well recognized sensory and motor neuropathy which can be precipitated by prolonged critical care status and which may have been exacerbated by her underlying and longstanding diabetic peripheral neuropathy.

I find that the report of Dr. Willer, plaintiff's expert neurologist, is lacking in that he fails to acknowledge Ms. Farris's pre existent diabetic neuropathy as a significant factor in her current disability. Her preexistent history of severe diabetic neuropathy required narcotic medication, and gabapentin, a medication commonly used to treat nerve pain. Most of Dr. Chaney's office visit notes before and after August 2015 mention the diabetic neuropathy and poor control of blood sugars. In the section of Dr. Willer's report regarding reviewed materials, he acknowledges that the records of Advanced Orthopedics and Sports Medicine from 07/02/14, 11/25/14, and 05/05/15 indicate a history of "diabetic neuropathy," but he does not comment as to the severity of the problem, which required narcotic medication and consultation. In addition, he did not mention that following the events in the summer of 2015 when she underwent her hernia surgery and ICU hospitalization, she continued to engage in dietary indiscretion and continued to have neuropathic pain.

For example, the 04/26/17 office note of Dr. Naomi Chaney notes that the patient continues to have neuropathic pain. She says: "I have explained this is in part related to diabetes." She notes that the patient continued to have poorly controlled diabetes.

Based on my education, training, and experience and review of the pertinent documents, I have reached the opinion that Ms. Farris suffered from a significant painful diabetic neuropathy prior to the events of August 2015 and that this was in part due to her poorly controlled diabetes, which continues to the present time.

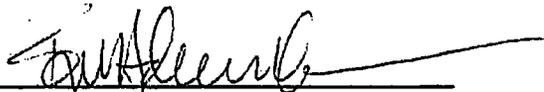
RE: FARRIS, Titina
December 18, 2018
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It is my opinion that it is more likely than not that she will continue to have painful diabetic neuropathy and that this characteristically and typically worsens with time in terms of disability due to pain, weakness, and impaired sensation, often accompanied by gait imbalance.

None of these facts are considered by Dr. Willer in his report.

Furthermore, it is my opinion that a substantial portion of her current disabilities and pain are related to her underlying neuropathy in addition to her critical care neuropathy.

All the opinions offered in this report are offered to a reasonable degree of medical probability.

A handwritten signature in black ink, appearing to read "Bruce T. Adornato", is written over a horizontal line.

Bruce T. Adornato, M.D.
Adjunct Clinical Professor of Neurology
Stanford School of Medicine
Palo Alto Neurology

BRUCE T. ADORNATO, M.D.

177 Bovet Road, Suite 600
 San Mateo, California, 94402
 TELEPHONE: 650.638.2308
 Email: adornato@stanford.edu
adornato@gmail.com

PERSONAL INFORMATION:

Year of Birth: 1946
 Citizenship: USA
 Medical Licensure: California G25289

EDUCATION:

-
- University of California, Santa Barbara, 1964-1968, A.B.
 - University of California, San Diego, 1968-1972, M.D.
 - University of California, San Francisco, 1973-1976, internal medicine and neurology
 - National Institutes of Health, Bethesda, Maryland, 1976-1978, neurology fellowship

HONORS AND AWARDS:

-
- Cum Laude, University of California, 1968
 - Award for Research Promise, Department of Psychology, University of California, Santa Barbara, 1968
 - USPHS Traineeship in Physiological Psychology, 1966-1968
 - USPHS Traineeship in Neurosciences, 1969
 - USPHS Traineeship in Neuropathology, 1970
 - "Doctor's Recommended – Physicians Name 621 of the Best Doctors in the Bay Area", September, 1992, Focus magazine
 - "Top 500 Doctors in the Bay Area", 2001, San Francisco magazine
 - American Academy of Neurology Annual Meeting, Neuro Bowl Competition, Toronto, 1999, winning team captain
 - "Top Doctors in the San Francisco Bay Area", Focus magazine, Jan 2000
 - "Top Docs in the San Francisco Bay Area-The A List", San Jose Magazine, Feb, 2003
 - American Academy Neurology Annual Meeting, Neuro Bowl Competition, 2004, winning team captain
 - American Academy of Neurology, Annual Meeting, Neuro Bowl Competition, Miami, Finalist, 2005
 - American Academy of Neurology, Annual Meeting, Neuro Bowl winning team captain, San Diego, 2006
 - Participant, Presidential Address, Annual Meeting, American Academy of Neurology, Boston, 2007
 - Recipient, Serra High School Award of Merit, Science and Technology, October 2007

- American Academy of Neurology, Annual Meeting, Neuro Bowl Competition Team Participant, Seattle Washington, 2009; Honolulu, 2011
- Top Doctor , San Francisco Magazine, January 2015
- Lifetime Honorary Staff Membership, Stanford Hospital, May 2016

TRAINING:

-
- Internship, Internal Medicine, University Hospital, San Diego, 1972-1973
 - Resident, Internal Medicine, University of California, San Francisco, 1973-1974
 - Resident, Neurology, University of California, San Francisco, 1974-1976
 - Clinical Fellowship, National Institutes of Health, Medical Neurology Branch, Bethesda, Maryland, 1976-1978 (LT.CDR, USPHS)

BOARD CERTIFICATION:

-
- American Board Internal Medicine, 1975
 - American Board Psychiatry & Neurology, 1978
 - American Board Electrodiagnostic Medicine, 1983
 - American Board Sleep Medicine, 1991

PRESENT PRACTICE POSITIONS:

-
- Adjunct Clinical Professor of Neurology, Stanford University Medical School
 - Attending Physician, active staff, Palo Alto Veterans Administrative Hospital
 - Chief Medical Officer, Core Mobility Inc, San Jose, California

ADMINISTRATIVE POSITIONS:

-
- Membership Committee, American Academy of Neurology, 2011-2012
 - Community Liaison, International Medical Services, Stanford Hospital, 2003-2006
 - Department of Neurology and Neurosciences, Stanford Medical School, Adjunct Clinical Faculty Review Committee, 2003-2006
 - Dean's Committee on Adjunct Clinical Faculty, 2002-2008
 - Bylaws Committee, Stanford Hospital 2004- 2012
 - Presidential Nominating Committee, American Academy of Neurology, 2012
 - Council Member, Society of Clinical Neurologists, 2010-2013
 - American Academy of Neurology, President's Physician Burnout Task Force, 2015

PREVIOUS POSITIONS:

-
- American Academy of Neurology, Member Research Committee, 2005- 2011

- Finance Committee, Stanford Hospital, 2006-2007
- Stanford Hospital Medical Board, 2005-2006
- President, Stanford Hospital Medical Staff 2003-2005
- Active medical staff, Stanford Hospital, 1978-2016
- Examiner American Board Psychiatry and Neurology 1978-2004
- Vice-President, Stanford Hospital Medical Staff, 2001-2003
- Deputy Chief, Department of Neurology, 2001-2004
- Neurologist, Palo Alto Medical Foundation, 1978-1983
- Clinical Assistant Professor, Department of Neurology, Stanford University, 1979-1990
- Director, Neuromuscular Laboratory, Stanford University Hospital, 1979-1983
- Neurologist, Neurological Associates, Boise, Idaho, 1983-1986
- Clinical Assistant Professor, Department of Medicine, University of Washington, Seattle, 1983-1986
- Director, CPMC Sleep Center, San Francisco, 1987-1996
- President, San Francisco Neurological Society, 1993-1994
- Credentials Committee, Stanford Hospital, 1986-1995
- Member, Physician Assisted Suicide Committee, Stanford Hospital, 1996-1997
- Clinical Advisory Committee, Blue Shield (Medicare) 1995-1997
- Member, Ad Hoc Physician Credentials Committee, Stanford Hospital, 1997
- Medical Director, Stanford Health Services Sleep Clinic, San Francisco, California, 1996-2000
- Examiner, American Board of Psychiatry and Neurology 1979-1991
- Legislative Affairs Committee, American Academy of Neurology, 1994-1998
- Program Chairman, Society of Clinical Neurologists, 1999
- Legislative Affairs Committee, American Academy of Neurology, 1994-2000
- Member, Strategic Planning Committee, American Academy of Neurology, 1999-2000
- Member, Strategic Planning Committee, American Academy of Neurology, 1999- 2000
- Council Member, San Francisco Neurological Society, 1994-2001
- Qualified Medical Examiner, State of California, 1986-2002
- Medical Director, Sleep Solutions, Inc., 1998-2002
- Chairman, Bylaws Committee, Stanford Hospital, 2002-2003
- Medical Advisor, Blue Shield of California, 1998-2005
- Member, Palliative Care Committee, Stanford Hospital, 2000-2003
- American Academy Neurology Speakers Bureau, 2000-2003
- Stanford Medical Quality Assurance Review 2002-2005
- Stanford Hospital Medical Staff Nominating Committee 2008

CONSULTANT ACTIVITIES:

-
- Stanford Research Institute: Calcium Channel Blockers and Multi-infarct Dementia, 1990
 - Syntex: Ticlopidine Antiplatelet Study – Adjudicator, 1986-1989
 - Physiometrix: Electrode Technology Development, 1991-1996
 - Genentech: Nerve Growth Factor Testing, 1992-present
 - Stanford Hospital: Occupational Injury Evaluation Program, 1993
 - Krames Communication: Sleep Apnea, 1993
 - JP Morgan Partners, Healthcare Group

- Sofinnova Biotechnology
- Interwest Partners, Biomedical Venture Capital
- Skyline Ventures, Palo Alto venture capital
- Panorama Capital, Menlo Park venture capital
- Coleman Research Group

MEMBERSHIPS:

- American Academy of Neurology
- Society of Clinical Neurologists
- San Francisco Neurological Society
- Bay Area Stroke Society
- Sleep Section, American Academy of Neurology
- Movement Disorders Section, American Academy of Neurology
- Neuromuscular Section, American Academy of Neurology
- Spine Section, American Academy of Neurology
- American Heart Association, Fellow, Stroke Council

FELLOWSHIPS:

- Fellow, American College of Physicians, 1980
- Fellow, American Academy of Neurology, 1982
- Fellow, American Sleep Disorders Association, 1992
- Fellow, American Association of Electrodiagnostic Medicine, 1991

PREVIOUS POSITIONS:

- Program Committee, American Association of Electromyography and Electrodiagnosis, 1985-1987
- President, Society of Clinical Neurologists, 1987-1989
- Assistant Secretary, Scientific Advisory Panel, CMA, 1987-1989
- Editor, Health Tips, CMA, 1988-1989
- Examiner, American Board of Neurology and Psychiatry, 1980-1992
- Examiner, American Board of Electrodiagnostic Medicine, 1985-1988
- Membership Committee, American Academy of Neurology, 1986-1991
- Section Chairman, Scientific Advisory Panel, California Medical Association, 1989-1990
- Program Chairman, San Francisco Neurological Society, 1992, 1993 Meetings
- Independent Medical Examiner, State of California, Neurology and Internal Medicine, 1989-present
- Secretary-Treasurer, San Francisco Neurological Society, 1989-1990
- Vice President, San Francisco Neurological Society, 1991-1992
- Lecturer, Department of Pathology, Neuropathology, Stanford Medical School, 1986-present
- Department Chairmanship Search Committee, Neurology, Stanford, 1992
- Board of Directors, Stanford Private Physicians Group, 1993-1994
- Founder, Sleep Disorders Center, St. Lukes Hospital, Boise, Idaho, 1984

- Founder, Director, Sleep Disorders Center, Pacific Presbyterian Hospital, San Francisco, 1986
- Instructor, School of Sleep Medicine, Palo Alto, 1994

HOSPITAL AFFILIATIONS:

- Stanford University Medical Center; Lifetime Honorary Staff Member, former Attending Physician
- Veterans Administration Hospital, Palo Alto; Active Staff, Attending Physician

PREVIOUS RESEARCH PROJECTS:

- Clinical Investigator, Ticlopidine Antiplatelet Stroke Study, 1982-1988
- Clinical Investigator, Naproxen Headache Study, 1989
- Principal Investigator: "Syntex Bioequivalence Study of Two Oral Contraceptives", 1990
- Principal Investigator: "Pilot Study of Phase 1 Triphasil, An Oral Contraceptive"
- Co-Investigator: "Study of Mitochondrial DNA and Oxidative Phosphorylation In Skeletal Muscle In Parkinson's Disease", 1991-1993
- Principal Investigator: "Dynamic Imaging of the Nasopharynx In Sleep Apnea", 1991-present
- Principal Investigator: "A New Proportional-fit Electrode Placement Device For Ambulatory Monitoring", 1991-1992
- Principal Investigator: "Clopidogrel vs. Aspirin In Patients At Risk For Ischemic Events", 1992-1996
- Principal Investigator: "A Phase 1 Open-label Study Of The Safety of Recombinant Human Nerve Growth Factor (rhNGF) In Patients With Small fiber Sensory Neuropathy", 1993-1995
- Principal Investigator: "A Phase 1 Double-blind Study Of The Safety And Pharmacokinetic Profile of Recombinant Human Nerve Growth Factor (rhNGF) In Healthy Volunteers"
- Principal Investigator: "Multicenter Dose-ranging Safety And Effectiveness Study Of Peg-Superoxide Dismutase In Severe Head Injury", 1992-1993
- Co-investigator: "Signal Analysis Of A New EEG Capsule Electrode And Comparison To The Electro-cap And Silver-silver Chloride Electrodes," 1993
- Principal Investigator: "Phase II Multicenter Double Blind, Placebo Controlled Study Of The Safety And Efficacy Of Nerve Growth Factor In Diabetic Peripheral Neuropathy", 1994-1996
- Principal Investigator: "Lymphocyte Characterization In Multiple Sclerosis", (Immologic), 1993-1995
- Principal Investigator: "Phase II Trial of Botulinum B Toxin In Cervical Dystonia", 1995-1996
- Principal Investigator: "NGF Trial In HIV Polyneuropathy", 1995-1998
- Principal Investigator: "Phase III Trial NGF In Diabetic Neuropathy", 1997-1999
- Principal Investigator: "Open Label Botulinum B In Cervical Dystonia", 1997-present
- Principal Investigator: "Open Label NGF In Diabetes", 1998-1999
- Principal Investigator: "Ambulatory Sleep Recording In Sleep Apnea" 2000

- Principal Investigator: "NINDS trial of magnets in diabetic peripheral neuropathy" 2000-2001

ABSTRACTS PRESENTED:

- Association of Professional Sleep Societies 6th Meeting, Phoenix, Arizona; "Dynamic CT Pharyngeal Imaging During Sleep In Patients With Sleep Apnea", BT Adornato, M.D., T Pace, R.Psgt.T., G Gamsu, M.D. et al
- Symposium On Etiology, Parkinson's Disease, Boston, MA, October, 1993
- "ATP Production by Intact Mitochondria Is Not Decreased in Parkinson's Disease", DA DiMonte, MS Sandy, BT Adornato, S Jewell, C Tanner and JW Langston
- "Phase Ib Study of Nerve Growth Factor In Peripheral Neuropathy", S Apfel, BT Adornato, D Cornblath, et al, ANA, 1996
- Benign Transient Neuromyalgic Response, AAN, Boston, 1997
- "Clinically Relevant Doses of Recombinant Human Nerve Growth Factor (rhNGF) Have a Large Margin of Safety", C Rask, B Adornato, C Sansers, Endocrine Society, New Orleans, June, 1998
- Severe Sleep Apnea in Non-obese Asians, AAN, Toronto, April, 1999

RECENT PRESENTATIONS:

- "Stroke as a cause of hemidiaphragmatic palsy", Society of Clinical Neurologists, Death Valley, Nov 4, 2010
- "A novel treatment for Restless Leg Syndrome", Society of Clinical Neurologists, Asheville, North Carolina, October 15, 2011
- "Tarlov's Cyst: A cause of persistent orthostatic headache", Society of Clinical Neurologists, St. John's, Newfoundland

A Puzzling Case, Diagnosis and Treatment, Society of Clinical Neurologists, Cranwell, Massachusetts, October 13, 2016

"Unsafe at Any Speed- a novel handsfree upright mobility device". Society of Clinical Neurologists, Lincoln Oregon, September 2017

INVITED LECTURES:

- "Sleep Disorders", Annual Meeting of the San Francisco Neurological Society, February 11, 1990
- "Neck Pain", Annual Meeting of California Society of Industrial Medicine and Surgery, Monterey, August, 1990
- "Tryptophan-induced Myalgias", Society of Clinical Neurologists, October, 1991
- "Parkinson's Disease", Stanford Medical Center, February, 1991

- “Antiplatelet Agents: Clopidogrel”, Physical Medicine Department Rounds, Stanford/Palo Alto VA, February 3, 1993
- “Neuropathology of Muscle Disease”, Stanford School of Medicine, January 20, 1993
- “The Normal Neurologic Exam”, Stanford School of Medicine, February 10, 1993
- “What Every Doctor Needs to Know About Stroke”, Natividad Medical Center, December 7, 1992
- “Antiplatelet Agents And Stroke”, Lompoc District Hospital, November 20, 1992
- “New Agents And Stroke”, Circle City Medical Center, Corona, CA, October 28, 1992
- “Stroke Prevention”, Riverside Community Hospital, November 10, 1992
- “New Treatment Options In Stroke”, South Coast Medical Center, Laguna Beach, September 15, 1992
- “Update On Stroke”, Samaritan Hospital, San Clemente, CA, May 15, 1992
- “New Options For Stroke Prevention”, Petaluma General Hospital, May 21, 1992
- “Update On Stroke Prevention”, HOAG Hospital, Newport Beach, March 19, 1992
- “Reducing The Risk of Stroke”, Samaritan Hospital, San Jose, March 18, 1992
- “Stroke Update”, Salinas Valley Memorial Hospital, August 11, 1992
- “New Agents in Stroke”, Tucson Memorial Hospital, April 20, 1992
- “Strategies In Stroke Prevention”, Marin General Hospital, July 21, 1992
- “CAPRIE – New Stroke Agent Clopidogrel”, Kaiser Hospital, Redwood City, May 19, 1992
- “Clopidogrel – New Antiplatelet Agent”, Mills Hospital, November 23, 1992
- “Stroke And A New Agent – Clopidogrel”, Department of Medicine Resident Rounds, June 5, 1992
- “Sleep Disorders”, California Pacific Medical Center, August 14, 1992
- “Polysomnography In A Clinical Sleep Center”, Eight Annual Meeting Of The American Academy of Clinical Neurophysiology, June 18, 1993
- “Nerve Growth Factor”, Society of Clinical Neurologist, Sedona, AZ, October, 1993
- “Practical Neurology, The Old, The New, and The Promising: Sleep Disorders”, California Medical Association, Anaheim, CA, March, 1994
- “Sleep Apnea”, Department of Otolaryngology, UCSF, November, 1993
- “Narcolepsy”, Stanford Sleep School, Palo Alto, November, 1993 and May, 1994
- “Head Injury”, Stanford University Emergency Room, March, 1993
- “Muscle Disease”, Stanford Department Pathology Medical Student Series, January, 1994
- “Diseases Of The Motor Unit”, Stanford Physical Medicine and Rehabilitation, VA Hospital, March, 1994
- “Stroke”, VA Hospital Resident’s Lecture, Palo Alto, March, 1994
- “Stroke Implications Of Therapy For Patients”, REACH Program, Palo Alto, July, 1994
- “Sleep Disorders”, St. Francis Hospital, San Francisco, October, 1994
- “Sleep Disorders”, UCSF Rounds, September, 1995 and November, 1995
- “Diabetic Neuropathy”, El Camino Hospital Rounds, July, 1995
- “Muscle Disorders”, Stanford Neuropathology, January, 1995
- “Nerve Growth Factor”, Basic Science Rounds, UCSB, March, 1995
- “Narcolepsy”, Stanford School of Sleep Medicine, January, 1996
- “Sleep Phenomena”, Neurology Grand Rounds, CPMC, San Francisco, June, 1996
- “Neurology of Sleep Disorders”, UCSF, November, 1996
- “Diabetic Neuropathy”, Santa Clara County Diabetes Association, October, 1996
- “Diabetic Neuropathy”, O’Connor Hospital, San Jose, August 2, 1997
- “Diabetes and NGF”, Palo Alto Medical Clinic Diabetes Support Group, August 5, 1997

- “Nerve Growth Factor Neuropathy Trials”, Genentech Quarterly Meeting, October 14, 1997
- “Approaches to Peripheral Neuropathy”, Medicine Grand Rounds, El Camino Hospital, November 7, 1997
- “Diabetic Neuropathy”, Los Gatos Community Hospital Rehabilitation Department, November 18, 1997
- “Stroke Treatment”, Medicine Grand Rounds, Mt. Diablo Hospital, November 19, 1997
- “Narcolepsy and Sleep Disorders”, Department of Neurology, Resident Rounds, UCSF, November 10, 1997
- “Excessive Daytime Sleepiness and Narcolepsy”, American Lung Association Meeting, Monterey, November 21, 1997
- “Narcolepsy”, Stanford School Sleep Medicine, July, 1998
- “Biology of Nerve Growth Factors”, Society of Clinical Neurologists, September, 1998, Dixville Notch, NH
- “Growth Factors in Diabetic Neuropathy”, American Diabetes Assoc. Meeting, Orlando, FL, January, 1999
- “Nerve Growth Factors in Neuropathy”, Grand Rounds, Stanford Neurology, April, 1999
- “Sleep apnea in the Surgical Patient” Surgical Resident teaching rounds, Stanford, October, 2001
- Global Pacific Stanford Conference, Manila: Parkinson’s Disease, Dementia, Migraine, November 2003

VIDEO CONSULTANT:

- AMA Video Clinic, April 22, 1987, “Understanding the Neuropathies”
- Video Back Program, Karen Perlroth, March, 1992
- Physiometrix Instructional Video: “Electroencephalographic Electrodes”, August, 1994
- Genentech Video Presentation “NGF in Diabetic Neuropathy”, November, 1997
- Sleep Solutions Video Presentation

REVIEWER:

- Annals of Neurology
- Annals of Internal Medicine
- Diabetes Care
- Neurowatch
- American College of Physicians Medicine, Neurology Section
- “Continuum” American Academy of Neurology Continuing Education in Neurorehabilitation, 2010
- Practice Guidelines, American Academy of Neurology, Peripheral Neuropathy, 2011
- American Academy of Neurology, 2015

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2. O'Brien JS, Okada S, Fillerup DL, Veath MI, Adornato BT and Brenner PH: Tay-Sachs Disease: Prenatal Diagnosis. *Science* 172:61-64, 1971
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5. Adornato BT and Lampert PW: Status Spongiosus Of Nervous Tissue: An Electron Microscopic Study. *Acta Neuropath.* 19:271-289, 1971
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9. Adornato BT: Hemopexin In Neuromuscular Disease. *Neurology* 27:380, 1977, (Abstract)
10. Askanas V, Engel WK, Brittan DE, Adornato BT and Elben RM: An Unusual Mitochondrial Abnormality Re-innervated Ex Aergro and Induced De Novo In Cultured Muscle Fibers. *Neurology* 27:348, 1977 (Abstract)
11. Adornato BT and Berg BO: Diencephalic Syndrome And Von Recklinghausen's Neurofibromatosis. *Ann Neurol* 2:159-160, 1977
12. Adornato BT and Engel WK: MB-Creatinine Phosphokinase Not Diagnostic Of Myocardial Infarction. *Arch Int Med* 137:1089-1090, 1977
13. Adornato BT, Corash I and Engel WK: Erythrocyte Survival In Duchenne Muscular Dystrophy. *Neurol* 27:1093-1094, 1977
14. Eil C and Adornato BT: Radiculopathy In Multifocal Eosinophilic Granuloma: Successful Treatment With Radiotherapy. *Arch Neurol* 34:786-787, 1977
15. Adornato BT, Kagen LJ, Garger FA and Engel WK: Depletion of Serum Hemopexin In Fulminant Rhabdomyolysis. *Arch Neurol* 35:547-548, 1978
16. Adornato BT, Engel WK and Foidart-DeSalle M: Elevations of Hemopexin In Fulminant Rhabdomyolysis. *Arch Neurol* 35:577-590, 1978
17. Peylan-Ramu N, Poplack DG, Pizzo PA, Adornato BT and Di Chiro G: Abnormal CT Scans Of The Brain In Asymptomatic Children With Acute Lymphocytic Leukemia After

Prophylactic Treatment Of The Central Nervous System With Radiation And Intrathecal Chemotherapy. *N Eng J Med* 298:815-816, 1978

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- Adornato, BT: Sleep Disorders And Insomnia In The Elderly. Albarede J, Morley J, Roth T and Vellas B. In *Contemporary Gerontology*, Volume 1:50, 1994

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- "Disorders of Sleep and Circadian Rhythms" in *Harrison's Principles of Internal Medicine Companion Handbook*, 14th Edition, McGraw-Hill, New York
- "Diseases of The Spinal Cord In Clinical Neurology", Adornato BT and Glasberg MR, in *The Science Of Practice of Clinical Medicine*, Rosenberg RN, ed., Vol 5, Grune and Stratton, 1980
- "Diseases of The Spinal Cord," Glasberg MR and Adornato BT, Volume 1, *The Clinical Neurosciences*, Churchill Livingstone, New York, 1983

JOURNAL REVIEW (published)

- *Neurowatch*, March 2003, Valproate in diabetic peripheral neuropathy

Bruce T. Adornato MD Testimony 2015-2018

Trials:

Yazon v Fountain Valley (2015) Orange County

Moore v Simopoulos (2015) South Lake Tahoe

Herger v Cammarosano (2015) Woodland Ca

Gunter v Schneier (2016) Van Nuys, Ca

Ubaldo v MMG, (2016) Kahilui, Hi

King v Sloan (2017) Oakland Ca

Boyle v Jordan (2017) Alameda, Ca.

Okelley v Bryant (2018) Napa, Ca

Depositions:

Nakada (2015 Palo Alto

Rosenwald v Petaluma (2015)

Yazon (2015)

Moore (2015)

Herger (2015)

Gunter (2015)

Newell (2016)

Galbreath (2016)

Bledsaw (2016)

Hash (2016)

Galinis v Bayer March 2017

Baxter v Selco June 2017

Strand v Pebble Beach March 2018

Bailey v RL Carriers October 2018

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July 15, 2018

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Date