

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.

No.: 80271

Appeal from the Eighth Judicial District
Court, the Honorable Joanna S. Kishner
Presiding

Electronically Filed
Feb 10 2021 06:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

vs.

TITINA FARRIS and PATRICK FARRIS,
Respondents.

No.: 81052

Appeal from the Eighth Judicial District
Court, the Honorable Joanna S. Kishner
Presiding

RESPONDENTS/CROSS-APPELLANTS' APPENDIX, VOLUME 7
(Nos. 819-999)

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Attorneys for Respondents/Cross-Appellants, Titina Farris and Patrick Farris

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<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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DECLARATION OF CUSTODIAN OF RECORDS

NOW COMES TIARA NELSON, who after being first duly sworn,

deposes and says:

1. That the deponent is the TIARA NELSON of CPR MERICAN 4 KIDS and in such capacity is the Custodian of Records for that organization.

2. That on the 29th day of OCTOBER, 2018 the deponent was served with a request for records or documentation regarding: TITINA M. FARRIS

3. That the records, notes, data and information produced herewith were made and recorded at or near the time the events, activities or statements recorded therein were performed, by a person with knowledge of the information contained in each record.

4. That these records were kept in the normal course of business and/or regularly conducted business activities, in accordance with the regular practices of said office.

5. As the duly authorized representative and custodian of records for _____, I attest that the records, notes, data and information attached hereto are true, correct, and exact copies of the originals thereof, and are trustworthy to the best of my knowledge; and that the reproduction of them attached hereto is true and complete.

Dated this 29th day of OCTOBER, 2018.

Tiara Nelson
CUSTODIAN OF RECORDS for
CPR MERICAN 4 KIDS

State of Nevada

County of Clark

On this 29th day of OCTOBER, 2018, personally appeared before me, Clara Denise Nelson, Drum Li

whose identity I verified on the basis of _____

_____ who is personally known to me,

whose identity I verified on the establishment of _____

a credible witness

to be the signer of the foregoing document and to be the knowledge

that he/she signed it

My Office _____



MARKED
PROPOSE



CareMeridian

Facility: Las Vegas-Buffalo
 Address: 3391 N. Buffalo Drive
 Las Vegas NV 89129

FACE SHEET

Phone #: (702) 800-8860
 Fax #: (702) 749-7951

Patient Name:	Farris, Tilina	Pt:	170298	Room:	6	Bed:	B
Admit Date:	08/11/2015 22:50	Dis. Date:	08/28/2015 18:00				
Sex:	Female	Age:	55	DOB:	10/24/1962	DOI:	07/05/2015
Religion:	Practicing? No			Marital Status: Married			
Race:	Caucasian				Occupation:		
Pern.				Home Phone:			
Admitted	St Rose Dominican Hospital						

Physician Information

Attending	Dr. Syed Saqib	Ahmad	Phone:	702-450-1717
Address:	8970 West Patick Lane	Las Vegas NV 89113	Cell:	
Alternate M.D.	Dr. Alok	Saxena	Phone:	(702) 791-1326
Address:	1405 S. Arville #101	Las Vegas NV 89102	Cell:	
Diagnosis:	Perforated viscus w/ intra abd sepsis s/p exp lap, partial colectomy, acute resp failure s/p trach, incarcerated incisional hernia, colectomy functioning, Leukocytosis			ICD-9:
				Secondary: AKI/ATN, Anemia, Peripheral
Allergies:	other	Explain Other:	Aspirin	

Family - Emergency Contact

Primary	Patrick Farris	Relationship	Spouse
Address:	Home Phone:		
	Work Phone:		
	Mobile Phone:		
Special Instructions:	Other Phone:		
	Marital Status: M		



CareMeridian, LLC
Client Account Ledger
(showing Services from 08/11/2015 to 08/26/2015)

6-0003

Client Name (ID): FARRIS, TITHA (33903)

Episode Episode 1 Actual Date: 08/11/2015 Discharge Date: 08/26/2015

Program Of Service: NV-CNA-Tues-Las Vegas Bufile-ABBY12NS

Program Code: 114170001

Svc Date	Svc Code & Description	Eg	Dur	Units	Full Charge
08-11-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-11-2015	CNA RLVY R & B - Highly	1		1.00	\$1,500.00
08-11-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-12-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-12-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-13-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-13-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-14-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-14-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-15-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-15-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-16-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-16-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-17-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-17-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-18-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-18-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-19-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-19-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-20-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-20-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-21-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-21-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-22-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-22-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-23-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-23-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-24-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-24-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-25-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-25-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-26-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-26-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-27-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00
08-27-2015	CNA RLVY R & B - Highly	1		1.00	\$1,478.00

Totals

\$28,747.63

Print Date/Time: Tue Date: 10/25/2015 07:44 AM

Patient: Farns, Tanya
DOB: 10/24/1962
in Date: 08/11/2015

MR#: 170298
Dr: Ahmad
Aspin



6-0004

PHYSICAL RESTRAINT CONSENT

In order to protect our residents from harm or to promote them to a higher level of independence, it is sometimes necessary for us to use a physical restraint.

Physical restraints are any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that cannot be removed easily and that restricts freedom of movement or normal access to the resident's body. Examples include leg restraints, arm restraints, hand mitts, soft ties, vest restraints, lap buddies, lap trays, wheelchair safety bars and geri chairs. These devices are NEVER used as a disciplinary action or for the convenience of the facility to control behavior.

Restraints are initiated only after less restrictive measures, such as positioning pillows, pads, wedges, removeable lap trays coupled with appropriate exercises, or other "enabling" equipment, have been demonstrated to be insufficient. The least restrictive device would be then implemented following a consultation with an appropriate health professional (i.e., physical or occupational therapist), and with a specific doctor's order.

Side rails sometimes restrain residents. The use of side rails as restraints is prohibited unless they are necessary to treat a resident's medical symptoms. As with other restraints, for residents who are restrained by side rails, it is expected that the process facilities employ to reduce the use of side rails as restraints is systematic and gradual to ensure the resident's safety while treating the medical symptoms.

The following less restrictive, alternative non-restraint approaches have proven to be INEFFECTIVE:

RESTRAINT INTERVENTION RECOMMENDED

Therefore, I understand my physician has ordered the following restraint(s) for the specific target behaviors and/or medical symptoms listed.

Restraint Type, Frequency	Specific Target Behaviors	Medical Symptoms
Side Rails x2 when in bed at all times	for bed mobility, controls and safety	HTN, DTA, Bilateral neuropathy

STATEMENT OF CONSENT

☒ I DO ☐ I DO NOT consent to the use of restraints if the appropriate healthcare professionals have assessed the need for such and a restraining device is indicated as part of my recommended plan of care.

☐ I DO ☐ I DO NOT consent to the use of restraints on a temporary basis for treatment of emergency medical symptoms.

☐ I defer judgment regarding restraints until the appropriate healthcare professionals have assessed the need.

Patient: Ferris Titna
DOB: 10/24/1962
Adm Date: 08/11/2015

MR#: 170298
Dr: Ahmad
Aspirin

Attending Physician

Record No.

Room/Bed

RIGGS

PHYSICAL RESTRAINT CONSENT

6-0005

UNDERSTANDING RESTRAINT USE

POTENTIAL BENEFITS

- _____
- _____

- Accidental injury from the restraint
- Increase incidence of falls or head trauma
- Other accidents: i.e. strangulation, entrapment
- Chronic constipation
- Incontinence
- Pressure sores
- Loss of muscle tone
- Loss of balance
- Reduced appetite, dehydration
- Loss of or decline in independent mobility or ability to ambulate
- Increased agitation or delirium
- Loss of autonomy, dignity and self-respect
- Symptoms of depression, withdrawal
- Contractures
- Reduced social contact
- Increased incidence of infections

ACKNOWLEDGMENT SIGNATURES

Resident or Resident Representative X / [Signature] Date / /

Print Name _____ Relationship _____

Signature and Title

Date / /

Revised

PHYSICAL RESTRAINT CONSENT

PHYSICAL RESTRAINT CONSENT

In order to protect our residents from harm or to promote them to a higher level of independence, it is sometimes necessary for us to use a physical restraint.

Physical restraints are any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that cannot be removed easily and that restricts freedom of movement or normal access to the resident's body. Examples include leg restraints, arm restraints, hand mitts, soft ties, vest restraints, lap buddies, lap trays, wheelchair safety bars and geri chairs. These devices are NEVER used as a disciplinary action or for the convenience of the facility to control behavior.

Restraints are initiated only after less restrictive measures, such as positioning pillows, pads, wedges, removeable lap trays coupled with appropriate exercises, or other "enabling" equipment, have been demonstrated to be insufficient. The least restrictive device would be then implemented following a consultation with an appropriate health professional (i.e., physical or occupational therapist), and with a specific doctor's order.

Side rails sometimes restrain residents. The use of side rails as restraints is prohibited unless they are necessary to treat a resident's medical symptoms. As with other restraints, for residents who are restrained by side rails, it is expected that the process facilities employ to reduce the use of side rails as restraints is systematic and gradual to ensure the resident's safety while treating the medical symptoms.

The following less restrictive, alternative non-restraint approaches have proven to be INEFFECTIVE:

08/11/15
Phlegm

RESTRAINT INTERVENTION RECOMMENDED

Therefore, I understand my physician has ordered the following restraint(s) for the specific target behaviors and/or medical symptoms listed.

Restraint Type, Frequency	Specific Target Behaviors	Medical Symptoms
Side Rails x2 when in bed at all times	for bed mobility, Controls and safety	HTN, D1A, Bilateral neuropathy

STATEMENT OF CONSENT

☒ I DO ☐ I DO NOT consent to the use of restraints if the appropriate healthcare professionals have assessed the need for such and a restraining device is indicated as part of my recommended plan of care.

☐ I DO ☐ I DO NOT consent to the use of restraints on a temporary basis for treatment of emergency medical symptoms.

☐ I defer judgment regarding restraints until the appropriate healthcare professionals have assessed the need.

NAME-Last	First	Middle	Attending Physician	Record No.	Room/Bed
<div style="display: flex; justify-content: space-between;"> <div> <small>Form 3048/2P © 1997 BRIGGS, Inc. Moline, IL 61201 (312) 347-2345 www.BriggsCorp.com</small> <small>Unauthorized copying or use violates copyright law. Printed in U.S.A.</small> </div> <div> BRIGGS </div> <div> PHYSICAL RESTRAINT CONSENT </div> </div>					

PSYCHOACTIVE MEDICATION INFORMED CONSENT

In order to protect our residents from harm or to promote them to a higher level of independence, it is sometimes necessary to utilize medication interventions. Medication interventions are NEVER used for disciplinary action or for the convenience of the facility to control behavior.

Psychoactive medication intervention would be initiated only after less restrictive non-drug measures were attempted and found to be ineffective. Examples of non-drug approaches include behavior programming, specific staff approaches, environmental evaluation, i.e., temperature, noise, room-mates, tablemates, or physical restraints utilized as enablers.

The following less restrictive non-drug approaches have proven to be **INEFFECTIVE**:

Medical Diagnosis: _____

MEDICATION INTERVENTION RECOMMENDED

A physician has prescribed the following psychoactive medication(s): (Drug, Dosage, Frequency)

Cymbalta

Specific Condition/Dx. (List Target Symptom/Behavior)	Beneficial Effects Expected	Possible Side Effects/Risks (Identify Concerns Used for Review)
<i>depression pain</i>	<i>↑ mood</i>	<i>Nausea H/A dizziness</i>

PROPOSED COURSE OF MEDICATION

STATEMENT OF CONSENT

☒ I DO desire the use of the medication(s) indicated above and DO consent to their use. I understand that once the target behavior is controlled, the dose should be gradually decreased to the lowest possible dosage and frequency, or discontinued unless contra-indicated by my physician.

☐ I DO consent to the use of medication interventions but only on a temporary basis for treatment of life-threatening medical symptoms only.

☐ I DO NOT desire, nor consent to, the use of medication interventions on a regular or temporary basis.

I understand that I may reevaluate the need for medication intervention at any time, and that this will be reviewed at each quarterly Care Planning Meeting.

ACKNOWLEDGMENT SIGNATURES

Resident or Resident Representative ☒ *Patricia Farn* Date *8/17/15*

If signed by Resident Representative, complete the following:

Print Name _____ Relationship _____

Person Completing This Form *Myra* Date *8/17/15*

NAME Last First Middle Address/Physician Record No. Room/Bed

BARRIS TITINA

PharmD

170298

6B

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BRIGGS Healthcare

6-0008

PSYCHOACTIVE MEDICATION INFORMED CONSENT

In order to protect our residents from harm or to promote them to a higher level of independence, it is sometimes necessary to utilize medication interventions. Medication interventions are NEVER used for disciplinary action or for the convenience of the facility to control behavior.

Psychoactive medication intervention would be initiated only after less restrictive non-drug measures were attempted and found to be ineffective. Examples of non-drug approaches include behavior programming, specific staff approaches, environmental evaluation, i.e., temperature, noise, room-mates, tablemates, or physical restraints utilized as enablers.

The following less restrictive non-drug approaches have proven to be **INEFFECTIVE**:

Medical Diagnosis: _____

MEDICATION INTERVENTION RECOMMENDED

A physician has prescribed the following psychoactive medication(s): (Drug, Dosage, Frequency)

ATRIAN

Specific Condition(s) (List Target Symptom/Behaviors)	Beneficial Effects Expected	Possible Side Effects/Risks (Identify Source Used for Review)
<u>anxiety</u>	<u>9 mood</u> <u>relax</u>	<u>sedation</u> <u>dizziness</u> <u>fatigue</u>

STATEMENT OF CONSENT

☒ I **DO** desire the use of the medication(s) indicated above and **DO** consent to their use. I understand that once the target behavior is controlled, the dose should be gradually decreased to the lowest possible dosage and frequency, or discontinued unless contra-indicated by my physician.

☐ I **DO** consent to the use of medication interventions but only on a temporary basis for treatment of life-threatening medical symptoms only.

☐ I **DO NOT** desire, nor consent to, the use of medication interventions on a regular or temporary basis.

I understand that I may reevaluate the need for medication intervention at any time, and that this will be reviewed at each quarterly Care Planning Meeting.

ACKNOWLEDGMENT SIGNATURES

Resident or Resident Representative

X / [Signature] Date 8/24/15

If signed by Resident Representative, complete the following:

Print Name _____

Relationship _____

Person Completing This Form

[Signature] Date 8/24/15

NAME

BRIGGS TITANA

First

Middle

Address

AK

Rooming

190298

Rooming

6B

PSYCHOACTIVE MEDICATION INFORMED CONSENT

In order to protect our residents from harm or to promote them to a higher level of independence, it is sometimes necessary to utilize medication interventions. Medication interventions are NEVER used for disciplinary action or for the convenience of the facility to control behavior.

Psychoactive medication intervention would be initiated only after less restrictive non-drug measures were attempted and found to be ineffective. Examples of non-drug approaches include behavior programming, specific staff approaches, environmental evaluation, i.e., temperature, noise, room-mates, tablemates, or physical restraints utilized as enablers.

The following less restrictive non-drug approaches have proven to be **INEFFECTIVE**:

Medical Diagnosis: _____

MEDICATION INTERVENTION RECOMMENDED

A physician has prescribed the following psychoactive medication(s): (Drug, Dosage, Frequency)

Risperidone 5mg tab PO Q 8 HRS x 4 doses.

Specific Condition/Drug (List Target Behaviors/Outcomes)	Beneficial Effects Expected	Possible Side Effects/Risks (Specify Known/Unknown)
SE ANXIETY, Nausea, Vomiting.	SE Prophylaxis, Provide AD comfort, decrease nausea/vomiting	Adverse Dyskinesia, Drowsiness, Dizziness, headache.

STATEMENT OF CONSENT

- ☒ I **DO** desire the use of the medication(s) indicated above and **DO** consent to their use. I understand that once the target behavior is controlled, the dose should be gradually decreased to the lowest possible dosage and frequency, or discontinued unless contra-indicated by my physician.
- ☒ I **DO** consent to the use of medication interventions but only on a temporary basis for treatment of life-threatening medical symptoms only.
- ☐ I **DO NOT** desire, nor consent to, the use of medication interventions on a regular or temporary basis.

I understand that I may reevaluate the need for medication intervention at any time, and that this will be reviewed at each quarterly Care Planning Meeting.

ACKNOWLEDGMENT SIGNATURES

Resident or Resident Representative *X Titina* Date 08/13/15
Signature

If signed by Resident Representative, complete the following:

Print Name _____ Relationship _____

Person Completing This Form *X Titina* Date 08/13/15
Signature and Title

NAME-Last <u>Farris, Titina</u>	First <u>Titina</u>	Middle <u></u>	Attending Physician <u>Dr. Ahmad / Swann</u>	Record No. <u>170299</u>	Room/Bed <u>603</u>
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BRIGGS Healthcare

6-0010

CareMeridian – Buffalo
ADMITTING HISTORY AND PHYSICAL

RE: Farris, Titina

DOA:

Date of Dictation: August 12, 2015

Page 1 of 3

REASON FOR ADMISSION: The patient is being admitted from St. Rose Dominican Hospital for continuation of care, IV antibiotics, wound care and a comprehensive rehabilitation program.

DIAGNOSTIC ASSESSMENT:

1. Perforated viscus with intra-abdominal abscess, status post exploratory laparotomy for removal of prosthetic mesh, partial colectomy, lysis of adhesions and placement of right-sided colostomy on 07/16/2015 by Dr. Elizabeth Hamilton.
2. Incarcerated incisional hernia, status post laparoscopic repair of incarcerated hernia with mesh and ~~XXXX~~ x 2 on 07/03/2015 by Dr. Barry Rives.
3. Acute respiratory failure, status post tracheostomy placement and decannulation.
4. Status post placement of abdominal drains, discontinued.
5. Status post sepsis, multifactorial.
6. Type 2 diabetes mellitus.
7. Hypertension.
8. Acute kidney injury/ATN, improved.
9. Severe anxiety.
10. Depression.
11. Peripheral neuropathy.
12. Anemia.
13. Dyslipidemia.
14. Debility.
15. Removal of an abdominal growth with hernia repair with mesh in August of 2014.

HISTORY OF PRESENT ILLNESS: This is a pleasant 52-year-old female with history significant for diabetes mellitus and hypertension with neuropathy who initially was operated upon in August 2014 for a growth (which was benign). She also underwent hernia repair with mesh at that time. The patient has been complaining of abdominal pain. She was admitted for incarcerated incisional hernia with mesh. Surgery was done on 07/03/2015 as noted above. However, her course was complicated after that. She had to be emergently intubated for respiratory distress/failure on 07/05/2015 likely secondary to sepsis. She underwent tracheostomy placement on 07/14/2015. The patient was seen, per family, for a second opinion by Dr. Hamilton. She underwent surgery for perforated incarcerated colostomy, washout of the abdomen, drain placement, extensive lysis of adhesions, retention suture placement, and removal of bioprosthetic mesh. The patient was continued on IV antibiotics and wound care and she was weaned off from the ventilator and underwent decannulation at one time. As noted above, history is also significant for severe anxiety. She had to be placed on L2K, however, has been taken off of that because of her ~~XXXX~~. The patient has been on Cymbalta for about a year for neuropathy. However, that was taken off because of potential interaction with her Zyvox. At this time the patient is being admitted as she complains of nausea as well as anxiety. Other than that, she denies any chest pain, shortness of breath, constipation or genitourinary symptoms.

Allergies: Aspirin.

6-0011

RE: Farris, Titina
August 12, 2015
Page 2 of 3

Past Medical History: As per the diagnostic assessment.

Social History: She does not smoke or drink. She lives with her husband in Las Vegas. She works at a radio station.

Family History: Significant for mother having coronary artery disease and diabetes and father having diabetes mellitus.

Current Medications: Lyrica 25 mg b.i.d., Ativan 1 mg q.8h. p.r.n. (this will be changed to 0.5 mg IV q.6h. p.r.n.), clonidine 0.2 mg transdermal patch, fentanyl 75 mcg patch q.72h. (this will be discontinued secondary to potential reaction with Zyvox), fluconazole 200 mg daily, Lasix 20 mg daily, heparin 5000 units q.8h., Lantus insulin 26 units q.a.m., insulin sliding scale, levalbuterol p.r.n., Zyvox 600 mg IV q.12h., Percocet q.8h. p.r.n., Zosyn 3.35 g and hydromorphone q.4h. p.r.n.

PHYSICAL EXAMINATION:

General: Awake, alert, anxious. Family is at the bedside.

HEENT: Atraumatic and normocephalic. Anicteric sclera. Negative conjunctival injection.

Neck: No JVD.

Lungs: Air entry satisfactory. No wheezes or crackles.

Heart: Heart sounds 1 and 2, regular.

Abdomen: Dressing over the surgical site with right-sided colostomy.

Extremities: No edema.

Neurologic: Awake, alert, appropriate and is able to move extremities except the toes.

LABORATORY DATA: White cell 10, hemoglobin 11, platelets 515,000, glucose 218, BUN 6, creatinine 0.6, sodium 133, potassium 4, bicarbonate 26, AST 49 and ALT 53.

ASSESSMENT:

This is a 52-year-old status post surgery for perforated viscus, intra-abdominal abscess, exploratory laparotomy and partial colectomy, diabetes, hypertension and severe anxiety.

PLAN:

1. The patient is now being admitted.
2. At this time we will continue with current medications. She was already evaluated by Infectious Disease. We will continue with Zyvox and daptomycin per recommendations. Holding parameters for antihypertensive medications at this time. We will also discontinue fentanyl patch secondary to potential reaction with Zyvox.
3. Incentive spirometry.
4. PT and OT.
5. Anxiolytics will be changed to IV lorazepam.

RE: Farris, Titina
August 12, 2015
Page 3 of 3

6. Pain control.
7. DVT and GI prophylaxis.
8. Monitor blood sugars closely.
9. Podiatry and speech therapy evaluations.
10. Wound care consult.
11. Continue with wound care.
12. Colostomy care per protocol.

Dictated by: Hassanali Sewani, M.D.
for

Syed Saqib Ahmad, M.D.

SSA/MD/ju

10-03740566.doc



6-0013

Discharge Summary

FARRIS, TITINA M - 10016420

Result type: Discharge Summary
Result Date: 11 August 2015 17:15
Result status: Auth (Verified)
Result Title: Discharge Summary
Source Of Report: Mojica, Wendy DO on 11 August 2015 17:56
Verified By: Mojica, Wendy DO on 11 August 2015 17:56
Encounter info: 34342485, SRDHM, Inpatient, 07/05/2015 -

Discharge Summary

Patient: FARRIS, TITINA M MRN: 10016420
Age: 52 years Sex: F DOB: 10/24/1962
Associated Diagnoses: None
Author: Mojica, Wendy DO

Discharge Information

Admit Days = 38

Final Diagnosis

Sepsis 07/09/2015 19:02 Discharge
Abdominal pain 07/09/2015 10:41 Discharge
Atrial Flutter 07/09/2015 19:02 Discharge
Diabetes 07/09/2015 19:02 Discharge

1. ACUTE RESPIRATORY FAILURE S/P TRACH ON T-PIECE TOL WELL. OFF THE VENT.
2. PERFORATED VISCUS WITH INTRA ABD SEPSIS S/P EXP LAP FOR REMOVAL OF PROSTHETIC MESH, AND WASHOUT OF ABD, PARTIAL COLECTOMY. LYSIS OF ADHESIONS, AND RIGHT ASCENDING COLON COLOSTOMY. 7/16/2015. DR. ELIZABETH HAMILTON.
3. INCARCERATED INCISIONAL HERNIA S/P LAP REPAIR OF INCARCERATED HERNIA WITH MESH AND COLONORRAPHY X2. 7/3/2015. DR. BARRY RIVES.
4. COLOSTOMY FUNCTIONING.
5. UPPER INCISION WITH BROWN DRAINAGE FROM UPPER PART OF INCISION.
6. PERIHEPATIC FLUID BY CT SCAN 7/29/2015
7. LEUKOCYTOSIS.
8. ENCEPHALOPATHY 2ND TO SEPSIS AND MED'S (OPIATES AND BENZODIAZEPINE). --IMPROVING.
9. T2DM.

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Printed on: 08/11/2015 17:57

Page 1 of 8
(Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

- 10. HTN.
- 11. AKI/ATN.
- 12. ANEMIA 2ND TO ACUTE BLOOD LOSS.
- 13. PERIPHERAL DIABETIC NEUROPATHY.
- 14. DYSLIPIDEMIA.
- 15. ICU stay weakness

Hospital Course

Consultations: Rives, Barry MD, Ripplinger, Gregg M, MD, Mooney, Kenneth J MD, Zaidi, Syed MD, Osman, Ashraf MD, Gupta, Arvin MD, Rebentish, Alka P MD.

Condition on Discharge: improved.

Radiology Results

Radiologist's Interpretation 24hrs

Name: FARRIS, TITINA

Account: 34342485

MRN: 9122218

DOB: 10/24/1962

Result Date: 08/11/15 16:34

Verified By: Tan, Kok MD at 08/11/15 16:36

Report : XR Chest 1 View

History: Infiltrates Shortness of breath Findings: Suboptimal inspiration with low lung volumes. Right PICC line in satisfactory position. Mild elevation of the right hemidiaphragm. Bibasal opacities slightly improved from 8/2/2015. Left lung is unchanged. No pneumothorax. Report generated on workstation: SRMPACS052
08/11/15 16:36

Results Review: 24 hr Labs

Labs (All documented values resulted over the prior 24 hours)

Fingerstick Glucose (Last 4)

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Page 2 of 8
(Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

117 174 190 190
 (08/10 20:00) (08/11 00:21) (08/11 08:28) (08/11 08:28)

Hematology		Chemistry		Enzymes	
WBC	9.30	Na	137.00	Alkphos	179.00
Hgb	10.10	K	3.50	ALT	43.00
Hct	30.40	Cl	103.00		
Plt	461.00	CO2	24.00		
		Gluc	180.00		
		Bun	5.00		
		Cr	0.65		
		Ca	9.20		
		T Bill	0.40		

CoagulationProteins

Alb 2.40 (08/11 08:33)

Anion

Anion Gap 10.00 (08/11 08:33)

Hospital Course: Brought in electively by Dr. Rives for laparoscopic reduction and repair of incarcerated incisional hernia with mesh due to incarcerated incisional hernia.

Patient had a long and complicated history she was admitted for incarcerated incisional hernia with mesh.

Surgery done on 7/3/15 by Dr. Rives for -7/3-incarcerated incisional hernia repair

On 7/5/15 the patient had to be emergently intubated likely due to sepsis. During the course of her admission, she had several

consultants on board care for her. This is a brief synopsis of what happened on this admission. Failure to wean off intubation

required her to have tracheostomy done on 7/14/15 by Dr. Osman. please note due to surgical complications she required a second

opinion and was seen by Dr. Hamilton who found the following during operation on 7/16/15: Pre/post op dx cc, perforated viscus, sepsis, resp failure, anasarca, fever, leukocytosis, recent inc hernia repair with prosthetic mesh. Procedure ex lap. partial colectomy with right end colostomy. washout of abd, drain placement, extensive loa for over 30 min, retension suture placement, removal of prosthetic mesh
 Additional Procedure decompressed stool and contrast from r colon into ostomy and disimpacted

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Page 3 of 8
 (Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

rectum and flushed left colon.

/On 7/30 and 7/31 radiology placed a abdominal drains for pus drainage.

With this long and complicated history the patient had a long time weaning off the vent she recently had been decannulated on 8/8/15.

Please note prior to decannulation the patient was on an L2K for stating she wanted to die, I reassessed the patient and she was not

suicidal therefore, the patient was taken off the L2K by me. The patient had her abdominal drain pulled 8/8 on 8/11 had the last drain pulled.

Per Dr. Hamilton there is no further surgery for her abdomen in mind due to her abdomen being so "hostile"

The patient will need another CT scan of her abdomen 2 days prior to last date of IV antibiotics. Last date of IV antibiotics is 8/21/15 please see mar for the current antibiotics recommended by Dr. Shaik. ✓

She will need wound care, close follow up by PT/OT while she is at rehab facility, she will also require colostomy care while she is at rehab facility. Please note the patient has a Mar with specific antibiotics, last minute add ons today include lyrica for neuropathy pain in her legs, and she also has ativan on board PRN for anxiety. FOR now holding her cymbalta due to adverse reactions with zyvox. She will need blood glucose monitoring as well during her rehab stay. Will d/c to rehab later tonight. ✓

If possible please consult the patient's surgeon Dr. Hamilton, and all other specialist physicians she had during her stay at St rose san martin if possible while she is at rehab facility.

Patient's assessment by Dr. Hamilton on 7/16/15 was done secondary to patient's family wanting a second opinion. Please

See below Dr. Hamilton's assessment:

"Patient Complaint: pt is a 52 yo female who had a recurrent incisional hernia. original repair was 8/14 and mesh was placed. only prev surgery prior to that was 3 c sections by report. pt developed recurrent inc hernia. colon was in it. had repair 7/3/15 laparoscopically. colon in hernia. adhesions. old mesh present. two colotomies made and repaired. new prosthetic mesh placed. pt has had a rocky postoperative course with tachycardia/af flutter, resp failure and now with trach, slow return of bowel fx, fever and leukocytosis and anasarca. ct done yesterday about 3:30 pm showed lots of free air and free fluid. pt awake and alert on vent in ICU, family present. thought is that ex lap needed to eval and correct likely bowel perforation. family req change in surgeon so we were asked to see pt. our group had given a second opinion days ago. not gen surg on call. pt afebr now. pulse in 80s- 100s on amlo, fentanyl and demadex. on ventilator. r pleural effusion on imaging. severe anasarca, abd extremely distended and taught. peritonitis. bc possibly present. midline wound and smaller laparoscopic port sites. no clear cellulitis. wbc 20 k. hct 30. inr 1.3. creat .7. ct- revd with rads- huge amt of free air. mesh likely seen. free fluid. contrast in cecum and rectum- was barium like contrast used in ct about a week ago- rectally. a/p- pt with resp failure, anasarca, sepsis, and evid of perforated viscus on imaging yesterday. recommendation is ex lap, washout of abd, likely removal of ?

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(Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

prosthetic mesh, likely bowel resection and ostomy, likely drain placement, and any other indicated procedures. new mesh need to be placed either absorbable or biologic. temporary closure of the abd may be needed. 1.25 hours spent reviewing chart and images and talking to RN and two sisters and husband and dr rives. detailed informed consent obtained from the patient including rba. all questions answered. high risk of morbidity and mortality and fistulas and prolonged vent dependence and continued sepsis. discussed in detail with family. they and pt, want to proceed promptly. suspect hostile abd."

Discharge Plan

Allergies

<u>Allergies (1) Active</u>	<u>Reaction</u>
aspirin	abdominal discomfort, itching

Discharge Medications

Med Reconciliation

Home Medications

(carvedilol 12.5 mg oral tablet)

12.5 mg= 1 Tab By mouth Tab twice daily

(lisinopril 2.5 mg oral tablet)

2.5 mg= 1 Tab By mouth Tab once daily

(Flagyl I.V.)

500 mg= 100 mL Intravenous Bag every eight hour interval

LISPRO(Insulin LISPRO)

0-16 units subcutaneously Soln every 4 hours

(heparin 5000 units/ml injectable solution)

5,000 Unit= 1 mL subcutaneously INJ every 8 hours

(Zyvox)

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 (Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

600 mg= 300 mL Intravenous Bag every 12 hours interval

Prescriptions(new/renewals)

glargine(Lantus 100 units/ml subcutaneous solution)

26 Unit subcutaneously once daily 30 Day

oxyCODONE(acetaminophen-oxyCODONE 325 mg-7.5 mg)

1 - 2 Tab By mouth Tab every 6 hours as needed for Pain 5 Day

(cloNIDine 0.2 mg/24 hr patch)

0.2 mg/day= 1 Patch Topical Patch Patch every week

(fentaNYL 75 mcg/hr transdermal film, extended release)

75 mcg/hr= 1 Patch Topical Patch Patch every 72 hours

(fluconazole 200 mg oral tablet)

200 mg= 1 Tab Intravenous Tab once daily 14 Day

Special Instructions: length of fluconazole to be adjusted by ID following the patient.

(furosemide 20 mg oral tablet)

20 mg= 1 Tab By mouth Tab once daily

(Xopenex 0.63 mg/3 mL inh soln)

0.31 mg= 3 mL By nebulizer Soln every 2 hours as needed for Shortness of breath 30 Day

(HYDROMorphone 1 mg/ml injectable solution)

0.5 mg= 0.5 mL Intravenous Push Soln every 4 hours as needed for Pain 3 Day

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(Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

Stopped Meds

By mouth twice daily

glargine (Lantus)

(DULoxetine 60 mg oral delayed release capsule)

By mouth once daily

(oxyCODONE 7.5 mg oral tablet)

By mouth every 4 hours

Education and Follow-up

Discharge Planning:

Follow-Up Details:

Provider/Org Name: Elizabeth Hamilton

Within: 1 week

Address: business (1) 10001 S EASTERN Suite 200 Henderson NV 89052;7029142420 Business (1);

Provider/Org Name: Follow up with primary care provider

Within: 1 week

Discharge Orders:

, Dr. Rebentish /Dr. Shaik ID

Dr. Gupta renal .

Comments

Time: More than 30 minutes on discharge day management.

Signature Line

Electronically Signed By:

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(Continued)

Discharge Summary

FARRIS, TITINA M - 10016420

Mojica, Wendy DO
On 08/11/15 17:56
Co Signature By:
Modified Signature By:

Printed by: Kennelly, Jessica UC
Printed on: 08/11/2015 17:57

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(End of Report)

Consultation

FARRIS, TITINA M - 10016420

*** Final Report ***

Result type:	Consultation
Result Date:	13 July 2015 18:43
Result status:	Auth (Verified)
Result Title:	Consultation
Source Of Report:	Osman, Ashraf MD on 13 July 2015 18:43
Verified By:	Osman, Ashraf MD on 14 July 2015 13:02
Encounter Info:	34342485, SRDHM, Inpatient, 07/05/2015 -
Contributor system:	SRDHTRAN

*** Final Report ***

Consultation (Verified)

DATE OF CONSULTATION:

REFERRING PHYSICIAN: Kenneth Mooney, M.D.

CONSULTATIONS LOCATION: San Martin Hospital.

Time spent with the patient reviewing her information, more than 55 minutes.

REASON FOR CONSULTATION: The patient with respiratory failure for evaluation for tracheostomy.

HISTORY OF PRESENT ILLNESS: The patient is a 52-year-old female patient with past medical history significant for diabetes mellitus, obesity, underwent laparoscopic incarcerated incisional hernia repair and then replacement of the mesh by Dr. Barry Rives on July 3rd, 2015. Postoperative course has been very complicated, and the patient has been intubated since that time. There was another surgical consultation as well to evaluation of the patient. The patient has been off sedation and an attempt to do her CPAP today, she is becoming so agitated and tachypneic and was cleared from the ICU team that the ability to wean her for extubation soon is slim and the ostomy for placement of tracheostomy.

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Printed on: 08/11/2015 17:51

Page 1 of 3
(Continued)

Consultation

FARRIS, TITINA M - 10016420

* Final Report *

PAST MEDICAL HISTORY: Significant for morbid obesity, diabetes mellitus, depression, hypertension, and anxiety.

PAST SURGICAL HISTORY: Incisional hernia repair about a year ago, repeat laparoscopic repair of incarcerated incisional hernia recently, and C-section.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: Negative for smoking or drinking.

ALLERGIES: ASPIRIN.

MEDICATIONS IN HOSPITAL: Reviewed.

REVIEW OF SYSTEMS: Twelve-point review of system were done by the member of the family and were negative with the exception of the above.

PHYSICAL EXAMINATION:

GENERAL: Obese female patient, intubated, off sedation now, but she is not responding well.

VITAL SIGNS: Showed temperature 38.2, heart rate 101, blood pressure 152/70, respiratory rate 20, FiO2 40%, and saturation 97%.

NECK: Supple.

CHEST: Decreased breath sounds bilaterally.

CARDIAC: Regular rate and rhythm.

ABDOMEN: Distended and firm. No bowel sounds.

EXTREMITIES: Warm.

LABORATORY INVESTIGATION: Her most recent lab shows white count of 17.9, hemoglobin 7.4, and platelets 437. Her sodium 153, potassium 3.7, chloride 112, CO2 is 33, BUN 37, and creatinine 0.8.

ASSESSMENT AND PLAN: This is a 52-year-old female patient, has been on ventilator for about eight days now, which seems to be, she is not going to be able to extubated soon. The ICU team asked me for placement of tracheostomy and I do agree with that. We will proceed.

Printed by: Kennelly, Jessica UC
Printed on: 08/11/2015 17:51

Page 2 of 3
(Continued)

Consultation

FARRIS, TITINA M - 10016420

* Final Report *

Since the patient has now really anemia prior to surgical intervention, I would like to transfuse her with blood transfusion prior to surgery, as well as I am going to start her on D5W to correct her sodium of 153. We are going to re-evaluate her labs in the morning. If the labs are acceptable, we will proceed with tracheostomy.

The above information was discussed with the family members and informed consent was requested by exam and the husband will sign the consent.

Ashraf I Osman, MD

AIO / MedQ

D: 07/13/2015 18:43:58

T: 07/13/2015 23:47:03

Job #: 119169

Signature Line

Electronically Signed By:

Osman, Ashraf MD

On 07/14/15 13:02

Co Signature By:

Modified Signature By:

Osman, Ashraf MD

On 07/14/15 13:02

Printed by: Kennelly, Jessica UC
Printed on: 08/11/2015 17:51

Page 3 of 3
(End of Report)

PHYSICIAN'S TELEPHONE ORDER

Name of Facility		Address	
CMB		3391 N. BETHLEHEM	
Family Name	First Name	Admission Number	Room No.
PANUJ	ADINA	170249	65
Date Received		Date Received	
8/28/15 1141		PATIENT CAN GO OUT ON PATI	
WHD		TODAY WITH RESPONSIBLE PARTY FOR 4 HRS	
8/28/15 42		TUBI OR AHMAD / M	
Signature of Nurse Receiving Order		Signature of Physician	
[Signature]		[Signature]	
Resident Notified		Family Notified	
[]		[]	
On MD Order Sheet	Med/Tx Sheet	Date & Time	Communicated / Read Back
Pharmacy	Nurses Notes	Pt. Care Plan	Signed

ORIGINAL COPY-Physician Please Sign and Return

Name of Facility		Address	
Family Name		Admission Number	
First Name		Room No.	
8/28/15		[Signature]	
Signature of Nurse Receiving Order		Signature of Physician	
[Signature]		[Signature]	
Resident Notified		Family Notified	
[]		[]	
On MD Order Sheet	Med/Tx Sheet	Date & Time	Communicated / Read Back
Pharmacy	Nurses Notes	Pt. Care Plan	Signed

ORIGINAL COPY-Physician Please Sign and Return

Name of Facility		Address	
Family Name		Admission Number	
First Name		Room No.	
8/28/15		[Signature]	
Signature of Nurse Receiving Order		Signature of Physician	
[Signature]		[Signature]	
Resident Notified		Family Notified	
[]		[]	
On MD Order Sheet	Med/Tx Sheet	Date & Time	Communicated / Read Back
Pharmacy	Nurses Notes	Pt. Care Plan	Signed

ORIGINAL COPY-Physician Please Sign and Return

6-0025

PHYSICIAN'S TELEPHONE ORDER

Form 942P © 1999-2003, Oak Medical, Inc. 10/03 942P-0146

PHYSICIAN'S TELEPHONE ORDERS

Name of Facility	CMB		Address	3391 N. Buffalo	
Family Name	Farris	First Name	Tithon	Admission Number	Room No.
				6B	Attending Physician
					Dr. Ahmad
Date Ordered	08/24/15	Time Ordered	TORB Dr. Ahmad / W. W. W.		
			Charge lantus to 20 units @ AM		
Signature of Nurse Receiving Order	[Signature]		Resident Notified	Family Notified	Signature of Physician
					Dr. Ahmad
					08/24/15
On MD Order Sheet		Med/Tx Sheet		Date & Time	Communicated / Read Back
Pharmacy		Nurses Notes		Pt. Care Plan	Signed

ORIGINAL COPY-Physician Please Sign and Return

Form 942P © 1999-2003, Oak Medical, Inc. 10/03 942P-0146

PHYSICIAN'S TELEPHONE ORDERS

Name of Facility	CMB		Address	3391 N. Buffalo	
Family Name	Farris	First Name	Tithon	Admission Number	Room No.
				6B	Attending Physician
					Dr. Ahmad
Date Ordered	8/24/15	Time Ordered	TORB Dr. Ahmad / W. W. W.		
			Chem and CBC in AM		
Signature of Nurse Receiving Order	[Signature]		Resident Notified	Family Notified	Signature of Physician
					Dr. Ahmad
					8/24/15
On MD Order Sheet		Med/Tx Sheet		Date & Time	Communicated / Read Back
Pharmacy		Nurses Notes		Pt. Care Plan	Signed

ORIGINAL COPY-Physician Please Sign and Return

Form 942P © 1999-2003, Oak Medical, Inc. 10/03 942P-0146

PHYSICIAN'S TELEPHONE ORDERS

24 Hour Chart Check
Date: 8/26/15
Shift: Night 234
Signature: [Signature]

Name of Facility	CMB		Address	3391 N. Buffalo	
Family Name	Farris	First Name	Tithon	Admission Number	Room No.
				6B	Attending Physician
					Dr. Ahmad
Date Ordered	8/24	Time Ordered	⑤ LE AFO's recommended d/t foot drop		
Signature of Nurse Receiving Order	[Signature]		Resident Notified	Family Notified	Signature of Physician
					Dr. Ahmad
					8/24/15
On MD Order Sheet		Med/Tx Sheet		Date & Time	Communicated / Read Back
Pharmacy		Nurses Notes		Pt. Care Plan	Signed

ORIGINAL COPY-Physician Please Sign and Return

6-0026

RESIDENT-DATA COLLECTION

CURRENT STATUS (Cont'd.)

HEARING		VISION		ORAL ASSESSMENT	
Adequate	<input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> L	Adequate	<input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> L	Own teeth?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Adequate w/aid	<input type="checkbox"/> R <input type="checkbox"/> L	Adequate w/glasses	<input type="checkbox"/> R <input type="checkbox"/> L	Dentures: Upper	<input type="checkbox"/> Complete <input type="checkbox"/> Partial
Poor	<input type="checkbox"/> R <input type="checkbox"/> L	Poor	<input type="checkbox"/> R <input type="checkbox"/> L	Lower	<input type="checkbox"/> Complete <input type="checkbox"/> Partial
Deaf	<input type="checkbox"/> R <input type="checkbox"/> L	Blind	<input type="checkbox"/> R <input type="checkbox"/> L	Do dentures fit?	<input type="checkbox"/> Yes <input type="checkbox"/> No
				Condition of teeth	
EATING / NUTRITION				PERSONAL HYGIENE / GROOMING	
<input type="checkbox"/> Dependent <input checked="" type="checkbox"/> Independent <input type="checkbox"/> Needs assist <input type="checkbox"/> Dysphagic (reason) <input type="checkbox"/> Adaptive equipment Type/Consistency of diet: <u>Regular soft no meat</u> Food likes Food dislikes Beverage preference HS snack preferred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Tub <input type="checkbox"/> Indep <input type="checkbox"/> Assist <input checked="" type="checkbox"/> Dependent Shower <input type="checkbox"/> Indep <input type="checkbox"/> Assist <input checked="" type="checkbox"/> Dependent Bed Bath <input type="checkbox"/> Indep <input checked="" type="checkbox"/> Assist <input type="checkbox"/> Dependent Oral Hygiene <input type="checkbox"/> Indep <input checked="" type="checkbox"/> Assist <input type="checkbox"/> Dependent Shave <input type="checkbox"/> Indep <input checked="" type="checkbox"/> Assist <input type="checkbox"/> Dependent Grooming <input type="checkbox"/> Indep <input checked="" type="checkbox"/> Assist <input type="checkbox"/> Dependent Dressing <input type="checkbox"/> Indep <input checked="" type="checkbox"/> Assist <input type="checkbox"/> Dependent Shampoo <input type="checkbox"/> Indep <input checked="" type="checkbox"/> Assist <input type="checkbox"/> Dependent	
SLEEPING				PSYCHOLOGICAL ASPECTS	
Usual bed time _____ am/pm Usual arising time _____ am/pm Nap time _____ am/pm				FAMILY RELATIONSHIPS: Members visit: <u>Husband, Daughter</u> Closest relationship with: <u>Husband</u>	
COMMUNICATION				WHICH WORDS BEST DESCRIBE RESIDENT? <input checked="" type="checkbox"/> Alert <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Noisy <input checked="" type="checkbox"/> Friendly <input checked="" type="checkbox"/> Cooperative <input type="checkbox"/> Lethargic <input type="checkbox"/> Verbally threatening <input type="checkbox"/> Combative ANSWERS QUESTIONS: <input checked="" type="checkbox"/> Readily <input type="checkbox"/> Reluctantly <input type="checkbox"/> Inappropriately MOOD: <input type="checkbox"/> Passive <input type="checkbox"/> Depressed <input type="checkbox"/> Elated <input type="checkbox"/> Quiet <input type="checkbox"/> Questioning <input type="checkbox"/> Talkative <input type="checkbox"/> Secure <input checked="" type="checkbox"/> Homesick <input type="checkbox"/> Wanders mentally <input type="checkbox"/> Hyperactive <input checked="" type="checkbox"/> <u>Agitated</u> COMPREHENSION: <input type="checkbox"/> Slow <input checked="" type="checkbox"/> <u>Quick</u> <input type="checkbox"/> Unable to understand ORIENTED: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No DISORIENTED TO: <input type="checkbox"/> Time <input type="checkbox"/> Place <input type="checkbox"/> Person RESIDENT GIVEN EXPLANATION OF/OR INVOLVED IN PLAN OF CARE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No MOTIVATION TOWARD REHABILITATION: <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor PERSONAL HABITS: Smokes? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Uses alcohol? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
BOWEL AND BLADDER EVALUATION					
Uses: <input type="checkbox"/> Toilet <input type="checkbox"/> Urinal <input checked="" type="checkbox"/> Bedpan <input type="checkbox"/> Bedside commode BOWEL HABITS: Continent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Constipated? <input type="checkbox"/> Yes <input type="checkbox"/> No Laxative used? <input type="checkbox"/> Yes <input type="checkbox"/> No Enemas used? <input type="checkbox"/> Yes <input type="checkbox"/> No Briefs used? <input type="checkbox"/> Yes <input type="checkbox"/> No Last bowel movement _____ BLADDER HABITS: Continent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Dribbles? <input type="checkbox"/> Yes <input type="checkbox"/> No Catheter? <input checked="" type="checkbox"/> Yes, type <u> Foley 2way </u> Urine color: <u>Yellow</u> Consistency _____ Time of last voiding _____ ABLE TO PARTICIPATE IN TRAINING: No (reason) _____ Yes (plan) _____					
DISCHARGE EVALUATION				ORIENTATION TO FACILITY	
Prior living arrangements: Where: <u>Home</u> With whom: <u>Husband</u> Still available? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Family plans _____ Short term care _____ Long term care w/dischg. poss. _____ Long term care no dischg. poss. _____				<input checked="" type="checkbox"/> Facility <input type="checkbox"/> Activities <input checked="" type="checkbox"/> Bathroom <input type="checkbox"/> Roommate <input checked="" type="checkbox"/> Smoking rules <input checked="" type="checkbox"/> Visiting hours <input checked="" type="checkbox"/> Meal time <input checked="" type="checkbox"/> Side rails <input type="checkbox"/> Call light <input type="checkbox"/> Business office <input type="checkbox"/> Telephone <input type="checkbox"/> Staff <input type="checkbox"/> Schedule <input type="checkbox"/> Storage <input type="checkbox"/> Lighting <input type="checkbox"/> Overbed table <input checked="" type="checkbox"/> Resident <input type="checkbox"/> Significant other <input type="checkbox"/> Family UNABLE TO ORIENT (reason) _____	
Completed by: <u>[Signature]</u> Signature/Title _____				Date: <u>8/11/15</u>	

Patient: Farris Titina
 DOB: 10/24/1962
 Adm Date: 08/11/2015

MR#: 170298
 Dr: Ahmad
 Aspirin

Residing Physician

Record No.

Room/Bed

ICS.

6-0027

EXHIBIT(S) LIST

Page 1

Case No.: A-16-739464-C

Trial Date: 10/14/19

Dept. No.: XXXI

Judge: JOANNA S. KISHNER

Tikina Farris
PLAINTIFF,

Court Clerk: Susan Botzenhart

Recorder: Sandra Harrell

Counsel for Plaintiff: Randall Jones,

vs.

Barry Rives, M.D.
DEFENDANTS.

Jacob Leavitt + George Hamid

Counsel for Defendant: Thomas Doyle

Jury	TRIAL BEFORE THE COURT
Court	'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
1.	Statement to Jury from Counsel	10-14-19	no	10-14-19	AB
2.	Proposed Instruction not given	10-16-19	no	10-16-19	AB
3.	Juror Question	10-17-19	no	10-17-19	AB
4.	Juror Question	10-17-19	no	10-17-19	AB
5.	Juror Question	10-17-19	no	10-17-19	AB
6.	Verification	10-18-19	no	10-18-19	AB
7.	Transcript 10-7-19				AB
8.	Juror Question	10-21-19	no	10-21-19	AB
9.	Juror Question	10-21-19	no	10-21-19	AB
10.	Juror Question	10-21-19	no	10-21-19	AB
11.	Juror Question	10-21-19	no	10-21-19	AB
12.	Juror Question	10-21-19	no	10-21-19	AB
13.	Insurance Documents	10-21-19	no	10-21-19	AB
14.	Juror Question	10-21-19	no	10-21-19	AB
15.	Juror Question	10-21-19	no	10-21-19	AB
16.	Juror Question	10-21-19	no	10-21-19	AB
17.	Juror Question	10-21-19	no	10-21-19	AB

EXHIBIT(S) LIST

A739464

titina farri's

vs. Barry Rines, M.D.

Court

'S EXHIBITS

PAGE 2

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
18.	Juror Question	10-21-19	no	10-21-19	AB
19.	Juror Question	10-22-19	no	10-22-19	AB
20.	Juror Question	10-22-19	no	10-22-19	AB
21.	Juror Question	10-22-19	no	10-22-19	AB
22.	Juror Question	10-22-19	no	10-22-19	AB
23.	Juror Question	10-23-19	no	10-23-19	AB
24.	Juror Question	10-23-19	no	10-23-19	AB
25.	Juror Question	10-23-19	no	10-23-19	AB
26.	Juror Question	10-23-19	no	10-23-19	AB
27.	Juror Question	10-23-19	no	10-23-19	AB
28.	Juror Question	10-23-19	no	10-23-19	AB
29.	Juror Question	10-23-19	no	10-23-19	AB
30.	Juror Question	10-23-19	no	10-23-19	AB
31.	Juror Question	10-23-19	no	10-23-19	AB
32.	Juror question	10-24-19	no	10-24-19	AB
33.	Juror question	10-24-19	no	10-24-19	AB
34.	Juror question	10-24-19	no	10-24-19	AB
35.	Juror question	10-24-19	no	10-24-19	AB
36.	Juror Question	10-28-19	no	10-28-19	AB
37.	Juror Question	10-28-19	no	10-28-19	AB
38.	Juror Question	10-28-19	no	10-28-19	AB
39.	Juror Question	10-28-19	no	10-28-19	AB
40.	Juror Question	10-30-19	no	10-30-19	AB
41.	Juror Question	10-30-19	no	10-30-19	AB
42.	Juror Question	10-30-19	no	10-30-19	AB

EXHIBIT(S) LIST

Titina farris

vs. Barry Rives, M.D.

Court's

'S EXHIBITS

[illegible]

This is a medical malpractice case.
Plaintiffs Titina and Patrick Ferris
are suing Defendant Dr. Barry
Rives and his corporation.

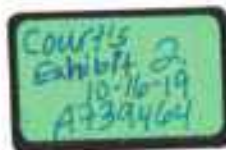


Dr. Barry Rives was a defendant in a medical malpractice case called Vickie Center vs. Barry James Rives, et al. When he answered interrogatories and at his deposition in this case, he did not identify the Center vs. Rives case.

Where relevant evidence which would properly be a part of this litigation is within the control of one party whose interest it would naturally be to produce it, and they fail to do so without a satisfactory explanation, the jury may draw an inference that such evidence would have been unfavorable to that party.

An inference means a logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, the jury may conclude exists from the established facts.

A it proper st
Δ
not given



Jury #3 only #404 Female

How quickly can diabetic neuropathy occur if diabetes (type II) is untreated?

Based on Mrs. Farro's diabetes, how quickly can she get foot drop ~~if~~ if she did not have surgery?

Why do you disagree w/ Dr. Chaney's assessment that Mrs. Farro has diabetic neuropathy? on April 3, 2015

Can you elaborate the likelihood someone w/ Type II Diabetes getting neuropathy between treated vs. untreated?

If ~~if~~ Mrs. Farro was not experiencing neuropathy before her July 2015 surgery, based on her condition w/ surgery, can she get CIP?

Court's
Exhibit 3
10-17-19
A931464

Jury #3 Dodge #444 Feasible

~~How often have you noticed~~
~~extremity or neuropathy with~~
~~diabetes (hypertension)?~~

~~How often have you noticed~~
~~that CIP? (increased large~~
~~at small, etc.)~~

~~When would neurological exams be~~
~~run on a patient? or on any?~~

- ① Difference between diabetic^{neuropathy} and CIP caused neuropathy?
- ② How to tell between the two causes of neuropathy?
- ③ ~~Is~~ Is bi-lateral foot drop more common in CIP or diabetic neuropathy?
- ⑤ What is "a reasonable degree of..."?
How much, can you give a %
minimum →

Court of
Exhibit 4
10-17-19

~~Does your location affect your
Board Certification?~~

④ Can ^{only} a neurologist give neurological exams?

⑤ How does steroids cause CIP? How much; how long? How long does it take to cause CIP?

~~How long has she been on steroids?~~
~~How long has she been on steroids?~~ ⑥ How quickly can diabetic neuropathy take to get to her 2015, if she post July state never had ~~any~~ sepsis? Min time.

Why do you rule out diabetic neuropathy as a cause for her foot drop?

~~Does the~~
Will the witness receive
any additional payment
if the verdict is in favor
of the plaintiff.

Agree
for
cost

Collins #450 /

Court 35
Exhibit 5
10-7-19
A739404

Farris v. Rives
Eighth Judicial District Court No.
Laparoscopic Surgery of Nevada's Response to Plaintiff Titina Farris' First Set of
Interrogatories

VERIFICATION

I, the undersigned, declare:

I have read the foregoing document and know the contents thereof.

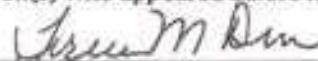
I am informed and believe that the matters stated therein are true and on
that ground I allege that the matters stated therein are true.

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

Executed on April 27, 2017, at Henderson, Nevada.

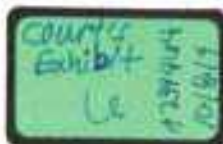

BARRY RIVES, M.D.

SUBSCRIBED and SWORN to before me
this 27 day of April, 2017,
by BARRY RIVES, M.D., personally
known to me or proved to me on the
basis of satisfactory evidence to be the
person(s) who appeared before me.



NOTARY PUBLIC

(seal)



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 TITINA FARRIS and PATRICK
FARRIS,

CASE#: A-16-739464-C

9 Plaintiffs,

DEPT. XXXI

10 vs.

11 BARRY RIVES, M.D.;
12 LAPAROSCOPIC SURGERY OF
NEVADA, LLC., ET AL.,

13 Defendants.

14 BEFORE THE HONORABLE JOANNA S. KISHNER
15 DISTRICT COURT JUDGE
16 MONDAY, OCTOBER 7, 2019

17 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

18 APPEARANCES:

19 For the Plaintiffs:

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

21 For the Defendants:

22 THOMAS J. DOYLE, ESQ.
23 CHAD C. COUCHOT, ESQ.

24
25 RECORDED BY: SANDRA HARRELL, COURT RECORDER

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WITNESSES FOR THE PLAINTIFF

BARRY JAMES RIVES

Direct Examination by Mr. Doyle	30
---------------------------------------	----

Cross-Examination by Mr. Jones	44
--------------------------------------	----

INDEX OF EXHIBITS

FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

1 Las Vegas, Nevada, Monday, October 7, 2019

2
3 [Case called at 8:34 a.m.]

4 THE COURT: Okay. Ferris v. Rives, 739464. Can I have
5 appearance of counsel, please?

6 MR. JONES: Kimball Jones and Jacob Leavitt for the
7 Plaintiffs, Your Honor.

8 MR. DOYLE: And Tom Doyle and Chad Couchot for the
9 Defendants.

10 THE COURT: Okay. As you know, today is the day of the
11 continuation. Got a couple of different matters on for today.

12 [Court and Clerk confer]

13 THE COURT: Okay. So today is a continuation of the
14 Plaintiff -- it was Plaintiffs' motion for sanction under Rule 37 for
15 Defendant's intentional concealment of Defendant Rives' history of
16 negligence and litigation. And then -- and motion to file leave to amend
17 complaint to add claim for punitive damages on order shortening time.
18 Now, as you know, this was originally on hearing last week. During that
19 hearing, the -- was a motion. There was -- the Court has signed the order
20 shortening time.

21 Now, the Court did not get the appropriate courtesy copies,
22 which was the Court's having to go through this pile again. Okay. So at
23 the end of that hearing -- I'm restating part of this for the benefit of
24 counsel that was not here at the last hearing. So with regards to the last
25 hearing, the Court specifically stated and offered the opportunity only --

1 because although it was not in Defendant's opposition to motion for
2 sanctions, there was no affidavit, no declaration, nothing with regards to
3 Dr. Rives. So it gave the Court no basis as to have any understanding
4 whatsoever about whether or not -- what his position was.

5 Okay. So in light of that, I obviously -- of course Supreme
6 Court precedent, including *Young v. Ribeiro*, *Johnny Young v. Ribeiro* as
7 well as *State Farm v. Hansen* this Court used to evaluate various factors
8 and of course *Valley Health* as well as *v. Doe* in making certain
9 determinations. And so in order to do, the Court offered the opportunity
10 to do a hearing under *Johnny Ribeiro*, although as that case cites and
11 cases subsequently have cited, the Court's not required to do so, but
12 offered a hearing.

13 There was no objection. I believe Plaintiff's counsel
14 specifically said that -- I don't want to misstate your words. It wasn't --
15 they seem to have concurred. They definitely did not raise an objection,
16 but they seemed to have concurred that it would be a good idea.
17 Defense counsel was giving the opportunity, if they chose, if that felt
18 after consultation with their client and obviously, they know their
19 obligations under Nevada Supreme Court precedent, including
20 specifically *State Farm v. Hansen* and hopefully -- I'm going to have to
21 confirm that was fully complied with. Was that fully complied with?

22 MR. COUCHOT: I'm sorry, Your Honor?

23 THE COURT: Was Nevada law, *State Farm v. Hansen* fully
24 complied with? I'm not asking about the content of any of your
25 conversations with regards to your client, but because of the serious

1 nature of this hearing, including terminating sanctions, this Court just
2 wants to ensure -- because I see just the two of you all here, and of
3 course it's a public courtroom. Anyone's more than welcome to be here,
4 but I'm going to -- individual in the last row, are you counsel or are you
5 just an observer probably from the appropriate insurance company? I'm
6 not asking who you are. You're more than welcome to be here, whoever
7 you are, but I'm only asking if you're here in a private capacity as
8 counsel for Dr. Rives. Are you?

9 UNIDENTIFIED SPEAKER: No.

10 THE COURT: That's all I was asking. Okay. In light of that,
11 then of course, the Court always asks just to confirm that applicable state
12 law has been complied with. So I'm just asking Defense counsel. I
13 wanted to make sure. The reason -- one of the reasons why the Court set
14 the hearing for today is to give Defense counsel full opportunity to speak
15 with Dr. Rives directly, coordinate among yourselves and determine
16 whether or not A, you wanted the evidentiary hearing, B, who you
17 wanted to call for the evidentiary hearing, including Dr. Rives.

18 As the Court specifically stated at the last hearing, no one
19 was requiring Dr. Rives to testify, provide an affidavit, provide a
20 declaration or do anything. It was completely up to you. I just needed
21 confirmation, A, you wanted the hearing and B, if you were -- if you did
22 want the hearing, whether Dr. Rives would or would not be testifying, we
23 could do scheduling, because you all specifically stated you only wanted
24 an hour.

25 And the Court, in light of that, as I told you I would be doing,

1 because there was other cases that needed time, would be scheduling
2 something specifically based on your requirements and the Court has
3 done so. So I have another matter starting at 10:00, because you all said
4 you needed an hour, which got the 8:30 to 9:30. In an abundance of
5 caution, I scheduled the next one at 10:00, knowing that probably be a
6 few minutes of preliminary time period and scheduling another one from
7 1:00 to 5:00. So some of these other cases, I told you that needed this
8 Court's time, so today was three different, special settings.

9 So in light of that, I wanted to give everyone enough time
10 that they could speak with whomever they deemed that they needed to
11 speak with to ensure that you had a full opportunity to be heard. So
12 today is the continuation of that motion for sanctions, without going
13 into -- it's the long version. I'm just going to call it motions for
14 sanctions. In addition, as you all know, the Court had also set for the
15 prior hearing date the Court's own order, because of the two separate
16 issues.

17 One, both counsel, in providing documents to this Court,
18 which on more than when occasion that were violative of multiple rules,
19 even after the Court notifying the parties and/or their offices, as detailed
20 in that Court's order, which you all know, because you had notice of, and
21 it was set for last week and it was continued to today. You have the
22 order of which I speak with regards to that. In the intervening time,
23 unfortunately, there has been additional inappropriate, impermissible
24 conduct by Defense counsel and continuing violations of the rules, some
25 of which has prompted the Court to do an additional order, which was

1 set for today to be heard as well as even subsequent to that order --
2 didn't think this one was possible.

3 Looks like there's even more conduct, which the Court has to
4 address as well and see -- since that most recent conduct happened on
5 Friday, and I don't even have a judicial day, I'm not sure -- well, the
6 Court's going to decide whether it's -- how it's going to address that
7 most recent issue, because that ties is not only to today's first prong, the
8 evidentiary hearing, but the Court's continued concern, despite specific
9 citation to case law rules, rules of professional conduct, NRCs, statutory
10 authority, case authority, local rules, you name it.

11 In writing, in minute orders, in memos, there continues to be,
12 it seems, a blatant disregard of many of the Court rules. Any being
13 probably a little strong, since I guess some of them are followed. They
14 actually do get filed electronically, but there has been numerous -- I
15 would use the term numerous. I won't use the term many. I'll say
16 numerous.

17 When I use Court rules, I'm not talking specific Department
18 31. I'm talking Supreme Court. Lot of rules of civil procedure is also
19 created by, obvious, the Supreme Court and a whole bunch of others
20 that I've named and subsequently put forth in writing, stated in court,
21 including blatant statements that are not accurate in declarations. So the
22 Court has to address those as well.

23 Whether we will have time for all of that today in the slotted
24 hour, stay tuned. We don't know. If not, looks like you may be coming
25 back on Thursday or Friday this week, after you have your calendar call,

1 which of course, everything is due at the calendar call, depending on
2 what the Court's ruling is today. If not, remember, everything's still due,
3 depending on the Court's ruling today.

4 Okay. When I say depending on the ruling today, meaning
5 unless the Court's rule is that it strikes everything, then you all knew, and
6 you all knew when this date was set, and you all knew with everything
7 that everything is still due. So I'm sure everyone's intending to comply.
8 Nothing was alleviated with regards to everything that's due at the
9 calendar call tomorrow.

10 Is that clear to everyone?

11 MR. DOYLE: Yes, Your Honor.

12 MR. JONES: Yes, Your Honor.

13 THE COURT: Okay. Just making sure. So and then also, we
14 had the order shortening time on the striking of the supplemental
15 witnesses, which I don't know if we're going to be able to get to that
16 today or not, but we also have that, Plaintiffs on the supplemental
17 witnesses, the 18 recorded witnesses that was asserted.

18 So going to the evidentiary hearing portion, since like I said,
19 it's -- obviously, it's counsel's obligation, not the Court's obligation, but
20 the Court always does want to make sure that everything is complied
21 with and that you know, we don't have people that don't have law
22 degrees getting on the stand and some things like that about things
23 being fully noticed.

24 So in that regard, since today's evidentiary hearing was
25 solely to provide Defense to the wish -- to the extent the Defense wish to

1 call any witnesses, even though they have not requested such in their
2 opposition, to the extent that they wish to call any witnesses, because of
3 the fact there was terminating sanctions being sought and also lesser
4 sanctions as well being sought. Give them an opportunity, if they wish
5 to call any witnesses in response to that, that was the sole thing that this
6 Court allowed. And I believe this Court was abundantly clear. Does
7 anyone think that this Court said anything else, other than evidentiary
8 hearing today, in which witnesses could be called, if Defense chose to do
9 so?

10 MR. JONES: I understand it was a Barry hearing, Your
11 Honor, where the Defense was going to have the opportunity.

12 THE COURT: Was that your understanding as well?

13 MR. COUCHOT: I understand, yes, Your Honor.

14 THE COURT: Okay. The Court did not -- and the reason why
15 the Court was asking that question is because we're now going to go
16 into what happened on Friday. Contrary to this Court's express, multiple
17 times stated and in fact, clearly stated so much that I even said does
18 everyone understand the process was you can choose to have the
19 hearing or not. You can choose whether you wanted somebody to
20 testify or not and that you then needed to provide this Court written
21 confirmation.

22 The only written paper this Court was supposed to get was a
23 written confirmation of whether A, Defense wanted the hearing to take
24 place and B, whether or not Dr. Rives was going to testify. And the
25 reason why the Court needed that, as the Court clearly said, is because I

1 needed to know if there was going to be a hearing, so that everyone
2 could be prepared and knew if they had a need to be here at 8:30 or not
3 and I could schedule other matters. And two, in fairness to everyone,
4 they needed to know who the witness or witnesses would be, so that
5 people could prepare.

6 Okay. This Court did not implicitly, explicitly or in any
7 manner whatsoever tell anyone they could do supplemental briefing.
8 And I don't think anyone's going to say that this Court said anyone could
9 do supplemental briefing. Counsel for Plaintiff, did this Court say
10 anyone could do supplemental briefing?

11 MR. JONES: No, Your Honor --

12 MR. LEAVITT: No, Your Honor.

13 MR. JONES: -- you did not.

14 THE COURT: Counsel for Defense, you were here. Did the
15 Court say you could do supplemental briefing?

16 MR. COUCHOT: No, Your Honor.

17 THE COURT: So contrary to the Court's express statements,
18 express limited to try and allow, because Defense counsel did not even
19 put it in their opposition, to allow that one aspect, if they wished to call a
20 witness or witnesses, whoever they wished to call for an evidentiary
21 hearing to take place this morning and they only stated one, so that's the
22 only reason why the Court used the singular, is that there was, instead, it
23 appears, Friday -- and I need to get on my system.

24 Friday there was a pleading filed, a rogue pleading filed, a
25 pleading in direct violation of yet another Court's specific order that

1 occurred, which the Court has to address first. The Court's going to
2 address it in two manners. The Court's going to address it first, just
3 procedurally, for today's sanction hearing. Then the Court's going to
4 have to address it second with regards to the Court's own orders on
5 what sanctions need -- may be imposed, up to, including terminating
6 sanctions, up to and including all sanctions, as the Court specifically put
7 in is order.

8 Fully on notice under *Valley Health Systems v. Doe* and all
9 the RPC aspects, all the Rule 37s, the whole panoply is all included in the
10 Court's order. That's going to be have to be taken into account, because
11 of the pattern of conduct. This is not the first, second, third or -- if I
12 remember, it may be, but definitely not the first or second time this has
13 happened. So when I say this, meaning the disregard of the Court's
14 specific directive with regards to this case by Defense counsel, who was
15 present in court, their law firm present in court.

16 So from a procedural standpoint, with regards to the hearing,
17 the Court's question is this. Was there any express agreement by
18 Plaintiff's counsel, albeit in contravention of the Court's specific directive,
19 to allow under EDCR 7.50, some additional briefing by Defense?

20 MR. JONES: Not at all, Your Honor. No, we were very upset
21 about it.

22 THE COURT: Okay. Do you waive or -- do you waive or wish
23 the Court to consider the briefing filed by Defendants?

24 MR. JONES: We do, Your Honor. We agree that it's --

25 THE COURT: Excuse -- I said --

1 MR. JONES: Oh.
2 THE COURT: -- do you waive the fact that -- do you waive,
3 and do you wish the Court to consider their briefing?
4 MR. JONES: No, not at all, Your Honor.
5 THE COURT: I just need --
6 MR. JONES: We don't --
7 THE COURT: -- to know if you're raising an objection or not.
8 I just need to know your position, so --
9 MR. JONES: Your Honor, we object to the briefing. In fact,
10 we pro -- I produced a motion to strike, but because I couldn't get it on
11 OST, there was --
12 THE COURT: What do you mean --
13 MR. JONES: -- no way for me to --
14 THE COURT: -- you couldn't get on OST?
15 MR. JONES: -- to produce it, since it was filed on Friday, so
16 no, we do not think it's appropriate to be considered, Your Honor.
17 THE COURT: Okay. So I'm going to address that portion
18 first. Counsel for Defense?
19 MR. DOYLE: Your Honor, after consultation with appellate
20 counsel, a decision was made to file the supplemental brief to --
21 THE COURT: Excuse me. Appellate counsel told you to
22 disregard as -- what appellate counsel in the State of Nevada told you to
23 specifically disregard a Court's directive, and why is that appellate
24 counsel not here?
25 MR. DOYLE: The appellate counsel did not advise us to

1 disregard a Court's directive.

2 THE COURT: Did you tell the appellate counsel that there
3 was a specific Court directive of the only thing that could occur, because
4 of your failure to even include on behalf of your client anything about his
5 own position in your opposition?

6 MR. DOYLE: Well, I --

7 THE COURT: I'm not asking about the content. I'm only
8 asking did you advise --

9 MR. DOYLE: No.

10 THE COURT: Okay. So you did not advise them that the
11 Court gave a specific directive of the only thing that could be taken into
12 account additionally?

13 MR. DOYLE: Well, that -- I guess that's an overly narrow
14 interpretation. That was not -- I read the transcript, and it was my
15 impression that if -- erroneously so, that I thought it would be helpful to
16 have the supplemental opposition --

17 THE COURT: Counsel -- my question. I'm interrupting you.
18 It's very narrow, because you do have limited time, and I have another
19 case at 10:00, okay, because of the specific request of your co-counsel,
20 how much time he needed, okay? My specific request was who's the
21 name of the counsel that you are saying told you to file this brief? If
22 you're saying it's not you, then I'm going to have to consider that
23 counsel for sanctions, too. So I want to know.

24 MR. DOYLE: His name is Robert Eisenberg. He did not tell
25 us to --

1 THE COURT: Okay. Robert Eisenberg I'm very familiar with.
2 I would be very surprised under this scenario, that Robert Eisenberg, if
3 fully aware of all the facts -- did you provide him a copy of the transcript?

4 MR. DOYLE: No.

5 THE COURT: Okay.

6 MR. DOYLE: Oh, wait. I take that back. He did have a copy
7 of the transcript. I'm sorry. I did provide it to him.

8 THE COURT: Your -- so, Mr. Eisenberg needs to be here for
9 sanctions as well, because you are saying that on his advice and
10 counsel, you chose to disregard this Court's specific directive?

11 MR. DOYLE: No, I -- it's not on his advice and counsel. We
12 were talking about the issues raised in the motion, the issues raised in
13 our --

14 THE COURT: I'm not asking about the content.

15 MR. DOYLE: I --

16 THE COURT: I'm just trying to get a specific -- you
17 understand what the Court's specific question is. This Court is asking --
18 okay -- Mr. Couchot was here. This Court was try -- because of the
19 pattern of what you all have been filing, this Court set out a specific
20 procedure, a specific procedure of do you want an evidentiary hearing.
21 Mr. Couchot said that you, Mr. Doyle, would be handling it, not him.

22 To give you all benefits of the doubt, the best possible
23 opportunity, so that everyone could speak about it and make a
24 determination, people were not having to make a determination in court,
25 to give you a full opportunity to speak with both your clients in a

1 tripartite relationship, okay? To make a full, well-reasoned
2 determination. This Court wasn't requiring that anybody make the
3 determination in court. The Court was offering, but then giving you time
4 in which you could fully consult with whomever you wished to do, if you
5 wished an evidentiary hearing.

6 *Johnny Ribeiro* says what -- *Young v. Johnny Ribeiro* says
7 what it says in subsequent case law. The Court doesn't need to offer it.
8 You didn't even request it. You didn't even request it during the hearing.
9 And I say you, meaning your firm, didn't on behalf of Dr. Rives. The
10 Court just offered it.

11 The Court offered it, but did not require anyone to have it.
12 Okay. I had no objection. So full waiver issue on the Plaintiffs, so I had
13 no issues there, so it was just an offer to Defense if they wished to have
14 any witnesses of their choosing in the time period they chose for today's
15 date at 8:30. Based on this statement it was going to be an hour.

16 So with that in mind, then the Court wanted a specific writing
17 from Defense counsel CC'ed to all parties and to the Court by a time
18 period that Mr. Couchot and Ms. Newberry, who are here, Ms. Clark
19 Newberry, seemed to be in agreement with, that that was sufficient time.
20 Nobody asked me for any more time to consult with whomever they
21 needed to consult with, to find out A) if they wanted the hearing, and B)
22 if Dr. Rives or anybody else was going to be testifying so it would be put
23 in just purely for a scheduling statement. No substance.

24 There was no request in that letter. There was no request by
25 motion. There is a proper procedure if somebody wishes to file a

1 motion, right? If you wish to file a motion, there is a procedure if you
2 wish to file a supplemental brief in the State of Nevada and under our
3 local rules. No such procedure was followed. There was not even an
4 OST submitted to the Court to request a supplemental brief. There was
5 no oral request in Court. There wasn't even an improper request in the
6 letter for a supplemental brief. There was nothing.

7 Then it came on Friday, less than a judicial day before
8 today's hearing. That is the reason why this Court has to ask under that
9 factual scenario, since none of those rules were followed, and you said it
10 was just filed, okay, and gave no chance whatsoever, because Mr.
11 Couchot knew, and Ms. Aimee Clark Newberry knew, because they were
12 here in court, that counsel for Plaintiffs even stated that they would be
13 out of town on Friday, because they were all aware that my JA came into
14 court.

15 Because inadvertently, I started to say I could do the hearing
16 on Friday, and then my JA came into court, and I believe I made some
17 statement like, oops, I have this tendency to try and schedule things
18 because I'm so -- try to help the parties out and try and schedule things,
19 when JA has to remind me that I, too, scheduled to be at that same
20 conference for -- CLE conference, right? And that both counsel were
21 willing not to attend that conference if the Court was specifically
22 scheduling, because they said that they both were going to be out of
23 town.

24 So counsel for Defense who were here, I'm paraphrasing, it
25 may have been shorter than that, my JA came in, so that's why I said

1 Monday, so you can give more time to Defense. So we knew that
2 Plaintiffs were out -- Plaintiffs' counsel were out of town, and the Court
3 was out of town on Friday, and yet still filed something in Friday. I'm not
4 saying that -- no one is sneaking in the door. Obviously, the Court had
5 backup in the court. My team knows how much I was calling, texting,
6 and on the phone, and everyone at the conference saw how much I was
7 on the phone.

8 Anyway, so obviously, the Court was fully available and
9 could handle anything if it came in the door, but nothing did come in the
10 door, because the Court was more than checking on this and every one
11 other of its cases to ensure that everyone was fully taken care of, albeit
12 while I was out of the jurisdiction at a CLE conference with several of our
13 justices, Court of Appeals, et cetera. So, you know, we all were fully
14 available to take care of our work, as well as obviously get our required,
15 continuing legal education.

16 So that being said, that's why the Court has to ask the
17 question is you didn't follow any of the procedures. So if you're telling
18 me you didn't follow any of those procedures or you didn't file an OST or
19 request supplemental briefing in any manner whatsoever because
20 Robert Eisenberg told you not to, then of course, in fairness, I'd give him
21 due process and give him an opportunity to explain.

22 MR. DOYLE: Okay. I'm not sure what the question is, but the
23 decision to file the supplemental brief was mine after speaking to Bob
24 Eisenberg about various issues. He did not say we shouldn't file it, and
25 the decision was mine.

1 THE COURT: Okay. And a decision not to file any request or
2 permission to seek leave to file a supplemental brief from me, that
3 determination, please?

4 MR. DOYLE: I made that determination, and I didn't feel it
5 was necessary under the circumstances given the significant and serious
6 nature of the sanctions being requested. The fact that it's on an order
7 shortening time, that's not a lot of time to deal with this to try and corral
8 all the information and figure out what happened, and to get all the,
9 what I believe to be, the necessary information in front of the Court so
10 that it could make an informed decision, I proceeded in that fashion.

11 THE COURT: But, counsel, you had a full opportunity to put
12 all that same information in your opposition and you chose to do so; did
13 you not?

14 MR. DOYLE: No. It was done on a --

15 THE COURT: You knew about --

16 MR. DOYLE: -- it was done on an order shortening time.

17 THE COURT: And was there any request --

18 MR. DOYLE: We had been --

19 THE COURT: -- with regards to the ordering shortening time
20 to extend the hearing date? It was at the Court's own decision that we
21 gave the evidentiary hearing. Anything in the opposition to request
22 additional time, either for briefing, to continue the hearing to a different
23 date, this Court received nothing from Defense counsel, nor the
24 information that you sought, which has its own issues on hearsay which
25 the Court hasn't even gotten to. But that information, you could have

1 easily picked up the phone, if you wanted to, and called Mr. Hand any
2 day you chose to do so, correct?

3 MR. DOYLE: I did --

4 THE COURT: And that could've been before the opposition
5 was filed, correct?

6 MR. DOYLE: I did call Mr. Hand and left him a message last
7 week, and he did not return my call, because I wanted to discuss with
8 him my conversation with Mr. Brenske, and Mr. Hand did not return my
9 telephone call.

10 THE COURT: And you could have picked up the phone and
11 called Mr. Brenske at any time whatsoever when they first filed their
12 motion, right, way back? And they discussed it with you before they
13 filed the motion. I believe it was back around September 12th or 13th,
14 correct? Which is --

15 MR. DOYLE: And I did -- I did call Mr. Brenske and talked to
16 him, and that was the basis for the statement that I put in my declaration.

17 THE COURT: Counsel, this Court's question is -- let's walk
18 through dates, please. Okay. Plaintiffs' motion for sanctions was
19 submitted to this Court on order shortening time by its date -- well, it's
20 dated September 16th. It was submitted to the Court for signature. The
21 Court dated it on the 18th, and it shows it was personally served on the
22 19th of September, okay?

23 Now, the Court does not have available to it when it was
24 electronically filed to Defendants. I don't know if it was filed before it
25 was submitted to the Court on order shortening time, but in the affidavit

1 on that motion, it said that it had spoken -- prior to filing OST in
2 accordance with the EDCR, they need to reach out to opposing counsel.

3 The affidavit sets forth that it did reach out to opposing
4 counsel and that they spoke with opposing counsel so that there would
5 have been -- even if the -- if the declaration is accurate and the pleading
6 date is accurate, at the latest, based on what is presented here, at the
7 latest, September 16th, Defense counsel would have been aware of the
8 allegations contained in the motion. Based on the purported rogue
9 document filed without the Court's permission, you did not contact Mr.
10 Brenske until on or about October 2nd.

11 MR. DOYLE: That is correct.

12 THE COURT: That means between September 16th and
13 October 2nd, you had the full opportunity to contact Mr. Brenske, put
14 that information in your opposition to the original motion for order
15 shortening time or B) request of this Court or first opposing counsel, or
16 this Court, to have continued the original motion, requested additional
17 time to have done opposition to the original motion for order shortening
18 time, or like I said, to have continued the hearing in the first place, or to
19 have even addressed the fact that you were in the process of trying to
20 reach out to Mr. Brenske or some such information somewhere in your
21 opposition, but instead, there was nothing about that whole topic area in
22 your opposition.

23 And in fact, it wasn't until the Court even set -- offered you
24 the opportunity to even have the evidentiary hearing, it's like you didn't
25 seem to address that issue. So that's why the Court's asking you the

1 question. I'm not seeing how your statement that you can disregard the
2 rules has any basis whatsoever when you would've had, at the latest, at
3 least from September 16th to have a full opportunity to do this way
4 before your opposition to the original motion, or you had several
5 remedies that you could have taken place way back in September, but
6 you chose not to do any of those, nor was there any request made at the
7 hearing, in the letter after the hearing, or before the supplemental brief.
8 That's why the Court is asking you that question.

9 MR. DOYLE: And I wish I had a crystal ball, or I could take a
10 time machine and put myself back a couple of weeks and do things
11 differently, but given the exigent circumstances and the significant relief
12 being sought by Plaintiffs, we proceeded in what I believe to be an
13 expeditious manner, trying to gather all the information necessary.
14 Frankly, I didn't know we could request an extension of an order
15 shortening time. I've never seen that happen. We just -- we assumed,
16 given that we had the impending trial date and the terminating
17 sanctions --

18 THE COURT: Well, counsel, therein lies part of the challenge
19 that this Court is going to have to address with you, right? Please read
20 the rules. Please stop violating all the rules. Please actually read the
21 rules when the Court sends you memos that sets it forth, right, because
22 they're there. They're there for you to read and to comply with, and you
23 would have found it there, if you had read them.

24 And as an experienced litigator, you know you can't say you
25 didn't know it existed, so you just were going to violate them and do

1 what you wanted to do. Plus, as you know, you even stated in your
2 statement that your alleged conversation, which you know the Court
3 can't take into account substantively because it's pure hearsay, even
4 regardless of all the procedural issues is pure hearsay. Is Mr. Brenske
5 here in court? No. Did you subpoena him? No. Did you have a full
6 opportunity to do so if you chose to do so? Yes. You were not limited in
7 the number of witnesses. Any witnesses you chose to could be here at
8 8:30. There was no limitation. It's whoever you wanted. He's not here,
9 the Court can't take it into account, as you know. It's hearsay.

10 You know it shouldn't have been in your declaration in the
11 first place because you know it's not personal knowledge as an
12 experienced litigator, so there would be no basis to have any exigent
13 circumstances. There's nothing -- as you know, the Court can't, by law,
14 take it into account, so there would be no reason to even file it in the first
15 place. So there would be no basis to violate the rules because you know
16 the underlying substances. You can't ask this Court to violate its oath of
17 office by taking into account hearsay.

18 So at this juncture, this Court cannot take into account,
19 procedurally or substantively, a "supplement" that was A) filed in direct --
20 and these are all independent bases, so it's not the totality. The totality
21 meets it. It independently meets it. The Court specifically -- you did not
22 request it -- offered the additional -- the hearing was supposed to be over
23 that day, but for the fact that the Court was concerned with the lack of
24 what was in that opposition with the extent of the nature of the sanctions
25 against one of your clients, okay, to ensure that both of your clients'

1 interests were represented so that -- okay, the Court offered the
2 evidentiary hearing. Otherwise, that hearing would have been over that
3 day.

4 So what you filed on Friday is a rogue document that the
5 Court cannot consider procedurally because A) it was filed less than a
6 judicial day, B) filed in direct contravention of this Court's specific --
7 without any leave, which could have easily been sought, was not sought.
8 There's no good cause for it not to be sought, even the very "looking at
9 the document" so that you had the conversation on the 2nd, but you still
10 chose to wait until a date of the 4th to even file the document, giving no
11 time whatsoever, fully prejudice to Plaintiffs, who have specifically
12 objected, any opportunity to respond, knowing even independently, if
13 you forgot that they were out of town -- they did state in open court that
14 they were out of town, but that's even a non-sequitur. Even if they were
15 in town or out-of-town, they could've done work over the weekend, I
16 guess. So I'm not taking into account they were out of town.

17 I just -- that is not a factor that the Court is legally stating, but
18 it just presents an even different concern, but that's not something that
19 the Court is taking into account legally, but you did know that. So
20 procedurally, it's a per se violation of the rules in and of itself. It's even
21 more so a violation of the rules because the Court specifically said what
22 could be done. You had full opportunity to ask for relief while you were
23 here in court last week, and no one did so. Not in your brief, did not ask
24 in open court, did not ask in a follow-up letter the Court did, and did not
25 ask in any other motion before the Court, but instead -- and then even on

1 the alleged conversation you did it on the 2nd, you then waited until
2 Friday to even file it, giving no chance for Plaintiffs to have any
3 opportunity to respond.

4 That all procedurally is detrimental to Plaintiffs, a violation of
5 the rules, a violation of specific court directive procedurally, all cannot be
6 done independently. The violation aspect is going to have to be
7 addressed separately shortly, with regards to the substantive aspect,
8 even if the Court somehow could overlook all of those procedural
9 hurdles, which it cannot, but independently, I would, to give you the
10 benefit of the doubt, the Court said is there any way, I can give you the
11 benefit of the doubt and look at it from a substantive manner. But the
12 Court even looking at it -- if it tried to even look at a substantive manner,
13 the Court can't, because it's pure hearsay.

14 It's pure hearsay because it was based -- supposedly, based
15 upon any purported conversation with another individual who is not
16 present in court when you had a full opportunity today on the
17 evidentiary hearing to have any witnesses you chose to bring. If you
18 chose to have Mr. Brenske present here in court, you could have asked
19 him to be here either by subpoena or by request. He is not here. It is
20 now 9:10, and I need to get you all started with the actual other portion,
21 so --

22 MR. DOYLE: And I guess the impetus for my phone call with
23 Mr. Brenske was the fact that there was nothing, and still today, there's
24 nothing from George Hand who was the only --

25 THE COURT: Counsel. Counsel. This is not a time -- the

1 Court's doing its ruling of why I'm not considering it, okay? So
2 substantively, pure hearsay. Counsel who is an experienced litigator
3 knew the procedural aspects fully available, and because -- it's more
4 egregious in this case, because of the numerous times that this Court
5 has, in open court, with three separate attorneys from your firm, or your
6 associated firms, plus the memos you've gotten in writing and served
7 onto you, plus the two orders the Court has, and in those orders where
8 the Court has referenced all the other -- not all -- actually, let me be very
9 clear. It wasn't all.

10 I only gave you EGs. I gave you examples of other occasions
11 where you've been specifically reminded to read the rules and given
12 specific examples of not following the rules, and the Court even -- you're
13 pending dispositive striking for your failure to follow the rules and
14 litigation tactics and then you do another one?

15 That presents a huge challenge, okay? And particularly,
16 since this just -- this Court had just done another order where it had just
17 outlined it. You were subject to having the Court evaluate Rules of
18 Professional Conduct, a whole panoply to do this again. Can't do it on all
19 of that. Substantively, it's hearsay. Pure and simple. Cannot be
20 considered, will not be considered, should have never been filed, and the
21 Court has to evaluate, in addition under Rule 11 if there's any good
22 basis, in addition to all the other factors, that unfortunately -- but the
23 Rule 11 factor is not to be taken into account for this dispositive hearing.
24 That is for the Court's other hearing that the Court has already set up
25 because of Defense counsel, and potentially their client's pattern of

1 conduct in this case.

2 So with that being said, the Friday document that was filed
3 shall not be considered by this Court because it cannot be considered by
4 this Court, either procedurally or substantively under any basis. And
5 there was nothing even in the document that even -- in the document
6 itself, even provided any support on how the Court could hear it. There
7 was nothing in the pleading itself on another substantive alternative
8 basis that even said why the Court could consider the supplement.
9 There was nothing even procedurally that addressed the procedural
10 nature of it being filed on Friday, or any basis for the Court to consider it.

11 So it can't be considered, it won't be considered. The law
12 does not allow me to consider it, and I've gone through all the prejudicial
13 nature. The impropriety of it being filed will be addressed in the Court's
14 portion, which it has to do because of the conduct as stated in the two
15 court orders.

16 So getting to the -- now, that takes care of that Friday
17 pleading, so we are back to where we were, which is what the Court
18 provided. You have the pending motion for dispositive, which was
19 Plaintiffs' motion. Everyone had had a full opportunity to argue
20 everything is what this Court had been told, other than -- and people
21 who were ready for the Court to rule, and then the Court then offered the
22 evidentiary hearing in regards to the witness testimony because the
23 Court asked some questions of Defense counsel, simple questions like
24 whether or not they provided things to their client, which Defense
25 counsel couldn't answer, or stated he didn't know.

1 So at this juncture, to the extent that Defense wishes to call
2 any witnesses, the Court will now provide that opportunity. Realize any
3 witnesses you call, you have to ensure that you fully advise your client
4 everything that you need to advise your client under Nevada law. I've
5 already cited a couple of the cases. You know the case law. If he
6 chooses -- if you're advising him to take the stand, even if there's no RPC
7 issues or anything like that, no conflict issues, no -- I don't know if I said
8 *State Farm v Hansen* issues.

9 So if you wish to call whatever witnesses you wish to call,
10 Defense counsel, and remember, there's cross-examination by Plaintiffs'
11 counsel, and the Court may have some questions if the parties don't
12 address the issues that the Court had. And then the Court will make a
13 ruling on Plaintiff's outstanding motion. So counsel for Defense, if
14 there's any witnesses you'd like to call, feel free to call your first
15 witness.

16 MR. DOYLE: I'd like to call Dr. Barry Rives and then when his
17 testimony is finished, I'd like to make some closing remarks.

18 THE COURT: That was not part of it. It was just -- it was just
19 to call any witnesses.

20 MR. DOYLE: So I'm not --

21 THE COURT: It was not requested by anybody last week.
22 Your co-counsel -- neither of your co-counsel made that request. That
23 was not the scope of this. Nobody requested that. You all requested the
24 time period for the one hour just for the questioning, and the only
25 person that was discussed was Dr. -- now if you brought somebody else,

1 of course, the Court didn't limit it to that. I said any witnesses because I
2 wanted to get everyone a full chance for any counsel to discuss with
3 anybody, any counsel that may not have been present in court that day.
4 But no such request was made. There is --

5 [Court and Clerk confer]

6 THE COURT: I don't recall, I was going to go see if we have a
7 copy. I don't recall if the letter said that request, but this Court is not
8 aware of any said request for any closing response.

9 All oral argument was taken care of. It was only the witness
10 testimony that -- that was what -- the only thing that --

11 MR. DOYLE: The witness testimony necessarily requires
12 some comment by me --

13 THE COURT: No, it --

14 MR. DOYLE: -- when the witness is done testifying.

15 THE COURT: Well, then your --

16 MR. DOYLE: And --

17 THE COURT: -- counsel should have asked that last week.
18 Nobody asked that -- the Court was not -- okay, at this juncture, you may
19 call your first witness.

20 MR. DOYLE: All right. Dr. Rives.

21 THE COURT: Okay.

22 BARRY RIVES, DEFENDANT, SWORN

23 THE CLERK: Thank you, please be seated. Could you please
24 state and spell your name for the record?

25 THE WITNESS: Barry James Rives, R-I-V-E-S.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. DOYLE:

4 Q Good morning, Dr. Rives.

5 A Good morning.

6 Q Over the years, have you given a number of depositions?

7 A Yes, I have.

8 Q Have you testified at trial several times?

9 A Yes, I have.

10 Q Did you take an oath each time?

11 A Yes, I did.

12 Q And do you understand you took an oath this morning?

13 A Yes.

14 Q Do you understand you took an oath before -- or at the
15 beginning of the Farris deposition?

16 A Yes.

17 Q And your understanding of the oath that you took at the time
18 of the Farris deposition and today means what to you?

19 A To tell the truth, the whole truth, and nothing but the truth.
20 So help me God.

21 Q And anything else?

22 A That's it.

23 Q Do you understand -- at the time you gave the Farris
24 deposition, did you understand the penalties that you could face, if you
25 did not carry out that oath?

1 A Yes.

2 Q Did you understand the penalties that you faced if you lied,
3 or were deceitful at the Farris deposition?

4 A Of course.

5 Q And what did you understand those to be?

6 A I could be guilty of perjury.

7 Q And at the Farris deposition, did you -- in response to any of
8 the questions at the time of the deposition, did you lie?

9 A No.

10 Q Were you deceitful?

11 A No.

12 Q Did you withhold information?

13 A Not at all.

14 Q I want to ask you some questions about the discovery
15 responses, the request to produce documents and the interrogatories.
16 There was a set of each to you individually and then as well as to your
17 professional corporation, Laparoscopic Surgery of Nevada. Did we send
18 those to you on April 12, 2017?

19 A I believe so, yes.

20 Q Did we send you a copy of the request to produce documents
21 with draft responses we had prepared?

22 A Yes.

23 Q Did we send you the two sets of interrogatories with draft
24 responses we had prepared?

25 A Yes.

1 Q Had you talked to anyone in my office before you received
2 those draft responses, either Mr. Couchot, myself, or anyone else, about
3 the interrogatories or request to produce documents?

4 THE COURT: The Court's going to interject here, because the
5 Court is being clear. The Court is not asking that anyone disclose any
6 attorney-client communications. If your client is going to waive that, I
7 need -- then (a) this Court needs to know that; and (b), this Court needs
8 to have a clear understanding that he has been advised clearly of what
9 that means, the impact of it, the full extent of what he's doing, because
10 there's a distinction between how that can be handled.

11 And you, as his counsel, I just want to ensure that the Court
12 is not asking any of that. The Court just needs to know if you're trying to
13 elicit communications between Dr. Rives and your office, that he has (a)
14 been advised of his rights, and the attorney-client privilege, and if he's
15 waiving it, what that impact is. The Court just wants to make sure that
16 he has been fully advised of such.

17 MR. DOYLE: And my client has been fully advised, and I
18 think the answer to the question will show that there is no attorney-client
19 privilege to violate.

20 THE COURT: No worries. The Court just --

21 MR. DOYLE: Thank you for that.

22 THE COURT: -- to ensure that everyone has a full
23 opportunity, and there's nothing done inadvertently. Thank you, so
24 much.

25 MR. DOYLE: Thank you.

1 BY MR. DOYLE:

2 Q Doctor, before you received on April 12th, 2017, the request
3 to produce documents and the special interrogatories, was there a
4 conversation between you and someone in my office about preparing
5 the draft responses?

6 A No.

7 Q Was it your understanding my office had prepared those
8 draft responses with no input from you?

9 A Correct.

10 Q Is it your understanding that we prepared those draft
11 responses based on information that we had obtained over the years
12 representing you in other cases?

13 A That is correct.

14 Q And --

15 THE COURT: Counsel, I've got to -- I'm hearing your
16 questions, but by the very nature of your questions, this Court's not
17 getting the nexus of how you said this is not eliciting attorney-client
18 communication. How can a person have an understanding of your
19 office's practices without having a communication with someone from
20 your office, and know specifically about how your office did his
21 interrogatories --

22 MR. DOYLE: Okay.

23 THE COURT: -- without having some conversation with
24 someone in your office? That's why this Court was -- it's not the first
25 hearing this Court has done, that's why this Court was very specific in

1 trying to give that step.

2 MR. DOYLE: I'm going to go on. Let me -- let me --

3 THE COURT: That's fine, counsel.

4 MR. DOYLE: Okay. Thank you, Your Honor.

5 THE COURT: The Court's concerned about waiver issues
6 right now. The Court's just saying that. Okay.

7 BY MR. DOYLE:

8 Q Doctor, concerning the special interrogatories that were sent
9 to you as an individual and the draft responses that we prepared, did you
10 review those draft responses?

11 A No.

12 Q Why not?

13 A I believe when I looked at the email, I opened up the first
14 PDF, which had to do with, I believe disclosure of materials, and it looked
15 like a bunch of legalese, and I assumed everything else was the same.

16 Q Did you rely on my office to -- for the information contained
17 in the responses to those interrogatories?

18 A Yes.

19 Q Before -- after you received the draft responses to the special
20 interrogatories directed to you, did you and I have a conversation about
21 those draft responses back in April or May of 2017, before they went out?

22 A No.

23 Q Did you have a conversation about them with anyone else in
24 my office?

25 A No.

1 Q The first time that you saw the responses to those
2 interrogatories, was that recently?

3 A Within the last week or two, yes.

4 Q And did you sign and return to us a verification for the
5 special interrogatories that were directed to you personally?

6 A To me personally, no.

7 Q Doctor, if you had reviewed the draft interrogatory answers,
8 do you believe you would have noticed that they contained an old office
9 address?

10 A Yes.

11 Q Do you believe you would have noticed that Center was not
12 on the list of cases?

13 A Yes.

14 MR. JONES: Your Honor, I'm just going to object. I don't
15 know when the last time it was that the Doctor testified and wasn't just
16 led into a question with a yes or no.

17 THE COURT: I'm sorry, so what's -- I'm not hearing your --

18 MR. JONES: Every question -- every question has been
19 leading, Your Honor, and I would just request that he actually elicit --

20 THE COURT: Okay.

21 MR. JONES: -- testimony from the Doctor.

22 THE COURT: Sustained because this is your witness.

23 MR. DOYLE: Okay.

24 BY MR. DOYLE:

25 Q Doctor, when you looked at the answers to interrogatories

1 recently, were supplemental responses prepared?

2 A Yes, I believe so.

3 Q And what was corrected based upon the information in the
4 draft responses, that we had prepared, and you had not seen? What was
5 changed, or amended?

6 A I noticed that the existing office address was incorrect. So
7 that had to be amended. That the Center case wasn't in there, so that
8 had to be amended. That there was a response to whether I'd been on
9 any medical committees, regarding the hospital, that was left either
10 blank, or that was -- didn't include my chief of surgery, and all of the
11 other stuff that I had done for the hospitals. So I believe that had to be
12 amended as well.

13 Q Okay. Now, when you sat for your deposition in Farris, what
14 did you review to prepare for the deposition?

15 A My office notes and the medical notes.

16 Q When you prepared for the deposition in Farris, did you
17 review any of the interrogatory responses, either by you, or by your
18 professional corporation?

19 A No.

20 Q Did you review, to prepare for the deposition, the request to
21 produce documents that had been prepared -- or the responses prepared
22 on your behalf and your anticipated --

23 MR. JONES: Your Honor, I'm going to just object again. I
24 would appreciate it if he'd elicit something from the Doctor, rather than
25 telling the Doctor the answer, and asking for a yes or no.

1 THE COURT: Counsel, I need that in the form of a proper
2 objection, if that's an objection.

3 MR. JONES: Your Honor -- leading, Your Honor.

4 THE COURT: Sustained.

5 BY MR. DOYLE:

6 Q Doctor, did you review any discovery responses to prepare
7 for your deposition in Farris?

8 A No.

9 Q At the deposition, who was the attorney that was present for
10 the Farris?

11 A George Hand, I believe.

12 Q Did George Hand mark as an exhibit for the deposition a
13 copy of the interrogatory responses from you --

14 MR. JONES: Objection, Your Honor. Leading.

15 THE COURT: Sustained. That's going to leading. Counsel,
16 three sustains on the same basis. Please stop it.

17 BY MR. DOYLE:

18 Q What did Mr. Hand mark and show you at the deposition
19 concerning interrogatory answers?

20 THE COURT: Counsel --

21 MR. JONES: Objection, Your Honor. Foundation. Leading.

22 THE COURT: -- that's a leading question, please. You've
23 already been admonished. I already just advised you on the very last
24 question, please do not do it indirectly what the Court has just
25 admonished you not to do directly. I am sustaining the objection and

1 you will be -- have sanctions against you if you do it a third time. Are we
2 clear?

3 MR. DOYLE: Yes.

4 THE COURT: Thank you.

5 BY MR. DOYLE:

6 Q What did Mr. Hand show you?

7 A I believe at one point during the deposition he handed me a
8 set of the interrogatories and my CV.

9 Q And what did he ask you to do when he handed you those
10 documents?

11 A He asked me to review my CV and see if it was up to date.

12 Q What did you do in response to his question?

13 A I think there was some dates, like in the medical -- my
14 medical license, the expiration date wasn't updated. There were some
15 small little factors like that, that I said needed to be updated. And then
16 he asked me to hand it back to him.

17 Q What do you mean by he asked you to hand it back to him?

18 A He asked the CV and the interrogatories be handed back to
19 him.

20 Q What did you do when he asked you that?

21 A I handed it to him.

22 Q Do you recall at the deposition whether you were asked
23 questions about interrogatory number 3?

24 A Yes, I was.

25 Q What do you recall about interrogatory number 3? What was

1 that about?

2 A I believe that's when he went through a list of my prior cases
3 and asked me for information regarding those cases.

4 Q Did you answer his questions?

5 A Yes.

6 Q Can you tell us if your answers were accurate?

7 A Yes, they were.

8 Q When Mr. Hand got to the end of asking you about cases
9 where you had been a Defendant, did he ask you about the Center case?

10 A No, he --

11 MR. JONES: Leading, Your Honor, again.

12 THE COURT: Counsel that is leading 101.

13 MR. DOYLE: Okay.

14 THE COURT: Sustained.

15 MR. DOYLE: Did --

16 THE COURT: And counsel, what did I say?

17 MR. DOYLE: Okay.

18 THE COURT: Counsel?

19 MR. DOYLE: I understand.

20 THE COURT: But you're not listening.

21 MR. DOYLE: I --

22 THE COURT: You're hearing me, but --

23 MR. DOYLE: I thought it was not a leading question, I
24 apologize, Your Honor. I'm not doing this intentionally. Let me try
25 again. I'm sorry.

1 BY MR. DOYLE:

2 Q Were you asked a question about the Center case?

3 A Regarding the interrogatories?

4 Q Yes.

5 A No.

6 Q Were you asked whether there were any other cases?

7 A I was asked if I had been deposed as an expert witness for
8 either a patient or for a defendant doctor.

9 Q And how did you respond to that question?

10 A I gave him two examples that I could remember at that time,
11 where I had been deposed or went to Court as an expert witness.

12 Q Did the Center case come up?

13 A The Center case did come up, yes.

14 Q How did it come up?

15 A Right at the end of that particular question, he asked me --
16 he, being Mr. Hand, asked me regarding that question, were there any
17 others that I could think of at that time. I could not recall any other time
18 that I did an expert witness for either a patient or a defendant doctor, and
19 Chad at that time mentioned Center's not on there. And I didn't really
20 understand what he was referring to, because Center is a case where I
21 was a Defendant, not an expert witness or something else to another
22 matter. And I think from there, we then talked about the Center case.

23 Q Did you answer all of Mr. Hand's questions about the Center
24 case?

25 A Yes.

1 Q Were your answers accurate?
2 A Yes, they were.
3 Q At that time, Doctor, did you have any reason to hide from
4 Mr. Hand the Center case?
5 MR. JONES: Your Honor, leading, again.
6 THE COURT: Did you have any reason to hide the Center
7 case?
8 MR. DOYLE: Did you --
9 THE COURT: Counsel, would you consider that a leading
10 question?
11 MR. DOYLE: No, I don't, actually.
12 THE COURT: Doesn't it presuppose the answer to the
13 question? Did you have any reason to hide the Center case? That is a
14 leading question, counsel. You're an experienced litigator, you know
15 that. That is sustained.
16 MR. DOYLE: Okay.
17 THE COURT: Please ensure that you ask open ended
18 questions. This Court is very concerned about how you're asking these
19 questions. They do not appear to be open ended to your client.
20 MR. DOYLE: Okay.
21 BY MR. DOYLE:
22 Q Doctor, at the time of the Farris deposition, what thoughts
23 were going through your head about the Center case?
24 A None.
25 Q Why not?

1 A A) to me, they weren't material to the issue at hand. I was
2 focused on my care and my medical responsibilities to Mrs. Farris in my
3 deposition -- or my answers to questions in that regard.

4 Q The deposition transcript in Farris, did you -- tell us whether
5 you received it.

6 A I received a letter and transcript within the last week or two,
7 regarding that.

8 Q Did you receive the deposition transcript before then?

9 A No, I did not.

10 MR. DOYLE: That's all I have then. Thank you.

11 THE COURT: Thank you. Any questions by Plaintiff's
12 counsel?

13 MR. JONES: Yes, Your Honor.

14 THE COURT: And since there's two of you, only one will be
15 asking questions, correct.

16 MR. LEAVITT: That is correct.

17 MR. JONES: That is correct, Your Honor.

18 THE COURT: I appreciate it. Thank you.

19 MR. JONES: Your Honor, I have some binders here that just
20 have some exhibits that I know I'll reference a couple of them, but I may
21 reference several.

22 THE COURT: Are they exhibits that have been introduced in
23 this case and are already on your pretrial through your joint pretrial
24 memorandum? What I'm trying to get clear is that they were exhibits
25 that have been produced in this case, they were at your 2.67, you know

1 what I mean, exchanged as proposed exhibits, et cetera. Meaning
2 they're not new exhibits coming in for the first time today.

3 MR. JONES: Yes, with the exception of a couple,
4 Your Honor. So what we have is the answer and complaint, and then we
5 have the Answers to Interrogatories by Dr. Rives for his corporation and
6 for himself personally. There's three sets of those each. Right? So
7 there's six.

8 THE COURT: Okay. So they're --

9 MR. JONES: Our 2.67 --

10 THE COURT: So they've been E-served. Okay. So what
11 you're talking about --

12 MR. JONES: They have been E-served, Your Honor.

13 THE COURT: -- the pleadings that have been E-served. I just
14 want to ensure that there's no surprises that come up from either side.
15 Right? Fairness --

16 MR. JONES: Correct.

17 THE COURT: -- to both sides forward -- forward and fair to
18 both sides in each and every case.

19 MR. JONES: That -- that is correct, Your Honor. And we
20 have disclosed the deposition that the doctor gave in the *Center* case.
21 That is also included here.

22 THE COURT: That was attached to the pleadings with your
23 Exhibit 3, I think.

24 MR. JONES: That is correct, Your Honor.

25 THE COURT: Okay. So let's see, the Court's not taking any

1 position. We'll see what I hear from the other side --
2 MR. DOYLE: Yeah.
3 THE COURT: -- as you go through. So the Court's not taking
4 a position until you do what you do. I just --
5 MR. JONES: And --
6 THE COURT: With that representation --
7 MR. JONES: -- Your Honor, may I approach to provide --
8 THE COURT: Of course.
9 MR. JONES: -- a copy to the Court?
10 THE COURT: Right.
11 MR. JONES: And also to the --
12 THE COURT: Like I said, the Court's not going to take any
13 position until I hear what you're saying and what you're asking.
14 MR. JONES: Yeah. Thank you, Your Honor.
15 [Counsel confer]
16 CROSS-EXAMINATION
17 BY MR. JONES:
18 Q All right. Doctor, the binder that you have in front of you, I'd
19 just like to go through it with you relatively quickly. If you can look --
20 turn to Tab 1. This is the complaint of the Farrises against yourself in
21 this case and against the Laparoscopic Surgery of Southern Nevada.
22 Does that appear correct?
23 A It does.
24 Q Okay. Have you seen this document before?
25 A I believe I have, yes.

1 Q Okay. Let's go ahead and turn to Tab 2. This is your answer
2 to the Plaintiff's complaint in this matter. Have you seen this document
3 before?

4 A I believe so, yes.

5 Q All right. Turn to Tab 3, please. This is Defendant Barry
6 Rives -- Dr. Barry Rives' response to Plaintiff Titina Farris' first set of
7 interrogatories. And you can see up in the top right-hand corner it says,
8 "Electronically served 4/17/2017 at 1:20 and 37 seconds, p.m."?

9 A Yes.

10 Q Okay. Have you seen this document before?

11 A A couple weeks ago, yes.

12 Q Okay. So you did not see this document prior to April 17th,
13 2017; is that correct?

14 A That is correct.

15 Q Okay. If you turn to Tab 4, this document was electronically
16 served on September 13th, 2019, and it's entitled, "Defendant Dr. Barry
17 Rives' supplemental response to Plaintiff Titina Farris' first set of request
18 for production of documents." Have you seen this document before?

19 A Yes, I have.

20 Q Okay. And when did you first see this document?

21 A Just about that time.

22 Q About the 13th of September?

23 A Sometime in that frame, yeah.

24 Q Okay. When you say, "that frame," what are the parameters
25 of the frame that you would provide?

1 A Maybe within one or two weeks of it being filed.
2 Q Either --
3 THE COURT: Counsel, can you re-ask that question? I
4 didn't --
5 MR. JONES: Yes. I'm trying to establish the time frame
6 whereby the doctor identified it.
7 BY MR. JONES:
8 Q Doctor --
9 THE COURT: Which tab is that? I was trying -- I --
10 MR. JONES: Oh. Tab 4, Your Honor.
11 THE COURT: One or two weeks -- can you please re-ask the
12 question? I was trying to --
13 MR. JONES: Certainly.
14 THE COURT: -- get the date --
15 MR. JONES: Yes.
16 THE COURT: -- that you got listed. Please. Thank you.
17 BY MR. JONES:
18 Q So I asked you when it was that you first observed this
19 document, Doctor. And -- go ahead?
20 A "Defendant Dr. Rives' supplemental response to Plaintiff
21 Titina Farris' first set of requests for production of documents." The
22 supplemental response --
23 Q Yes.
24 A -- was sometime in September.
25 Q Okay. Do you have any -- anymore narrower parameters

1 than sometime in September to identify when it was that you saw this
2 document for the first time?

3 A No, I don't.

4 Q Okay. All right. Did you ever see either of these documents,
5 whether it be Exhibit 3 or Exhibit 4, prior to September 2019, Doctor?

6 A The supplemental response and -- hold on one second --
7 Defendant response to first set -- no.

8 Q Okay.

9 A The first time I saw these was sometime in September of this
10 year.

11 Q Okay. Thank you, Doctor.

12 THE COURT: So that question was Tabs 3 and 4? When
13 you're doing it by tabs rather than titles, I'm trying to make sure I've got
14 the correct --

15 MR. JONES: Thank you.

16 THE COURT: -- titles of what you're saying. So --

17 MR. JONES: I appreciate it, Doctor -- Your Honor.

18 THE COURT: Because the Court needs to be clear.

19 MR. JONES: Right.

20 BY MR. JONES:

21 Q And to be clear, Doctor, the tabs we were talking about were
22 3 and 4, which would have been the initial responses and the
23 supplemental responses, correct?

24 A The supplemental response to request for production of
25 documents and the response to Plaintiff's first set of interrogatories.

1 correct.

2 Q Okay. And those were the documents that one -- the first
3 was served 4/17/2017, and the second was served 9/13/2019, correct?

4 A Correct.

5 Q Okay. And those were -- you saw those for the first time both
6 in September of 2019. Fair?

7 A That is correct.

8 Q All right. Turn to Tab 5. So this document is titled,
9 "Defendant Dr. Barry Rives' first supplemental response to Plaintiff Titina
10 Farris' first set of interrogatories." And this is dated 9/25/2019, correct?

11 A That is correct.

12 Q Have you ever seen this document before?

13 A I have.

14 Q Okay. And when did you first see this document?

15 A Sometime in September.

16 Q Okay. Did you see it before, after, or concurrently with the --
17 the document that was served 9/13/2019, the supplemental response,
18 versus the first supplemental response?

19 A I don't have an independent recollection of that.

20 Q You don't have an independent recollection of when you saw
21 each?

22 A No. I got a number of emails in the last couple of weeks, all
23 through September, with different interrogatories, different supplements
24 asking me to review, and then verify, get it notarized, and resigned.

25 Q Okay.

1 A So which one came in one email versus the other, I'd have to
2 review my emails for that.

3 Q Based on your recollection, did you see them all at one time
4 or did you see them on multiple occasions?

5 A I saw them on multiple vacation -- multiple occasions.

6 Q Okay. And as we sit here today, you couldn't tell like me or
7 the Court when it was that you saw one versus the other. Is that fair?

8 A Exactly, no.

9 Q Okay. All right. All of them in September 2019 for the first
10 time?

11 A I believe September or possibly even late August, but
12 sometime in the last four to six weeks, yes.

13 Q Okay. Let's go ahead and -- I want to be very brief with the
14 next three. If you took at Tabs 6, Tabs 7, and Tabs 8, these are
15 essentially the mirror responses or -- the responses are different, and the
16 questions are different, but these were served at the exact same times as
17 the aforementioned three that we went through. And these are with
18 respect to Defendant Laparoscopic Surgery Center of Southern Nevada --
19 Surgery of Nevada, LLC's responses.

20 And so the first, which is Tab 6, was electronically served
21 4/17/2017, the seventh tab is your supplemental responses, and the
22 eighth tab is the first supplemental responses. Again, these are for your
23 corporation. Correct?

24 A Correct.

25 Q All right. Tab Number 6, have you ever seen this before?

1 A Yes, I have.
2 Q When did you see this, Doctor?
3 A Within the last couple weeks.
4 Q Okay. The same timeline as the aforementioned three that
5 we just went through?
6 A Correct.
7 Q Okay. Number 7?
8 A Same timeline.
9 Q Okay. Number 8?
10 A Same timeline.
11 Q Okay. Now, Doctor, are you sure that you have not seen
12 these before, any of these six that we just went through, prior to
13 September of 2019?
14 A Yes.
15 Q Okay. Why are you so sure of that, Doctor?
16 A Because when I had a chance to review them, there were
17 errors on there that I needed to have them corrected.
18 Q And that's true both for the ones for your corporation as well
19 as for your Answers to Interrogatories for yourself personally?
20 A I'd have to go through them again to verify that.
21 Q Please do so.
22 [Witness reviews document]
23 THE WITNESS: Yeah, I reviewed them in September of this
24 year, because I needed to correct the address on my corporation's
25 responses as well.

1 BY MR. JONES:

2 Q Okay. So because of that, you can say with certainty for the
3 Court that this is the first time you saw them, was September 2019,
4 correct?

5 A Or sometime in September, yes.

6 Q Right. Sometime in September 2019?

7 A Oh, 2019. Yes.

8 Q Okay. And that you've never seen either one before, correct?

9 A That is correct.

10 Q All right. Doctor, who is Teresa Duke?

11 A Teresa Duke is head of credentialing at St. Rose -- actually
12 St. Rose, all campuses.

13 MR. JONES: Your Honor, I have another exhibit that I didn't
14 think I was going to be needing to attach. We received this from Defense
15 counsel within the last week or so, two weeks perhaps. One through
16 paralegals. We reached out to them for a copy of the verification in this
17 case. I'd like to distribute verifications signed by Dr. Rives that we've
18 received within the last week.

19 THE COURT: Is that the one that came in the night before the
20 last --

21 MR. JONES: No, Your Honor.

22 THE COURT: -- hearing?

23 MR. JONES: This is one that -- that we happened to receive
24 by email within the last week or so.

25 THE COURT: All right. But what I'm asking is, I think at the

1 original hearing set on order shortening time in this case on 9/26 on the
2 10 a.m., you all disclosed to me at the hearing on 9/26 that -- I believe
3 you said the evening before, you received a verification. Is that the
4 verification you're talking about that's in your hand, or is this a different
5 verification? I'm just trying to get an understanding of --

6 MR. JONES: Absolutely.

7 THE COURT: -- what verification is this.

8 MR. JONES: Yes. And, Your Honor, I'll -- so after we got
9 Defendant's opposition, we asked them if they had a verification, and
10 their paralegal sent us this, which is a verification of Dr. Rives for his
11 surgery center.

12 THE COURT: Okay. So --

13 MR. JONES: It appears to contradict what Dr. Rives just
14 testified to, Your Honor.

15 THE COURT: Okay. Well, let's see it, and see what people's
16 position is. So you're saying you got this from the paralegal of the Doyle
17 firm? I'm just trying to get an understanding who you got it from, when
18 you got, and where you got it, if you don't mind, please.

19 MR. JONES: Absolutely, Your Honor. When we saw
20 Defendant's opposition, much of it said, well --

21 THE COURT: Okay.

22 MR. JONES: -- it's really not that bad because there wasn't a
23 verification, I reached out to Mr. Hand and I said, is there a verification?
24 And he said, oh, let me check. And his paralegal sent an email to the
25 paralegal asking for verification from Mr. Doyle's office, and they sent

1 over this verification.

2 THE COURT: Okay.

3 MR. JONES: And so we received this in the last week or two,
4 is my --

5 THE COURT: Okay.

6 MR. JONES: -- understanding, Your Honor.

7 THE COURT: So time frame -- just so the Court has an
8 understanding here, just -- because you all are talking about a lot of
9 different time frames. Defendant filed their opposition. Since I don't
10 have the final stamped copy -- I'm looking at the date on page 22. Okay?
11 It says September 24, 2019. Okay? So your understanding is you got
12 this verification some point between September 24 and when the
13 hearing took place on September 26, or you got it -- I'm just --

14 MR. JONES: No. That's --

15 THE COURT: I'm trying to chronology it.

16 MR. JONES: Right.

17 THE COURT: I'm trying to get the correct chronology here,
18 please.

19 MR. JONES: My understanding is right around that time,
20 Your Honor.

21 THE COURT: Okay.

22 MR. JONES: That's my understanding.

23 Now, to be clear, the -- at the hearing, I didn't mention this
24 because it didn't seem directly on point at all, since this is only a
25 verification of the company, not of his individual responses.

1 THE COURT: Okay. Okay.

2 BY MR. JONES:

3 Q Dr. Rives, what is this document that I've just handed you?

4 A It's a verification regarding Laparoscopic Surgery of
5 Nevada's response to Plaintiff Titina Farris' first set of interrogatories.

6 Q All right. And can you read -- it says verification. And can
7 you please read what it says below that?

8 A "I, the undersigned, declare I have read the foregoing
9 document, and know the contents thereof. I am informed and believe
10 that the matters stated therein are true. And on that ground, I allege that
11 the matters stated therein are true. I declare under penalty of perjury
12 that the foregoing is true and correct. Executed on the 27th of 2017 at
13 Henderson, Nevada."

14 Q Is that your signature, Doctor?

15 A That is.

16 Q All right. And Teresa Duke is a notary at St. Rose?

17 A She's head of medical credentialing, but she's a notary, yes.

18 Q Okay. And she's notarized documents for you before?

19 A Yes, she has.

20 Q And you don't doubt -- you don't deny that you signed in
21 document, that it was notarized?

22 A No, I don't.

23 Q Okay. All right. So, Doctor, what you testified to before, a
24 moment ago, that you had never seen this document up until September
25 of 2019, that's not true, is it?

1 A No. It is true.

2 Q So, Doctor, you had this verification notarized when?

3 A The 27th, 2000- -- April 27th, 2017.

4 Q Okay. And you did that without looking at the document that

5 it attached to?

6 A The documents came as an email. The first PDF I pulled up

7 was for something regarding discovery. I read it as a bunch of legalese.

8 They asked me, can you approve these? So I printed out the last

9 verification, had it signed and notarized.

10 Q Okay. So -- and you didn't go back to read what you were

11 swearing under penalty of perjury was true?

12 A You mean the other documents?

13 Q Right.

14 A No.

15 Q Okay. What did you -- what did you believe this related to,

16 Doctor, at the time that you swore under penalty of perjury that the

17 answers were true?

18 A To the documents prepared by my legal counsel.

19 Q Okay. All right. And you did so. It says, "I have read the

20 foregoing document and know the contents thereof." That was not true

21 when you signed this?

22 A No.

23 Q Okay. And you have no idea whether or not the information

24 stated therein was true or not, did you, because you hadn't reviewed any

25 of it?

1 A I did not review it. Having been with this counsel for many
2 years and seeing these in the past, half the time I can't make sense of
3 them, so I assume what their due diligence has been is true. Yes.

4 Q Okay. All right. But you certainly did not verify that any of
5 the statements therein were true, correct?

6 A I did not review them sentence by sentence, no.

7 Q And your understanding when you signed this was that you
8 were affirming that everything they had sent to you was true, correct?

9 MR. DOYLE: Objection. It mischaracterizes the evidence.

10 MR. JONES: I don't think it does at all.

11 THE COURT: Okay. I need an answer -- I need a further --
12 since this is me and an evidentiary -- I don't have a jury -- I need a further
13 explanation. I don't want --

14 MR. DOYLE: This is --

15 THE COURT: -- it in his presence though because I do not
16 want to -- in light of the issues that were raised with these leading
17 questions, I need this done in a manner that explains to the Court. So
18 we have a couple of ways of doing that.

19 MR. DOYLE: Can we approach?

20 THE COURT: But I want to ensure that you are fine with your
21 client, because we have those mixed interests because he is a client who
22 is also entitled to hear things.

23 So, counsel, what do you suggest? You're his counsel.

24 MR. DOYLE: I'd like to just point out what's wrong with the
25 question. And the suggestion in the question is inaccurate about this.

1 document.
2 MR. JONES: Your Honor, I'm happy to rephrase the question
3 and see if I can accomplish what I'm attempting to accomplish --
4 THE COURT: Okay.
5 MR. JONES: -- with something that is --
6 THE COURT: Since it's rephrased, the Court will --
7 BY MR. JONES:
8 Q Doctor, a moment ago you testified --
9 THE COURT: -- not address it.
10 Go ahead.
11 MR. JONES: Oh, sorry.
12 BY MR. JONES:
13 Q Doctor, a moment ago you testified that you got all of these
14 documents from counsel, and that you knew that they wanted a
15 verification signed, so you printed off the very last page of all of them
16 and signed that, correct?
17 A That is correct.
18 Q Okay. And you did that believing that this was a verification
19 saying that everything they had sent you was true. Is that fair?
20 MR. DOYLE: Objection. It mischaracterizes the evidence.
21 THE COURT: The Court's going to overrule the objection
22 because he said, "Is that fair."
23 THE WITNESS: I'm sorry. You're going to have to -- I got
24 lost in all this, quite honestly.
25 MR. JONES: You bet, Doctor.

1 BY MR. JONES:

2 Q You printed off this last page, and you signed it as a
3 verification that you were saying that everything they had sent you was
4 true --

5 A Correct.

6 Q -- is that -- all right, Doctor. Now, I want to go through --
7 you've been deposed numerous times, and that dealt with previously,
8 and you were under oath in each occasion; isn't that true?

9 A That is true.

10 Q And you've answered interrogatories in numerous cases, and
11 you would know that you -- that those are under penalty of perjury as
12 well, correct, when you answered those?

13 A My counsel has answered those interrogatories for me, yes.

14 Q But you knew -- but you signed verifications for those
15 interrogatories, correct?

16 A I believe so, yes.

17 Q And the verifications to those interrogatories were sworn
18 under penalty of perjury, were they not?

19 A I believe so, yes.

20 Q And you're the one swearing under penalty of perjury that
21 they're true, aren't you?

22 A Yeah, I guess. Yeah.

23 Q Okay. All right. Now, Doctor, during your deposition, you
24 stated that -- in this case, you stated that Mr. Hand provided you with
25 some documents, including your CV and including interrogatory

1 responses; is that true?
2 A Rereading the deposition and the best of my recollection,
3 yes.
4 Q Okay. When did you reread that deposition, Doctor?
5 A Sometime in the last week or two.
6 Q Okay. Any time before that since the time of your
7 deposition?
8 A I do not -- I don't think I even had the deposition. No.
9 Q Okay. So you believe the first time you saw that deposition
10 since the deposition was sometime last week or two?
11 A I believe so, yes.
12 Q We can agree that that deposition as taken October 24th,
13 2018?
14 A I have no reason to quibble with that.
15 Q Okay. Let's just flip over to Exhibit 10.
16 MR. JONES: Your Honor, I have a few more questions still.
17 Is there --
18 THE COURT: Here's what we're going to -- how much time
19 do you estimate that you still need?
20 MR. JONES: Maybe ten minutes. Something like that.
21 THE COURT: Okay. And how much do you need for your
22 final rebuttal or your final -- are you going to do redirect?
23 MR. DOYLE: So far, no.
24 THE COURT: Okay.
25 MR. DOYLE: But I haven't heard everything.

1 THE COURT: Okay. Then Tena says I'm fine for the other
2 case that's waiting, estimate we're probably more likely to start closer to
3 10:15 just to let you know, best estimate. Okay. So if you need to be
4 doing something, we won't call -- you know what I mean? We won't
5 start without you, let's put it that way. But more likely 10:15. Okay.
6 Thank you.

7 Go ahead, counsel.

8 BY MR. JONES:

9 Q Now, Doctor, the -- when he handed those to you, did he give
10 you the impression that you weren't really permitted to really look
11 through those answers?

12 A Say that again?

13 Q Well, I'll say it the other way. Was it clear that he wanted you
14 to review what he was handing you?

15 A He asked me to review the CV part, yes.

16 Q Okay. But he handed you both things?

17 A Yes.

18 Q Did he say, please review your CV, but don't review the
19 interrogatories?

20 A He asked me only to review the CV.

21 Q Okay. All right. Did you, at any time, review the
22 interrogatories at that time?

23 A No, I don't believe I did.

24 Q Did you even look at them as -- during the course of that
25 deposition?

1 A I don't believe I did.

2 Q Okay. Do you have an actual recollection of either looking at
3 them or not looking at them during that deposition?

4 A To the best of my recollection is that I did not.

5 Q Okay. So I just want to ask you again. Do you have an
6 independent recollection of that? Do you actually recall answering his
7 questions about interrogatories without them in front of you versus with
8 them in front of you?

9 A In -- you mean independent of all other information like
10 rereading the deposition?

11 Q I'm asking you right now, do you have a memory in your
12 mind of the deposition that is so clear that you can tell the Court with
13 certainty, based on your memory, whether or not you answered the
14 questions with the deposition -- or interrogatories in front of you?

15 A To the best --

16 MR. DOYLE: Objection. Argumentative.

17 THE COURT: Court's going to overrule that.

18 THE WITNESS: Am I allowed to answer?

19 BY MR. JONES:

20 Q Yes.

21 A To the best of my recollection, to the best memory I have as I
22 sit here today is that I did not have those when he asked me about them.

23 Q Okay. Do you have a recollection of answering those
24 questions --

25 THE COURT: Bless you.

1 BY MR. JONES:

2 Q -- and that the interrogatories were not in front of you?

3 A Yeah, I believe I just stated that.

4 Q Okay. All right. Okay. If you can turn to page 10 of Exhibit
5 10, down at the very bottom of that page, beginning line 25, there's a
6 question. It says,

7 "If I could direct you to response number 3. And the question
8 is if you had ever been named as a defendant in any case
9 arising from alleged malpractice or negligence? So I'm just
10 going to go over these with you. We are on page 2."

11 So are you saying that as he's saying that to you that you did not
12 have that document in front of you?

13 A That's correct because he asked for it back on page 10,
14 around question -- line 1 or 2 where he says, "Can I see those
15 interrogatories again for a second. Thank you."

16 Q Okay. And so you're saying that when he did that there was
17 only one set of interrogatories, and he was just talking to you only at that
18 time?

19 A Correct.

20 Q Okay. So when he was asking -- when he was saying if he
21 could direct you to response number 3, he was holding the only set of
22 interrogatories himself and not directing you to anything?

23 A He was holding the interrogatories and going through the list
24 that he was reading. I was listening to him as he was reading the list of
25 cases.

1 Q Okay. Doctor, have you looked at any portion of the
2 deposition of the *Center* case within the last month?
3 A Yes.
4 Q When was that?
5 A Within the last two weeks maybe.
6 Q Was that also in relation to this hearing?
7 A Yes, it was.
8 Q Okay. In the *Center* case, do you recall being asked about
9 prior medical malpractice cases in which you had been involved?
10 A I believe so, yes.
11 Q And you'd agree that when you were under oath in the
12 *Center* case, you also had taken an oath to tell the truth, and as you
13 stated, the whole truth and nothing but the truth, correct?
14 A That is correct.
15 Q And that was true for today, at the deposition in the Farris
16 case, and the deposition in the *Center* case, correct?
17 A That covers all aspects of my life, yes.
18 Q Okay. Let's go ahead and go to Exhibit 9. And you'd agree
19 this is a copy of your deposition in the *Center* case, correct?
20 A It appears to be, yes.
21 Q Okay. Now, in the *Center* case, you also failed to mention
22 the Farris case when you were asked about medical malpractice cases
23 you'd been involved in, correct?
24 MR. DOYLE: Objection. Mischaracterizes the evidence.
25 THE COURT: The Court can't make a ruling on that because

1 you're referencing a hundred plus page document. So the Court's going
2 to have reserve and hear what the answer is and then rule afterwards
3 and let you each provide what you want to provide afterwards.

4 Go ahead.

5 BY MR. JONES:

6 Q Go ahead, Doctor. Answer.

7 A I'm sorry; you're going to have to remind me.

8 Q Yes, Doctor. You'd agree that you failed to name the Farris
9 case when you were asked about medical malpractice cases in which
10 you had been involved during your *Center* deposition?

11 A When I reviewed my deposition I realized that I had left off
12 both pending cases, Brown and Farris.

13 Q Okay. So you failed to disclose that you had the Farris case,
14 and you failed to disclose that you had the Brown case during your
15 *Center* deposition?

16 A No, I misunderstood the question. I thought it was related to
17 matters that had been settled. So I talked about the four cases that had
18 been settled. I didn't realize that included the three pending cases, which
19 would have been *Brown, Center, and Farris* at that time.

20 Q Okay. But you would agree in retrospect, having reviewed
21 this in the last two weeks, that the question required you to be candid
22 even about the Farris and the *Brown* case, correct?

23 A In retrospect, yes.

24 Q Okay. And so you're just saying at the time, you
25 misunderstood it, correct?

1 A That is correct.

2 Q And because of that, you gave incomplete testimony,
3 correct?

4 A That is correct.

5 Q Okay. Now, you'd agree that your attorney understood the
6 call of the question in the Farris case to require you to mention the
7 *Center* case when you were being deposed in the Farris case?

8 MR. DOYLE: Objection. Speculation.

9 THE WITNESS: I'd say you'd have to ask Chad.

10 THE COURT: Wait just a second. Hold on. Can you repeat
11 that question? You understood --

12 BY MR. JONES:

13 Q During your deposition --

14 MR. JONES: I think it's a fair objection, Your Honor. I think it
15 is speculative. I'm going to move on.

16 THE COURT: Okay. You're going to rephrase. Since it's
17 been withdrawn, then the Court need not rule?

18 MR. JONES: Yes, I'll withdraw --

19 THE COURT: Okay.

20 MR. JONES: -- the question, Your Honor.

21 BY MR. JONES:

22 Q Now, do you recall if Mr. Brenske, after you failed to divulge
23 the Farris case during the *Center* case, if Mr. Brenske, the attorney in the
24 *Center* case, reminded you of the Farris case at some point?

25 MR. DOYLE: I'm going to object. It mischaracterizes his

1 testimony.

2 THE COURT: I'm going to overrule that objection because
3 it's a do you recall if this happened, so it's not testimony.

4 THE WITNESS: You mean do you -- do I recall after having
5 read the deposition?

6 BY MR. JONES:

7 Q I asked if you recalled.

8 A Well, does that include rereading my deposition? Because
9 something jogs your memory or --

10 Q Answer it the way you see fit, Doctor.

11 A Rereading my deposition on *Center*, Mr. Brenske readdresses
12 me towards the two pending cases. Yes.

13 Q Okay. So after he asked you and you hadn't mentioned
14 those cases, he later brought those cases up to you?

15 A He did. Yes.

16 Q Okay. All right. And do you recall providing Mr. Brenske an
17 explanation about what happened in the Farris case?

18 A I'd have to review that.

19 Q Doctor, can you give a short description about what
20 happened in the Farris case?

21 A Right now?

22 Q Yeah.

23 A Oh, Ms. Farris came to me because she had a recurrent
24 eventual hernia. I recommended surgery for that. Went through all the
25 risks, benefits, alternatives regarding the surgery. We did a presumed to

1 be outpatient surgery. During that surgery, there were injuries to the
2 transverse colon that are repaired at that time. Subsequently, she
3 developed sepsis and had a prolonged hospital course.

4 Q Okay. Now, Doctor, when you were asked to provide a
5 description from Mr. Brenske, you don't recall what it is that you stated?

6 A Not without reviewing the record, no.

7 Q All right. I'll refer you to page 18 of your deposition in this
8 case. This is Exhibit 9, beginning at line 3, going through 12.

9 "Q With regard to the next case, Farris --

10 A Wait, I'm not there yet.

11 Q Oh, okay.

12 A Hold on.

13 Q My apologies, Doctor.

14 A Where are we at? Page 18 --

15 Q Page 18.

16 A Oh, there are four pages to a page. Okay.

17 Q Yes. Yeah. I apologize. That's the only version I have at this
18 time.

19 A No worries.

20 Q Page 18, beginning at line 3. Tell me when you're ready.

21 A Go ahead.

22 "Q With regard to the next case, Farris v. Reeves, is that case
23 still ongoing?

24 "A Yes.

25 "Q In ten words or less, can you -- you don't have to do it in ten

1 words or less, but can you just give us a brief description of what that --
2 the allegations in that case?"

3 And then your answer is there. Doctor, can you read your answer?

4 "A The patient had a laparoscopic hernia repair and resulted in
5 oculocutaneous fistula postoperatively that required subsequent
6 surgery."

7 Q That's not accurate, is it, Doctor?

8 A It -- yeah, it is.

9 Q That is accurate?

10 A Yeah.

11 Q When was she diagnosed with oculocutaneous fistula by
12 you?

13 A It was when she had her CT scan showing the extravasation,
14 and she had to go -- be taken back to surgery. I don't recall the exact
15 date of that.

16 Q And you're saying that you diagnosed her with that
17 condition?

18 A I diagnosed her with that -- I don't know --

19 Q With oculocutaneous fistula?

20 A Well, it hadn't fistulized yet, but it was a leak, so it was going
21 to be oculocutaneous fistula, effectively, yes.

22 Q Did she develop oculocutaneous fistula, Doctor?

23 A She went to surgery.

24 Q She did go to surgery.

25 A Right.

1 Q Did she develop oculocutaneous fistula, Doctor?
2 A No.
3 Q She did not?
4 A No.
5 Q Okay. Now, you testified under oath here on page 18 that it
6 resulted in oculocutaneous fistula.
7 A Correct.
8 Q Isn't that what your testimony was?
9 A It was.
10 Q Okay. And in fact, you never diagnosed her with
11 oculocutaneous fistula, did you?
12 A We diagnosed her with oculo -- we diagnosed her with a
13 perforation to the colon. That's the development of oculocutaneous
14 fistula. Whether you want to say it's matured and she's leaking stool out
15 of her skin or whether you want to say she has a perforation and that's
16 going to be the subsequent outcome of it, whichever part of that time
17 frame you want to be definitive, depends upon your definition, I guess.
18 Q Okay. In any event, you would agree with me that she was
19 never diagnosed with oculocutaneous fistula; isn't that true?
20 A She was not diagnosed with oculocutaneous fistula.
21 Q And she was not diagnosed by you or by anyone else, was
22 she?
23 A She didn't develop oculocutaneous fistula because she went
24 back to surgery --
25 Q Okay.

1 A -- on that day or the day after, I should say.
2 Q On -- you mean like 13 days after the original surgery?
3 A When Dr. Hamilton [phonetic] did the surgery.
4 Q Okay.
5 A Correct.
6 Q Got it. Is there any reason that you didn't tell Mr. Brenske
7 that she developed bilateral foot drop?
8 A No.
9 Q Is there any reason that you didn't tell Mr. Brenske that she
10 became septic post-op day one?
11 A No.
12 Q Is there any reason you didn't tell Mr. Brenske that she
13 remained septic, and you didn't recommend surgery for more than 11
14 days?
15 A No.
16 Q Okay. You knew that those were all issues, allegations made
17 against you in the *Center* case, though, correct?
18 A Correct. He asked me to summarize, not allege what the
19 allegations against me were.
20 Q Okay. And you agree that all of those are commonalities in
21 this case, correct?
22 A No.
23 Q No?
24 A Not at all.
25 Q Those that I just mentioned are not?

1 A With the *Center* case?
2 Q That's correct, those three things.
3 A But Center never had foot drop.
4 Q Okay. Her feet were amputated instead, correct?
5 MR. DOYLE: Your Honor, relevance.
6 THE COURT: The Court's going to sustain for the purpose of
7 today's evidentiary hearing.
8 MR. JONES: Okay.
9 THE COURT: I'll sustain his objection.
10 MR. JONES: All right.
11 BY MR. JONES:
12 Q Doctor, you agree that the documents that you received in
13 April of 2017 failed to list the *Center* case, correct?
14 A That is correct.
15 Q Okay. And you agree that you signed a verification that you
16 believed was attesting to the truthfulness of those documents, although
17 you never reviewed them yourself?
18 A Basically, yes.
19 Q Okay. And you'd agree that during your deposition, you
20 never provided information about the *Center* case until after your
21 attorney stepped in and mentioned what has come into the transcript as
22 *Center*, correct?
23 A Yeah. I was never asked about the *Center* case. No.
24 Q You ultimately were asked about the *Center* case, weren't
25 you?

1 A In the part that you were talking about, no. But later, yes.
2 Q Okay. After your attorney mentioned the case, you were
3 then asked about it?
4 A That is correct.
5 Q Okay. And when you were asked about the *Center* case, you
6 didn't mention that she developed sepsis post-op day one, correct?
7 A I don't recall what I said. I'd have to review it on the
8 deposition.
9 Q Okay. Let's go ahead to page 10.
10 MR. JONES: Your Honor?
11 THE COURT: A few more moments, Counsel.
12 MR. JONES: Okay.
13 THE COURT: You went into an area that was outside, so
14 you --
15 MR. JONES: That's fair enough. I can shut it down, Your
16 Honor, if you'd like me to.
17 THE COURT: We've got a moment or two, and then --
18 MR. JONES: Okay.
19 THE COURT: -- I'm going to see if counsel has an
20 understanding of the case.
21 MR. JONES: I will be finished in one minute.
22 BY MR. JONES:
23 Q Page 13, Doctor, of Exhibit 10.
24 A Okay.
25 Q Are you there?

1 A Yes, I am.

2 Q Let's see. Okay. It's actually on page 14. Sorry, beginning
3 line 3 says, "Can you tell me what that case involved?" And your
4 answer?

5 A "Patient had diaphragmatic tear laparoscopically. She
6 aspirated and became septic."

7 Q Okay. And while those are things that you may have argued
8 in your trial in that case, you'd agree with me that the allegations were
9 that she became septic post-op day one?

10 A That was an allegation, yes.

11 Q Right. And you agreed that that was the case, in fact, did you
12 not?

13 A Yeah.

14 Q And also, that there was an 11-day period in which she
15 remained septic without surgical --

16 MR. DOYLE: Objection. Relevance. Relevance.

17 THE COURT: I'm going to sustain it as to that's a substantive
18 question not for purposes of today's evidentiary hearing.

19 MR. JONES: Thank you, Your Honor. I'll move on.

20 BY MR. JONES:

21 Q Doctor, is it your practice to swear under oath without
22 knowing or reviewing information you're swearing to?

23 A No.

24 Q It just happened in this case?

25 A That is correct.

1 MR. JONES: That's all, Your Honor.
2 THE COURT: Thank you. Counsel?
3 MR. DOYLE: I don't have any questions.
4 THE COURT: Okay. The Court has a few follow-up
5 questions. I'm going to tell you what the Court's questions are and it's
6 really going to be up to -- if either counsel does not wish the Court to ask
7 any of these questions, then I won't. It's really as simple as that, okay?
8 So I'm going to tell you what the question is. Well actually,
9 there's a few of them, okay? First question is the Court would like to
10 have a better clarification of how Dr. Rives knew in April 2017 to get into
11 the email to find the verification, to sign the verification.
12 MR. DOYLE: No objection.
13 MR. JONES: No objection, Your Honor.
14 THE WITNESS: I was sent an email from my attorneys with --
15 THE COURT: And the Court's not asking about the content of
16 any communications, but the way you described it --
17 THE WITNESS: Okay.
18 THE COURT: -- I'm trying to just get an understanding of
19 how you knew -- you said you opened up --
20 THE WITNESS: An email.
21 THE COURT: -- an email, the last page and to find the
22 verification on the last document, in the last page of the last document.
23 So I'm trying to have an understanding of how you knew which
24 document --
25 THE WITNESS: There's --

1 THE COURT: -- to know, to find a verification.

2 THE WITNESS: So there's a list of pdf files, and there's a
3 truncated title to each pdf file. It doesn't give the complete title. And I
4 believe the last one says verification, so I clicked on that one to print it
5 out, have it signed and notarized.

6 THE COURT: Okay. So the Court's follow up question is was
7 there only -- I'm trying to get an understanding of what this email looked
8 like to the extent without in any way invading the attorney client
9 privilege. Was there only one truncated document that said verification?
10 That's the next question. Anyone that doesn't want the Court to ask it,
11 then the Court won't.

12 MR. DOYLE: No objection.

13 MR. JONES: No objection, Your Honor.

14 THE WITNESS: There were -- if I recall correctly, six pdf files.
15 And as I scanned through them that was the one that came out of in my
16 mind that said verification on them.

17 THE COURT: So the Court doesn't feel that that answered
18 the Court's direct question of whether or not there was only one that said
19 verification. As there were six, was there only one that said verification
20 is really the question the Court was asking. I was trying to get an
21 understanding if there was one or more than one that had the word
22 verification on it.

23 THE WITNESS: I can't remember, Your Honor.

24 THE COURT: Okay. And I'll tell you the Court's next question
25 would be is whether or not this witness has signed other interrogatories

1 in the past and understands what the verification is, without in any way
2 asking from any communications with any counsel, but understands
3 what a verification is from the past, so he's got an understanding of how
4 he knew to look for the verification in this case from the email. Not
5 getting into content or any communications, of course. Just trying to get
6 a background.

7 MR. DOYLE: No objection.

8 MR. JONES: No objection.

9 THE WITNESS: In the email, it asked me if I approve, to sign
10 the verification.

11 THE COURT: Okay. The Court's question was a little
12 different about whether or not there had been any prior signing of --

13 THE WITNESS: Oh. My apologies.

14 THE COURT: -- interrogatories and verifications or was this
15 the first time. Does anyone have any objection to that question being re-
16 asked so that it clarifies?

17 MR. DOYLE: No, Your Honor.

18 MR. JONES: No objection.

19 THE WITNESS: My apologies, Your Honor. I misunderstood.
20 I'm sure that in the past, I've been asked to verify these before.

21 THE COURT: Okay. Okay. Those were the Court's
22 questions. So it is 10:16. Dr. Rives came on the stand, Madam Court
23 Reporter, what time?

24 COURT REPORTER: 9:16.

25 THE COURT: 9:16. An hour. Just what you all asked for. So,

1 you all being provided the exact amount of time that you specifically
2 requested on 9/26 to having today for the totality of today's hearing, the
3 Court finds that it has provided you. And that hour was supposed to take
4 into account also really the Court's ruling as well, so the Court's given
5 you a full hour to give you an opportunity. It's offered direct
6 examination, cross-examination, offered but did not wish any response.
7 So the witness can feel free to go off the stand.

8 So the Court's position at this juncture is the Court did
9 exactly what the parties asked for, after the Court offered the evidentiary
10 hearing. In the intervening time, the Court did go and ask -- just let my
11 Law Clerk leave to make sure -- I wanted to make sure I reread the letter
12 of September 30th, 2019, just to see if there was any request for any
13 additional argument, oral argument, because the Court knows it did not
14 receive anything subsequent to that. There's no request in this letter. It
15 just says, you know -- it just says whether he was intending to testify at
16 the hearing scheduled at 8:30. Correspondence via the Court and
17 counsel, Dr. Rives will testify.

18 So there's no request for any additional oral argument. The
19 Court gave you all extensive oral argument to the extent everybody
20 wished to do as much as you wanted to. In fact, the Court even, on 9/26,
21 gave you a partial inclination to one portion of Plaintiff's motion and that
22 was as to the punitive damages portion, to give you some indication so
23 that to the extent that was of assistance, so that you could fully prepare
24 for tomorrow's calendar call, but said that the other requested sanction
25 aspects were still on the table for today's evidentiary hearing to really

1 allow you to narrow where you were going for today.

2 So while I heard Defense counsel mention that you'd like to
3 do some kind of summation at the end, the Court doesn't see that that
4 was requested previously by anyone. This was set up specific when I
5 had counsel -- Plaintiff's table on 9/26, whoever you all chose to come at
6 the hearing date, which was supposed to be the total final only hearing
7 date. I had two counsel on Defense. Nobody asked on 9/26. Nobody
8 asked in any of the intervening time, either in the letter -- I even double-
9 checked the inappropriately -- which is now stricken, by the way.

10 The Court specifically ordered stricken the improperly rogue
11 documents filed on 9/30, specifically contrary for all the reasons that the
12 Court said previously, obviously, the quote supplemental and that
13 declaration, post -- and for supplemental, because -- for all the reasons
14 the Court stated. It's not even there, a request for oral argument, so I
15 double-checked that just to see by chance, even if it was. So even giving
16 the benefit of the doubt with regards to -- the Court even -- if by
17 implication, somebody may have intended that somewhere, the Court
18 can't take that into consideration, because that is -- for all the reasons,
19 it's impermissible.

20 The Court's not reiterating everything it said for the first time
21 period this morning at 8:30, so that can't be considered. Those we're
22 striking, but in any event, there was nothing on the face of that
23 document that requested specific additional oral argument, and I've
24 given the other side an opportunity to do so. And the Court -- you all
25 knew I was scheduling something right after you. In fact, you all thought

1 I was scheduling right after I gave some time.

2 So here's what the Court's going to do. The Court is going to
3 say as follows. We didn't get to the motion to strike the affirmative
4 defenses, did not get to the other motions that were also going to be
5 taken care of, because I wanted to ensure -- we went longer on the
6 testimonial portion, so I wanted to ensure everyone had a full
7 opportunity to have that taken care of.

8 So the Court's going to do the following. The Court's going
9 to give you its ruling on the 10th, but here's what we're going to do. I'm
10 going to tell you the first part of the Court's ruling, okay? Because that's
11 going to be important for tomorrow's purposes. For tomorrow's
12 purposes, here's what you're going to hear. The first portion of the
13 requested ruling was for terminating sanctions, okay? For terminating
14 sanctions. And I will give you my longer analysis on Thursday.

15 But the short version of its for there to be terminating
16 sanctions, those terminating sanctions would need to be due, as you
17 know, to the conduct of Dr. Rives, okay? Under *Young v. Ribeiro*, well,
18 I'm just going to short-version it. All analysis setting forth, citing *Young*
19 *v. Ribeiro*, I will cite all the different provisions of the other applicable
20 case law, NRC 37 -- 7.60, all the different basis I -- actually, your
21 motion's really on 37, but when listening, while there is egregious
22 conduct, the one mitigating factor for reason why this Court doesn't find
23 solely on this motion alone -- not taking into account everything else that
24 the Court needs to address -- for counsel's conduct, for all the other
25 issues that the Court still needs to address.

1 But for Plaintiff's motion alone, the Court doesn't find that
2 terminating sanctions under the applicable case law and the rules, would
3 be appropriate, because Dr. Rives' conduct in and of itself would not rise
4 to the level for terminating sanctions, based on his testimonial evidence
5 presented today, taking into account the following. The Court -- after I
6 get through the whole analysis, what I'll give you further on Thursday,
7 when you're coming back is the prejudice to Plaintiff issue.

8 By Plaintiff's own declaration in their motion, they
9 acknowledge that they did not look at some of this information, until, I'm
10 going to put it, summer of this year. Whereas, this deposition, or some
11 of this information was clear, was October 2018. So the prejudice
12 aspect, solely for this motion only, Plaintiff's motion only, I do have to
13 look at prejudice. Prejudice under *Johnny Ribeiro* is that some of that
14 prejudice, this Court finds, could have been mitigated, if it had been
15 looked at earlier.

16 There could have been some additional things the Court
17 would have had the ability potentially to have done. And that -- taking
18 that into account, which was one of the factors the Court does
19 specifically need to take into account. I'm not in any way minimizing the
20 egregious conduct, which will be discussed later, by both counsel and
21 client, okay, which the Court will be evaluating and going through. But
22 the reason why the Court doesn't find it merits at this juncture purely on
23 Plaintiff's motion only, which is the only thing I'm addressing right now,
24 is because by Plaintiff's own declaration, this information was available.

25 I'm not in any way adopting the oppositions' position that

1 you needed to look at Odyssey. They had an -- sorry. Yeah. They had
2 an affirmative -- Defense had an affirmative obligation to give you the
3 correct information. I'm in no way adopted their position. However,
4 some of this information was available to Plaintiffs in a manner that it
5 could have been evaluated, because there was enough in that October
6 deposition that a reasonable inquiry could have gotten you some
7 information and gotten some relief requested from the Court in a more
8 timely manner that could have alleviated some of the prejudice, which is
9 a factor this Court does have to consider under *Johnny Ribeiro*, and
10 that's why the Court doesn't find it to be appropriate to do terminating
11 sanctions.

12 All other sanctions up to that are on the table and will be
13 further discussed on Thursday. The reason why I needed -- important to
14 tell you the terminating was not happening is because you have your
15 calendar call tomorrow. So I want to make it clear, I would expect to see
16 everything tomorrow, as you have been told all along, okay? Since
17 January, not since September, as improperly stated in people's
18 declarations. So we will be seeing you tomorrow at your calendar call.
19 Thank you so very much.

20 MR. DOYLE: Your Honor, if I may --

21 THE COURT: That's -- this hearing is now over. We'll be
22 seeing you tomorrow at your calendar call. I need to get to my next case
23 that's patiently -- you're already taking 25 of their minutes.

24 MR. DOYLE: A quick question. I was going to be traveling
25 on Thursday. The Court hasn't set a time for the hearing on Thursday,

1 but could I do that by telephone, rather than physically being present?
2 THE COURT: How important you think this --
3 MR. DOYLE: I'll be here personal --
4 THE COURT: -- is for you, that's up to you.
5 MR. DOYLE: I'll be here personally on Thursday.
6 THE COURT: That's up to you.
7 MR. DOYLE: All right.
8 THE COURT: The Court's not requiring, because there's no
9 evidentiary basis. Thursday is we're going to go over that. We're going
10 to go over all the other sanction components against you and your firm,
11 so it's however important you feel it is. If you want a telephonic request,
12 you can have a telephonic.
13 MR. DOYLE: Okay.
14 THE COURT: It's up to you. The Court's not requiring people
15 to be here in person. I was going to suggest 1:30 on Thursday the 10th.
16 See you all. But I was going to discuss that further tomorrow? Okay.
17 But anticipated time is going to be Thursday the 10th at 1:30. If you want
18 to be here telephonically, telephonically is fine. Plaintiff's counsel, if one
19 of you want to be here telephonically, once again, it's your choice.
20 MR. JONES: We will be here, Your Honor.
21 THE COURT: That's up to you.
22 MR. LEAVITT: We'll be present.
23 THE COURT: The Court's not requiring somebody to be here
24 in present [sic]. The Court's going to go over all those issues. It's how
25 you wish to be here.

1 MR. JONES: Your Honor, would you like to retain a copy of
2 the binder that I dropped --

3 THE COURT: I am going to just for purposes that you -- easy
4 way, instead of me having to click on the system, I've got mine. I'll keep
5 it until Thursday. But I'll see you tomorrow, okay?

6 MR. JONES: Okay.

7 THE COURT: Thank you so much.

8 MR. JONES: Absolutely, Your Honor.

9 [Proceedings concluded at 10:26 A.M.]

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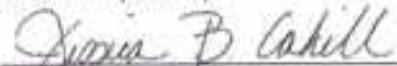
17

18

19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

24 Maule Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

With uncontrolled
diabetes. Can nerve
damage to the point of
Mrs. Farris case on her
feet & legs, happen overnight.
Or does it take a long time
to get to the level she
is at?

Collins #450



~~Exhibit~~ Peacock
#9

In your medical opinion,
was Mrs Ferns' foot drop
& lack of nerve response
below the knee caused
by her uncontrolled
diabetes?

Is it likely that her
uncontrolled diabetes
would've caused
foot drop & lack of
nerve response below
the knee within 10 years?

Courtis
Exhibit 9
10-21-19
A-34464

Court's
Exhibit 10
10-19-19
0239464

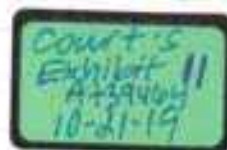
Crenshaw #455

~~XXXXXXXXXX~~

If Mrs. Farris's
condition was caused
from diabetes would
it even able to happen
so quickly as it did
from when Dr. Chaney
stated she didn't
have footdrop, to when
it did occur?

(renshaw #455

-when completing your
operative report are you
suppose to list everything
in detail of what took
place? (ie how big the
holes in the colon were?
how many staples used
to repair damage?)

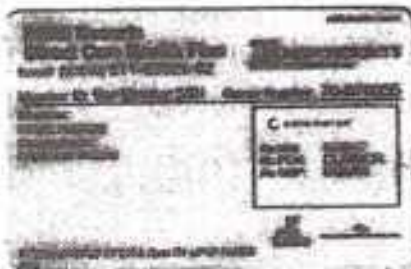
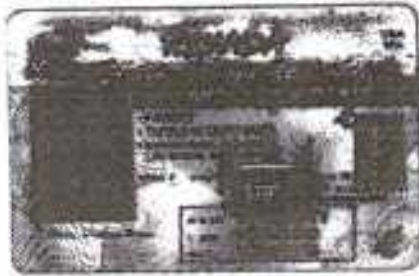


(Pen Show #455)

- if getting holes in the colon is a complication why wasn't the patient informed of so?, prior to the procedure? or was she?

- could you have removed the feces from the colon before ~~removing~~ closing the patient's holes to help prevent further complications?





Court's
Exhibit 13
0-21-19
A739464

PLT0008675

A-000020

IMPORTANT NOTE: All information on this form is confidential and must be completed for scheduling and pre-registration purposes.
Physician must complete and fax to: 8783
☐ Sierra Campus @ 782-416-5683 ☐ Rose de Lima Campus @ 782-416-4123 ☒ San Martin Campus @ 782-452-8484
☒ OR ☐ GILAB ☐ RADIOLOGY ☐ CARDIOLOGY ☐ CATH LAB/EP

Patient Legal LAST NAME: Farris FIRST: Tina DOB: [REDACTED] ☐ Male ☒ Female
PROCEDURE DATE/ START TIME: 08/07/2014 Am ☐ INPATIENT ☒ OUTPATIENT
CONSENT TO READ: excision of abdominal wall lipoma
CPT CODE: [REDACTED]
ANESTHESIA TYPE: general ANESTHESIA PROVIDER: PBS
OR Special Equipment Needs/ Vendor: [REDACTED]
Diagnosis and ICD-9 Code: abdominal wall 214.1 lipomatous mass of [REDACTED]
Diagnosis supporting additional pre-op work: [REDACTED]
PATIENT ADDRESS: [REDACTED]
PHONE: [REDACTED] ALTERNATE PHONE: [REDACTED]
EMPLOYER: [REDACTED] SSN: [REDACTED]
INSURED NAME: self PRIMARY INS: VMR INSURED SSN: [REDACTED]
GROUP #: [REDACTED] INS. SUBSCRIBER #: [REDACTED] AUTH#: [REDACTED]
SECONDARY INS: [REDACTED] INS. ID/ SUBSCRIBER #: [REDACTED]

TEST REQUIRED (Please check all that apply) *Pre-Admission testing and pre-registration are to be done 3 days (72 hours) prior to procedure.
* Test are subject to Medication Restrictions. Advanced Beneficiary notice may be required.

Laboratory: ☐ CBC * ☐ Hemogram ☐ BUN ☐ Type & Screen
☐ Chem Panel* ☐ Electrolytes ☐ Creatinine ☐ Type & Crossmatch # [REDACTED] Units: [REDACTED]
☐ PT * ☐ PTT * ☐ UA * ☐ MRSA nasal culture
☐ FTT * ☐ Glucose * ☒ Urine Pregnancy (required on females who began menses and have a uterus)

Radiation: ☐ Other ☐ Chest X-Ray* ☐ Other: [REDACTED]
Cardiovascular: ☐ EKG* ☐ PFT ☐ ASO ☐ OTHER: [REDACTED]

IV THERAPY: (PLEASE CHECK ALL THAT APPLY)
☐ Lactated Ringers [REDACTED] mL/hr ☐ Isolyte [REDACTED] mL/hr ☐ Normal Saline [REDACTED] mL/hr
Other IV Fluids: [REDACTED]

Recommended PROPHYLACTIC ANTIBIOTIC SELECTION / SCIP Initiatives (please check antibiotic ordered for IV pre-operative medication)
☐ Cardiothoracic / Vascular Surgery ☐ Hip or Knee Arthroplasty
☐ Cefazolin (Ancef) ☐ 1 gram (weight less than or equal 85 kg) ☐ 2 grams (weight greater than 85 kg) times one dose ☐ Other Dose: [REDACTED]
☐ Vancomycin 15 mg/kg times one dose
☐ Colorectal Surgery ☐ Urinary with Gynaecological Procedures ☐ Vaginal or Abdominal Hysterectomy:
Cefoxitin (Mefoxin) ☐ 1 gram (weight less than or equal 85 kg) ☐ 2 grams (weight greater than 85 kg) times one dose ☐ Other Dose: [REDACTED]
☐ Other Beta Lactam Allergy Choice: Clindamycin 400 mg times one dose and Levofloxacin 500 mg times one dose ☐ Other Dose: [REDACTED]
☒ Hair removal from surgical site with clippers (group) ☒ Chlorhexidine wipe to site (group)
☒ Patient to take Beta Blockers as prescribed at least 2 hours prior to procedure with sip of water.
☒ Blood Glucose check prior to procedure (Diabetic Patients Only)
☐ Sequential Compression Devices (SCD) ☐ Anti-Embolism Stockings
☐ Other Orders: [REDACTED]

PHYSICIAN SIGNATURE: Darryl J. Rives, MD PHYSICIAN NAME (PRINTED): Darryl J. Rives, MD DATE/ TIME: [REDACTED]

 **St. Rose Dominican Hospitals.**
A Dignity Health Member

PRE-PROCEDURE PRE-OPERATIVE ORDERS

STH (08/11)



ORDER#

PLTF008676

A-000021

TRANSMISSION VERIFICATION REPORT

TIME : 05/29/2015 09:27AM
NAME :
FAX :
TEL :
SER. # : UG3059K40001842

DATE, TIME
FAX NO. /NAME
DURATION
PAGE(S)
RESULT
MODE

05/29 09:27AM
7027326871
00:00:28
01
OK
STANDARD
ECH

Page 1 of 1

Laparoscopic Surgery of Nevada

8285 W Arby, Suite 290
Las Vegas, NV, 891132148
Tel: 702-263-9644 Fax: 702-270-4062

Order Form for
Barry Rives, MD (NPI:1295751352)
Provider Code:

General Surgery

Patient: Farris, Titina M

Order Date: 04/30/2015 01:45 PM
Today's 05/29/2015 08:16 AM

Primary Insurance Name: UMR MGM Resorts
Insurance Address: PO BOX 30541, Salt Lake City, UT, 84130
Subscriber Number: [REDACTED]
Insured Name: [REDACTED]

DIAGNOSTIC IMAGING:

Code	Diagnostic Name	Assessment(s)	Notes	Instructions
	CT SCAN : ABDOMEN & PELVIS (with IVY & oral contrast)	553.20, Ventral hernia NOS	Please schedule patient STAT!	

Electronically Signed By: Barry Rives, MD

Signature of Patient/Guardian

PLTF006877

A-000022

TRANSMISSION VERIFICATION REPORT

TIME 05/29/2015 01:55PM
NAME
FAX
TEL
SER. # U63889K40801842

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

05/29 01:55PM
7827326871
00:00:32
01
OK
STANDARD
ECM

Page 1 of 1

Laparoscopic Surgery of Nevada
8285 W Arby, Suite 390
Las Vegas, NV, 891332148
Tel: 702-263-9544 Fax: 702-270-4053

Order Form for
Barry Rivera, MD (NPI:1295751352)
Provider Code:

General Surgery

Patient: Parks, Titina M

Order Date: 04/30/2015 01:45 PM
Today: 05/29/2015 08:16 AM

Primary Insurance Name: UMR MGM Resorts
Insurance Address: PO BOX 30541, Salt Lake City, UT, 84130
Subscriber Number: [REDACTED]

DIAGNOSTIC IMAGING:

Code/Diagnostic Name	Assessment(s)	Notes	Instructions
CT SCAN : ABDOMEN & PELVIS (with IV & oral contrast)	S33.20, Ventral hernia NOS	Please schedule patient STAT!	

Electronically Signed By: Barry Rivera, MD

Signature of Patient/Guardian

PLT000678

A-000023

Laparoscopic Surgery of Nevada
 8285 W Arby, Suite 390
 Las Vegas, NV, 891132148
 Tel: 702-263-9644 Fax: 702-270-4062

Order Form for
 Barry Rives, MD (NPI:1295751352)
 Provider Code:

General Surgery

Patient: Farris, Tiona M

Order Date: 04/30/2015 01:45 PM
 Today: 05/29/2015 08:16 AM

Primary Insurance Name: UMR MGM Resorts
 Insurance Address: PO BOX 30541, Salt Lake City, UT, 84130
 Subscriber Number:

DIAGNOSTIC IMAGING:

Code/Diagnostic Name	Assessment(s)	Notes	Instructions
CT SCAN - ABDOMEN & PELVIS (with IVY & oral contrast)	S53.20, Ventral hernia NOS	Please schedule patient STAT!	

Electronically Signed By: Barry Rives, MD

Signature of Patient/Guardian

<https://nvri-vespp.eclinicalweb.com/mobiledoc/jsp/catalog/xml/Tab/printLabOrder.jsp?enc...> 5/29/2015

PLTF008679

A-000024

TRANSMISSION VERIFICATION REPORT

TIME : 06/25/2015 01:18PM
 NAME :
 FAX :
 TEL :
 SER. # : US3859K4801042

DATE, TIME
 FAX NO. / NAME
 DURATION
 PAGE(S)
 RESULT
 MODE

06/25 01:09PM
 16022945772
 00:00:26
 01
 OK
 STANDARD
 ECH

IMPORTANT NOTE: All information on this form is confidential and must be completed for scheduling and pre-registration purposes.
 Physicians must complete and fax to:

☐ Lima Campus @ 703-616-6003 ☐ Rose de Lima Campus @ 703-616-4333 ☒ San Martin Campus @ 703-616-4444
☒ OR ☐ GULAN ☐ RADIOLOGY ☐ RADIOLOGY ☐ CATH LAB @ 703-616-4444

Patient Legal LAST NAME: Farris FIRST: Tina DOB: 07/23/1975 ☐ Male ☒ Female
 PROCEDURE DATE/ START TIME: 07/23/2015 3rd case ☐ INPATIENT ☒ OUTPATIENT
 CONSENT TO READ: laparoscopic repair of incisional hernia w/mesh
 ANESTHESIA TYPE: General CPT CODE: 4357.21
 ANESTHESIA PROVIDER: ACI
 OR Special Equipment Name/ Vendor: ASZ.21
 Diagnosis and ICD-9 Codes: incarcerated incisional hernia Diagnosis supporting additional pre-op tests:

PATIENT ADDRESS: [REDACTED]
 PHONE: [REDACTED] ALTERNATE PHONE: [REDACTED]
 EMPLOYER: [REDACTED] SSN: [REDACTED]
 INSURED NAME: Bonrick Farris PRIMARY INS: UMR INSURED SSN: [REDACTED]
 GROUP #: [REDACTED] INS. SUBSCRIBER #: [REDACTED] AUTH: pending
 SECONDARY INS: [REDACTED] INS. ID/ SUBSCRIBER #: [REDACTED]

TEST REQUIRED (Please check all that apply) +Pre-Admission testing and pre-regISTRATION are to be done 3 days (72 hours) prior to procedure.
 * Tests are subject to Medicare Restrictions. Advanced Beneficiary notice may be required.
 Laboratory: ☐ CBC ☐ Hemogram ☐ BUN ☐ Type & Screen
☐ Chem Panel ☐ Electrolytes ☐ Creatinine ☐ Type & Crossmatch # Under
☐ PT ☐ PTT ☐ Platelets ☐ UA ☐ MRSA nasal culture
☐ PTT ☐ Glucose ☒ Urine Pregnancy (required on females who began menses and have a uterus)
 Ref: ☐ Other ☐ Chest X-Ray ☐ Other
 Cardiac: ☐ EKG ☐ PFT ☐ APO ☐ OTHER
 IV THERAPY: PLEASE CHECK ALL THAT APPLY:
☐ Lactated Ringers nil/hr ☐ Isolyte nil/hr ☐ Normal Saline nil/hr
 Other IV Fluid: [REDACTED]
 Recommended PROPHYLACTIC ANTIBIOTIC SELECTION / SCIP Initiative (please check antibiotic ordered for IV pre-operative medication)
☒ Cefazolin / Vancomycin Surgery ☐ Hip or Knee Arthroplasty
☒ Cefazolin (Apo) ☒ 1 gram (weight less than or equal 85 kg) ☐ 2 grams (weight greater than 85 kg) Give one dose ☐ Other Dose:
☐ Vancomycin 15 mg/kg (weight less than or equal 85 kg) Give one dose

A-000025

IMPORTANT NOTE: All information on this form is confidential and must be completed for scheduling and pre-operative purposes.
Physician must complete and fax to:

☐ Eliseo Campos @ 783-416-5693 ☐ Rose de Lima Campos @ 783-416-4333 ☒ San Martin Campos @ 409-460-0465
☒ OB ☐ GYN ☐ RADIOLOGY ☐ CARDIOLOGY ☐ CATH LAB/EP A 602-294-5772

Patient Legal LAST NAME: Farris FIRST: Titina DOB: [REDACTED] ☐ Male ☒ Female
PROCEDURE DATE/ START TIME: 07/03/2015 3:00 PM ☐ INPATIENT ☒ OUTPATIENT
CONSENT TO READ: laparoscopic repair of incisional hernia w/mesh
CPT CODE: [REDACTED]
ANESTHESIA TYPE: GA/IV ANESTHESIA PROVIDER: ACI
OR Special Equipment Needs/Ventilator: [REDACTED]
Diagnosis and ICD-9 Codes: unrepaired incisional hernia Diagnosis supporting additional pre-op tests: [REDACTED]

PATIENT ADDRESS: [REDACTED]
PHONE: [REDACTED] ALTERNATE PHONE: [REDACTED]
EMPLOYER: [REDACTED] SSN: [REDACTED]
INSURED NAME: Patrick Farris PRIMARY INS: UMR INSURED SSN: [REDACTED]
GROUP #: [REDACTED] INS. SUBSCRIBER #: [REDACTED] AUTHN: pending
SECONDARY INS: [REDACTED] INS. IDV SUBSCRIBER #: [REDACTED]

TEST REQUIRED (Please check all that apply) *Pre-Admission testing and pre-registration are to be done 3 days (72 hours) prior to procedure.*
* Tests are subject to Medicare Reimbursement. Advanced laboratory orders may be required.

Laboratory: ☐ CBC ☐ Metabolic ☐ BUN ☐ Type & Screen
☐ Chem Panel ☐ Electrolytes ☐ Creatinine ☐ Type & Crossmatch # [REDACTED] Units
☐ PT ☐ PTT ☐ UA ☐ MESA renal culture
☐ PT/PTT ☐ Glucose ☒ Urine Pregnancy (required on females who began menses and have a uterus)

Reflexes: ☐ Other ☐ Chest X-Ray* ☐ Other: [REDACTED]
Cardiovascular: ☐ EKG* ☐ PFT ☐ ABO ☐ OTHER: [REDACTED]

IV THERAPY: (PLEASE CHECK ALL THAT APPLY)
☐ Lactated Ringers [REDACTED] mL/hr ☐ Isolyte [REDACTED] mL/hr ☐ Normal Saline [REDACTED] mL/hr
Other IV Fluids: [REDACTED]

Recommended PROPHYLACTIC ANTIBIOTIC SELECTION / SCIP Initiative (Please check antibiotic ordered for IV pre-operative medication)
☐ Cefazolin / Vascular Surgery ☐ Hip or Knee Arthroplasty
☒ Cefazolin (Ancef) ☒ 1 gram (weight less than or equal 85 kg) ☐ 2 grams (weight greater than 85 kg) times one dose ☐ Other Dose: [REDACTED]
☐ Vancomycin 15 mg/kg times one dose
☐ Colorectal Surgery ☐ Urologic with Cystoscopy Procedures ☐ Vaginal or Abdominal Hysterectomy
☐ Cefoxitin (Mefloxin) ☐ 1 gram (weight less than or equal 85 kg) ☐ 2 grams (weight greater than 85 kg) times one dose ☐ Other Dose: [REDACTED]
☐ Other Beta Lactam Allergy Choice: Clindamycin 600 mg times one dose and Levofloxacin 500 mg times one dose ☐ Other Dose: [REDACTED]
☒ Hair removal from surgical site with clippers (preop) ☒ Chlorhexidine wipe to site (preop)
☒ Patient to take Beta Blocker as prescribed at least 2 hours prior to procedure with sips of water.
☒ Blood Glucose check prior to procedure (Diabetic Patients Only)
☒ Sequential Compression Devices (SCDs) ☐ Anti-Embolism Stockings
☐ Other Orders: [REDACTED]

PHYSICIAN SIGNATURE: Barry J. Rivers, MD PHYSICIAN NAME (PRINTED): Barry J. Rivers, MD DATE/TIME: 7/3/15 1:30 PM

 **St. Rose Dominican Hospitals**
A Dignity Health Member

PRE-PROCEDURE PRE-OPERATIVE ORDERS

STH (06/11)



PLTF000681

A-000026

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45. The forty-fifth part of the document is a list of names and dates.

Count's 14
Exhibit
10-21-19
1739464

(Crenshaw) #455

①

If you were able to see
that Mrs. Farris's condition
was worsening why wouldn't
you reach out to someone
else for a second opinion?

~~What if you were able to see
that Mrs. Farris's condition
was worsening why wouldn't
you reach out to someone
else for a second opinion?~~

② ~~with patients~~

with Mrs. Farris's white
blood cell count going up
why wouldn't you think
condition was worsening?

Courtesy
Exhibit
10-21-19
A739464

transcription #455

- If you and another doctor had two different medical opinions, why wouldn't you reach out to see who is correct, or come to some sort of resolution regarding your patient?

~~What if the doctor who was wrong was the one who was wrong? What if the doctor who was wrong was the one who was wrong? What if the doctor who was wrong was the one who was wrong? What if the doctor who was wrong was the one who was wrong? What if the doctor who was wrong was the one who was wrong?~~

- If Mrs. Farris's white blood cells were staying fairly consistent why did it take so long for you to realize there was ~~an~~ an issue?

[Faint, mostly illegible text from a document, possibly a legal or official record, spanning the majority of the page.]

Court's
 Exhibit 16
 10-21-19
 A239464

Reccord #9

Have you ever been found guilty of medical malpractice by a judge, jury or any medical committee? If so, please explain?

When did you first notify the medical team + Mrs. Ferris that you made 2 holes in her colon?

If you ^{or another doctor} had operated earlier to repair the holes is it probable that Mrs. Ferris would've recovered as fully as previously expected?

Knowing what you know now would you have operated or suggested that Mrs. Ferris ~~to~~ be operated on sooner?

Handwritten notes on lined paper, mostly illegible due to blurring. Faintly visible words include "Court's", "Exhibit", "0-21-19", and "A-3946".

Court's 17
Exhibit
0-21-19
A-3946

Dr. Reeves Q's
Reut 361

- Have you used that particular heated scalpel in similar surgeries to that of July 3, 2015? How many times? Were there similar complications?
- How often have you seen holes in the colon caused by tugging & pulling hernia mesh during surgery?
- Did you make Mrs. Forris aware of the possibility of creating holes in her colon before the surgery?

1

1. Name of the party: _____

2. Address: _____

3. City: _____

4. State: _____

5. Zip: _____

6. Date: _____

7. Signature: _____

8. Printed Name: _____

9. Title: _____

10. Organization: _____

11. Phone: _____

12. Fax: _____

13. E-mail: _____

14. Website: _____

15. Other: _____

Court 5 18
Exhibit
10-21-19
A739464

Have you ever taken
the advice of another
physician over your
own diagnosis of one of
your patients for treatment.

Collins #450

Root 361

Are there any
services / products
in her life care plan
that would benefit
progressing diabetic
symptoms? Which ones?

Courtis 19
Exhibit
10-22-19
A739464

#444 Fossil

Do these numbers reflect
for inflation?

Court's
Exhibit 20
p. 22-19
A239464

COURT'S 21
Exhibit
10-22-19
A739464

Research #9
① Many elderly people wouldn't be able to do many of these therapies (eg pool therapy) in their later years. Why do you calculate cost for their entire life expectancy?

② What portion of these cost will be covered by insurance, example Medicare Part B? Did you calculate all cost as private pay?

③ Would many people in their 80's need a wheelchair, scooter, hoist lift etc?

Peacock #9

Does the life care plan take into account the amounts that will actually be due vs. the charges? Hospital/Medical charges are typically much higher than what the patient will pay.

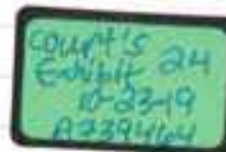
Does the life care plan take into account what is covered by Mrs. Ferns' insurance or ^{patient} will be covered by Medicare when she reaches that age?



Crenshaw #455

Q In order for Mrs. Farris's to be able to afford her life care plan she would need to invest her funds?

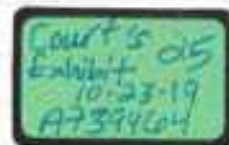
Q How can you know for sure that the funds that will be invested will cover her lifetime medical needs?



Crenshaw #455

In your expert opinion
was the third whole over-
looked or could it have opened
up after the surgery? /
time?

was the third whole
near the initial
two holes?



Reed 361

After the holes
were created &
identified, did
Dr. Reeves take the
appropriate action
to repair them?

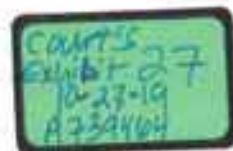
Would you say that
Dr. Reeves' post-op actions
were against the standards
of care?



What is the
temperature of the
ligature?

How thick is the
colon & lining?
inches / centimeters

BARRIOS
366



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author to the reader, explaining the purpose of the document.

The second part of the document is a list of the

main points of the document, which are as follows:

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County
Exhibit
18-23-19
#4344/04

Peacock #9

In your medical opinion,
how many days after
surgery could Dr Rives
have wanted to operate
& most likely avoided
her ongoing complications
or damage?

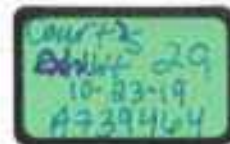
Eg. If he had operated
on the 5th would she
likely have had a
full recovery as
anticipated?

Without the advantage
of hindsight, what
date would you have
likely operated based
on the sepsis and
increased white
blood cell count?

Perlock #9

Have you ever been
sued in a medical
malpractice case?

If so, were you
found guilty or
negligent?



Badge # 944 Fessie

Where would a ligature be appropriate to be used on the body? In other words, what kind of tissue would a surgeon use a ligature on?

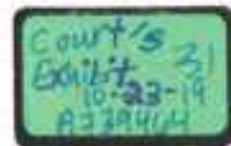
When ~~she~~ would you have Farris gone back to surgery when her appendix was not known, and the colon just had holes repaired?



Peacock #9.

If Dr Rives had
operated on 7/9
would that have
reduced the level of
injury to Mrs. Ferns?
Would she likely
still have foot drop?

~~Do you feel that by
using a ligasure,
Dr Rives increased
the risk of the
staples fracturing
and subsequent leakage?~~



Research #9

~~What is the medical~~
~~condition that caused~~
~~her foot drop?~~

Can CT scans
give false negative
results?



Peacock #9

Given what you know
now about Mrs. Fern's
complications, would you
have done anything
differently during or
after surgery if you
were the surgeon?
Please explain.



#444 Fossil

Was Mrs. Farris being treated
for the ~~the~~ pulmonary aspiration syndrome
between July 3rd and July 16th?

If she had pulmonary aspiration
syndrome after July 3rd, did anyone
fail to meet the standard patient
care for not diagnosing for it?
If so, who?

~~If pulmonary aspiration syndrome
was treated right away, could
Mrs. Farris recover quickly
and avoid necessary scabbing after
July 16th?~~



Crenshaw #465

- Is sepsis common
in the type of surgery
Mrs. Farris's had?

- Could infected mesh
cause sepsis?

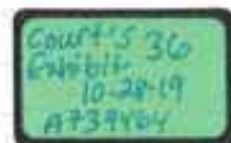
- How were you able
to diagnose a patient
without seeing any
imaging going only
based off records that
had no documentation
of your diagnoses?



How much is each
attorney on the plaintiff's
side making an hour
or for this entire case?

am only asking since
all Doctors have had
to disclose how much
they are making.
Only fair in my opinion.

Barrios
#366



Thomas 4/8

① Do tell what exactly
Does the standard of
care mean?

② How come your blaming
Mrs. Farris for not
healing ~~more~~ properly?

③



Peach #9

Prior to 7/15 could your
mom take care of your
son without help?

Now, can your Mom
take care of your
son without help?
Please describe.



Did your wife have
medical insurance
during the time of her
July hernia procedure?

If yes, what is the amount
~~of cost to you~~ for all
the surgery & rehab ~~costs~~

Collins # 450



Peacock #9

Is your estimated
interest rate on
investment guaranteed?

~~Peacock #9~~

Can the money be
taken out as needed
for expenses without
penalty?

Court 15
Exhibit 40
10-30-19
A29464

if a patient has
diabetic neuropathy
could they get a
drop foot overnight?

Collins #452

Court 5 41
Babbit
10-30-19
A739464

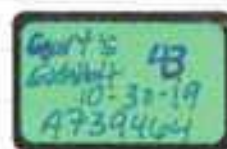
Grenshaw #455

⑩ Although, Mrs. Farris's
had symptoms of diabetic
neuropathy but never
went to specialist why
would you continue the
meds and diagnosis?



Root 361

I have a doctor's
app tomorrow at
10:30am, will I be
able to make it
to the app or should
I try to move it
to the afternoon?





Crenshaw #455

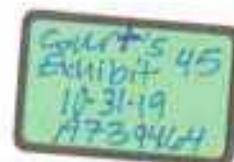
- ① Can a leak be missed on a CT scan?
- ② Prior to Mrs. Farris's surgery when did you expect her to go home?
- ③ If holes being made in colon was something to be expected was Mrs. Farris informed prior to surgery?
- ④ Although Mrs. Farris's had high white blood cell count but you ruled out sepsis what do you believe was the reason/cause?
- ⑤ When did Mrs. Farris's start having bowel movements? When did you expect first bowel movement to be?

#444 Feasible

Did Mrs. Farris eat between
July 5th to July 13th?

Is it normal for recovery if
there was no bowel movement
between July 5th to July 15th?

Can a bowel obstruction cause
a hole in the colon, or
contribute to ~~the~~ creating
a hole in the colon?



Peacock #9.

On 7/13 your notes
say "progressing as
expected" but she's
on a ventilator and
still no bowel movement
10 days Post Op.

Please explain
how this is "progressing
~~as expected~~ expected"



A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 07, 2019 08:30 AM All Pending Motions (10/07/2019)

HEARD BY: Kishner, Joanna S. COURTROOM: RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Barry Rives, M.D.	Defendant
Chad C. Couchot	Attorney for Defendant
Jacob G Leavitt	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Thomas J. Doyle	Attorney for Defendant

JOURNAL ENTRIES

Court addressed the matters on for today; and also addressed the supplemental pleadings filed October 4, 2019 by defense, and non-compliance issues. Mr. Jones requested Court not to consider the supplemental pleadings. Arguments by Mr. Doyle. Court stated findings; and determined the supplemental pleadings are rogue documents, and cannot be considered by the Court. COURT ORDERED, Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, 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 filed October 4, 2019, and Declaration of Thomas J. Doyle in Support of 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 filed October 4, 2019, are STRICKEN.

EVIDENTIARY HEARING...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

Defendant Barry Rives, M.D., sworn and testified. Counsel provided binders of documents to the Court during testimony. After testimony concluded, Court determined it had done what the parties had asked for, in regards to today's hearing. Court noted it will issue its ruling on October 10, 2019; and provided a short version of its analysis on the Motion for sanctions. COURT ORDERED, Motion CONTINUED to October 10, 2019, for remaining matters to be addressed, for sanction components to be discussed, and for Court's ruling to issue.

PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING

Printed Date: 10/15/2019

Page 1 of 2

Minutes Date:

October 07, 2019

Prepared by: Susan Botzenhart

TIME...CONTINUED HEARING FROM SEPTEMBER 26, 2019 RE: NON COMPLIANCE
(PER ORDER FILED SEPTEMBER 19, 2019)

COURT ORDERED, matters CONTINUED to October 10, 2019 at 1:30 P.M.

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 14, 2019 08:30 AM Jury Trial - Med Mal #1

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Barry Rives, M.D.	Defendant
George F. Hand	Attorney for Plaintiff
Jacob G Leavitt	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Patrick Farris	Plaintiff
Thomas J. Doyle	Attorney for Defendant
Titina Farris	Plaintiff

JOURNAL ENTRIES

Robert Eisenberg, present with defense counsel and seated in gallery.

Mr. Hand and Plaintiffs not present.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Discussions as to pre-trial matters, including voir dire procedures, number of peremptory challenges for each side, and parties agreeing to have two alternate jurors for this trial. Plaintiff's counsel objected to defense counsel having a juror consultant to assist at trial. Arguments by Mr. Doyle. Court provided the rules for juror consultants; and indicated each side can have individuals accurately identified seated in Court. Court TRAILED and RECALLED matter for the prospective jury panel to be lined up by Jury Services and brought up to Court. Mr. Hand present in Court with the Plaintiffs. Juror consultant Amy Hanegan, present at defense counsel's table with Mr. Doyle. Discussions as to proposed voir dire and proposed statement by counsel to the jury panel. Court's Exhibit ADMITTED (See Worksheets.).

PROSPECTIVE JURY PANEL PRESENT: Introductory statements by Court. Clerk called roll. **PROSPECTIVE JURY PANEL SWORN.** Voir Dire commenced. Introductory statements by counsel.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Juror excusals were addressed. Objections were made regarding defense counsel's three trial briefs filed October 14, 2019.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Additional juror excusals were

Printed Date: 10/16/2019

Page 1 of 2

Minutes Date:

October 14, 2019

Prepared by: Susan Botzenhart

addressed. At request of counsel, Court noted trial will start tomorrow at 1:00 p.m. Mr. Doyle presented an additional deposition to be provided to the Clerk for trial. Objections by Mr. Leavitt. Court noted counsel can let the Court tomorrow as to whether the name of the deponent was previously disclosed.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. Court admonished and excused the prospective jury panel for the evening to return to Court by 12:45 P.M.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Additional juror excusals were addressed. Parties were directed to arrive to Court tomorrow by 12:40 P.M.

Evening recess. TRIAL CONTINUES.

10/15/19 1:00 P.M. TRIAL BY JURY

A-16-739464-C Titina Farris, Plaintiff(s)
 vs.
 Barry Rives, M.D., Defendant(s)

October 15, 2019 01:00 PM Jury Trial - Med Mal #1

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Barry Rives, M.D.	Defendant
George F. Hand	Attorney for Plaintiff
Jacob G Leavitt	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Patrick Farris	Plaintiff
Thomas J. Doyle	Attorney for Defendant
Titina Farris	Plaintiff

JOURNAL ENTRIES

Robert Eisenberg, present with defense counsel and seated in gallery.

Juror consultant Amy Hanegan, present at defense counsel's table with Mr. Doyle.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Discussions as to missing jurors. Defense counsel requested Court to instruct the jurors not to consider anything with regards to various counsel arriving in and out of the courtroom at various times, throughout trial. Discussions as to unavailability of witness Mary Jayne Langan and records review. Objections were made by Plaintiff's counsel. Court stated it will revisit this.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Challenge for cause was addressed; and objections were placed on record. Court deferred ruling. Court addressed proposed jury instruction requirements. Court cautioned counsel not to make inaccurate statements in front of the jury panel. Objections were made by counsel regarding trial briefs submitted by defense counsel; and noted Plaintiff will have briefing prepared with an order shortening time for the Court.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

Evening recess. TRIAL CONTINUES.

10/16/19 9:30 A.M. TRIAL BY JURY

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 16, 2019 09:30 AM Jury Trial - Med Mal #1

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Barry Rives, M.D.	Defendant
George F. Hand	Attorney for Plaintiff
Jacob G Leavitt	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Thomas J. Doyle	Attorney for Defendant

JOURNAL ENTRIES

Robert Eisenberg, present with defense counsel and seated in gallery.

Juror consultant Amy Hanegan, present in Court.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Objections placed on record as to Mary Jane Langan testifying; which was sustained by Court. Court addressed the general rules regarding objections. Both sides gave a time estimate on their opening statements.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

Lunch recess until 1:15 p.m.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: No parties were present in Court as required at 1:21 p.m. Thereafter, parties arrived in the courtroom and were admonished by Court regarding timeliness. Parties confirmed on having completed their peremptory challenges during the lunch hour. Court reviewed peremptory challenges; and verified the names of remaining jurors for the seated jury panel. Discussions as to proposed curative pre-instruction to be read to the Jury by Court.

PROSPECTIVE JURY PANEL PRESENT: JURY SELECTED and SWORN by Clerk. Court instructed Jury.

OUTSIDE PRESENCE OF JURY: Tech checks were done in open Court. Further discussions as to language of the proposed curative pre-instruction. Objections were placed on record. Court stated findings.

JURY PRESENT: Court read pre-instruction to Jury. Court's Exhibit ADMITTED (See Worksheets.). Opening statements by counsel.

Printed Date: 10/23/2019

Page 1 of 2

Minutes Date:

October 16, 2019

Prepared by: Susan Botzenhart

Evening recess. TRIAL CONTINUES.

10/17/19 12:30 P.M. TRIAL BY JURY

A-16-739464-C Titina Farris, Plaintiff(s)
 vs.
 Barry Rives, M.D., Defendant(s)

October 17, 2019 12:30 PM Jury Trial - Med Mal #1

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Barry Rives, M.D.	Defendant
George F. Hand	Attorney for Plaintiff
Jacob G Leavitt	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Thomas J. Doyle	Attorney for Defendant

JOURNAL ENTRIES

OUTSIDE PRESENCE OF JURY: Colloquy as to witness line up and trial exhibits.

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). Court admonished and excused the Jury for the evening, to return tomorrow by 9:00 A.M.

OUTSIDE PRESENCE OF JURY: Plaintiff's counsel moved to strike Defendant's Answer. Arguments by counsel. Court deferred the Motion to a later date, to allow parties to talk to reach other about scheduling on having the Motion to strike addressed further.

Evening recess. TRIAL CONTINUES.

10/18/19 9:00 A.M. TRIAL BY JURY

Malpractice - Medical/Dental

COURT MINUTES

October 18, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 18, 2019 09:00 AM Jury Trial - Med Mal #1

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Jacobson, Alice

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Barry Rives, M.D.	Defendant
George F. Hand	Attorney for Plaintiff
Jacob G Leavitt	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Thomas J. Doyle	Attorney for Defendant

JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE JURY: Colloquy between the Court and counsel regarding Joint Jury Instructions, Interrogatories, and Verifications 18 and 19 to be used for impeachment purposes.

JURY PRESENT: Barry Rives sworn and testified.

OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding legal conclusion and relevance on ethics question.

JURY PRESENT: Michael Hurwitz sworn and testified.

OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding new opinions and failure to disclose timely. COURT ORDERED, GRANTED IN PART and DENIED IN PART.

JURY PRESENT: Further testimony by Michael Hurwitz. Court excused the jury for the evening.

OUTSIDE THE PRESENCE OF THE JURY: Court admonished Defense counsel for making statements regarding the transcript against the Court's directive and would consider a mistrial for his conduct.

Trial CONTINUED 10/21/19.

Printed Date: 10/29/2019

Page 1 of 1

Minutes Date:

October 18, 2019

Prepared by: Alice Jacobson