

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

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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 1
(Nos. 1–165)

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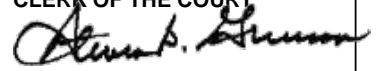
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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

TITINA FARRIS, PATRICK FARRIS,)

Plaintiffs,)

vs.)

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

Defendants.)

CASE NO.: A-16-739464

DEPT. NO.: XXXI

Transcript of Proceedings

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

TELEPHONIC CONFERENCE

MONDAY, JANUARY 7, 2019

APPEARANCES:

For the Plaintiffs: GEORGE F. HAND, ESQ.
(Via Telephone)

For the Defendants: AIMEE LEA CLARK NEWBERRY, ESQ.
(Via Telephone)

RECORDED BY: SANDRA HARRELL, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

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MONDAY, JANUARY 7, 2019 AT 9:31 A.M.

THE COURT: Okay. We're on the record in case 739464, *Farris versus Rives*. This is page 1 for today. Counsel, can I have appearances? First, plaintiffs' counsel and, then, defense counsel?

MR. HAND: For plaintiffs, George Hand, bar number 8483.

MS. CLARK NEWBERRY: And good morning. This is Aimee Clark Newberry, 11084, for Dr. Rives and Laparoscopic Surgery of Nevada, LLC.

THE COURT: Do appreciate. You all requested a telephonic when you all were -- back in December, we talked about some time frames and you all sent a letter that you wanted a different date. So, let's walk through what you want and whether it impacts any waiver issues.

So, what do you all want and what can the Court do?

MS. CLARK NEWBERRY: Well, we talked about possibly setting in January of 2020. If we could start there and see if we can make something work, that would be great.

THE COURT: And as much as I can identify your voice, our wonderful JAVS system does not --

MS. CLARK NEWBERRY: Yeah.

THE COURT: -- have voice recognitions.

1 MS. CLARK NEWBERRY: This is Aimee Clark -- the
2 last comment was just made --

3 THE COURT: Thanks.

4 MS. CLARK NEWBERRY: -- by Aimee Clark Newberry.

5 THE COURT: Do appreciate it.

6 Okay. You're thinking January 2020. Mr. Hand,
7 odes that meet your needs as well?

8 MR. HAND: It does.

9 THE COURT: Okay. Let me look at the date. Now,
10 this case, though, -- okay. One second. My system is
11 having some Monday morning fun. That presents two sets of
12 challenges. Okay. One, it sets -- it presents the med-mal
13 challenge. Okay. Is there going to be an express waiver
14 by defendants in writing?

15 MS. HAND: We could prepare that, if -- Aimee, --
16 this is George Hand. Would you agree to that? We could
17 just prepare something on that and --

18 MS. CLARK NEWBERRY: And, I'm sorry. Is that for
19 the three-year rule or the five-year rule?

20 MR. HAND: Three-year.

21 MS. CLARK NEWBERRY: The three-year rule. Yes.

22 THE COURT: Three.

23 MS. CLARK NEWBERRY: Yes.

24 MR. HAND: The five-year would be -- okay.

25 THE COURT: Yeah.

1 MS. CLARK NEWBERRY: Yes. That's fine. This is
2 Aimee Clark Newberry. Yes. We can prepare a written
3 stipulation regarding the three-year rule.

4 THE COURT: Okay. See, I also got an EDCR 1.90
5 issue because this is a -- it appears that -- now, once
6 again, I'm going to give you the dates that it shows on
7 Odyssey, but of course you all are responsible for checking
8 the accuracy of any dates with regards to any of your
9 cases, okay, but it appears that it may be July 1st, 2016,
10 which means if I put this to 2020, it also has an EDCR 1.90
11 issue which means that it's more than three years after the
12 case commenced. So, that presents an independent
13 challenge.

14 Do you really need 2020? I mean, is there any
15 reason it can't be fall of 2019?

16 MS. CLARK NEWBERRY: This is Aimee Clark Newberry.
17 The reason it should be 2020 as opposed to fall of 2019 is
18 we have a number of older cases, ones that are actually up
19 against five-year rules that we do anticipate going to
20 trial that make 2019 fall difficult.

21 We also have a number of depositions, is my
22 understanding, that need to be taken in this case and with
23 our respective trial calendars and the depositions that
24 need to be taken, I think 2020 -- early 2020 is probably
25 going to be the most reasonable estimate of when we could

1 be ready to go to trial.

2 THE COURT: Because what I see -- as you all know,
3 you all went to sweeps on August 8th, 2018 and on August 8th,
4 2018, the reason why this case got reassigned to this
5 department is you all wanted the March 18, 2019 trial date.
6 You understand that? So that's why it got assigned to this
7 department.

8 MR. HAND: Right.

9 THE COURT: And then to put it off to January 2020
10 is just a little bit too ambitious because the EDCR 1.90
11 issue. I mean, I can see pushing it as late as August
12 2019, maybe -- because if I'm pushing it more than six
13 months after it was to be set based on sweeps really just -
14 - on trial calendars, you know, that does not -- you know,
15 that old adage, attorneys take on the cases that they can
16 take on. Just presents a real challenge for the Court to
17 be able to do that. You know, just --

18 MR. HAND: Aimee, are you open in August of '19?

19 MS. CLARK NEWBERRY: The problem with August of
20 '19 is that Dr. Rives and our office, we've just reset
21 trial in the *Brown versus Rives* case --

22 MR. HAND: Oh.

23 MS. CLARK NEWBERRY: -- starting August 5th and we
24 do expect that to go. That's going to take 10 days. So
25 the problem with August, even if we did later in August,

1 which we're unavailable for, is Dr. Rives then being out of
2 his practice for more than a month, appearing for trial.

3 THE COURT: Well, that's the unfortunate thing --
4 okay. I mean, I've set -- September stack is the latest I
5 can give you. I can give you the September 9th stack,
6 somewhere in that stack. Let me see what I've got on my
7 September stack. I can't push it to January. That's just
8 -- with a 2000 -- you know, with an express waiver, I can
9 push you to the September stack. I can't push you all the
10 way to January. It's just --

11 MS. CLARK NEWBERRY: What about some time in
12 November of 2019? Our November is fairly open.

13 THE COURT: Let me look one second. Now, I'm
14 booked with some other med-mals. No that bumps up against
15 my October CD stack. September is the latest I can put
16 you. I mean, I can give you the -- how long do you
17 anticipate this case is going to be?

18 MR. HAND: Seven to 10 days or 10 days.

19 THE COURT: Seven --

20 MS. CLARK NEWBERRY: Ten days.

21 THE COURT: Ten days. I can put you -- hold on
22 one second. October -- we're not off for Columbus Day, are
23 we? All right. Okay.

24 Looks like where I can put you is I can put you
25 October 14th, it looks like where I can put you. That's the

1 latest date I can put you. To kind of blend with your two
2 different things, I can put you October 14th. It kind of
3 blends between your November and it puts you back from your
4 August date that you want. That puts you at the beginning
5 of my CD stack, so I can put you right before my CD case.

6 MR. HAND: Okay.

7 MS. CLARK NEWBERRY: I mean, October 14th is a
8 trial conflict for us. We have a case -- a 15-day trial
9 that starts the October 14th in Washoe County.

10 THE COURT: Is it older than this case?

11 MS. CLARK NEWBERRY: I do not know the answer to
12 that. It's not my case, but I can find out.

13 THE COURT: Well, I can put you back in September.
14 I mean, like I said, I was trying to accommodate your --

15 MS. CLARK NEWBERRY: Would you like me to call my
16 office and find out whether that case is older?

17 THE COURT: Sure. I can do that or I can put you
18 -- let's see. Where else can I put you? Hold on a second.

19 Yeah. Because who is going to be trial -- are you
20 going to be trial counsel on both of those cases?

21 MS. CLARK NEWBERRY: I am not trial counsel. Mr.
22 Doyle is trial counsel.

23 THE COURT: On both cases?

24 MS. CLARK NEWBERRY: This is his calendar.

25 THE COURT: Oh, sorry. He's trial counsel on both

1 cases?

2 MS. CLARK NEWBERRY: Yes. Mr. Doyle is trial
3 counsel on both cases.

4 THE COURT: Okay. Do you want to pause for a
5 quick second? I mean, I can put -- October 14th is about
6 the latest -- you said seven to 10 days. Wait a second. I
7 got all the way to November -- why don't you put us on hold
8 for a quick second, check what is trial calendar is,
9 because -- see when that other case is -- you said that
10 other case is 15 days?

11 MS. CLARK NEWBERRY: I have a 15-day trial
12 starting on October 14 in Washoe County. I also have a 10-
13 day trial in another case starting on September 9th, which
14 is when I understand that other stack starts. So, you
15 know, neither is desirable for me, but perhaps some things
16 going on in one I don't appreciate. I can either call my
17 office right now or if those are our only two choices, I
18 can talk to my office and send a letter to the Court, if
19 that would be easier --

20 THE COURT: Well, why don't -- I can put it on
21 hold. The other date I can do is I can do September 18th,
22 you can start on a Wednesday, and that goes to September
23 27th, if that meets your needs.

24 MS. CLARK NEWBERRY: So, 9/9, 9/18.

25 THE COURT: Counsel for plaintiff, will that other

1 date work for you, September 18th to the 27th?

2 MR. HAND: Yeah. Yeah.

3 MS. CLARK NEWBERRY: Okay. I'm sorry. I will --
4 let me call my office if you don't mind holding for a
5 moment and then I can have a --

6 THE COURT: Sure.

7 MS. CLARK NEWBERRY: -- definitive answer.

8 THE COURT: Of course.

9 MS. CLARK NEWBERRY: Thank you. Okay. Thank you.

10 [Pause in proceedings]

11 MS. CLARK NEWBERRY: Hello. This is Aimee Clark
12 Newberry joining -- rejoining the call. Are you guys still
13 there?

14 MR. HAND: Yeah.

15 THE COURT: The Court is still here. Yes.

16 MS. CLARK NEWBERRY: Okay. Great. Thank you.

17 I spoke with my office and, despite the fact that
18 we do have conflicting trial dates with September 9th,
19 September 18th, and October 14th, if we could set it -- the
20 October 14th date, I guess, would be the best option, though
21 we -- because trial counsel does have a trial conflict for
22 that.

23 THE COURT: Is the other one older? You said --
24 is that a Nevada case? You said it was Washoe County.
25 Right?

1 MS. CLARK NEWBERRY: It is a Washoe County case.

2 THE COURT: And is it older or newer than this
3 case?

4 MS. CLARK NEWBERRY: I am waiting for my office to
5 let me know that, I just wanted to get back on and try to -
6 -

7 THE COURT: Sure. No worries.

8 MS. CLARK NEWBERRY: -- keep this call going.

9 THE COURT: Is it a firm med-mal under the
10 statute?

11 MS. CLARK NEWBERRY: It is a firm med-mal, yes.
12 In Reno.

13 THE COURT: Okay. Because if it's a firm med-mal
14 in an older case, then I'd want to of course be -- I'm
15 trying to see. And that has been set as a firm?

16 MS. CLARK NEWBERRY: Yes.

17 THE COURT: It's not a stack. It's a firm date,
18 firm date?

19 MS. CLARK NEWBERRY: It's a firm date. Yes.

20 THE COURT: So the only other thing I may
21 potentially do, but you said that may not meet your needs,
22 you said two weeks -- I mean, the only thing I can do is
23 have you pick a jury on November 1st. We'd have to be dark
24 on Veteran's Day, the 11th, and -- hold on a second. The
25 1st, and then be done by the 15th and I'd tell you that one

1 of those days in there, that week of Veteran's Day, would
2 likely have to be not in trial a half-day because it's
3 going to be CD sweeps. We just don't know which half-day
4 is going to be CD sweeps of that week yet. I don't know if
5 it's going to -- it's likely to be the 12th or the 13th. I
6 just don't know which -- or 14th, I should say. Usually
7 sweeps is sometime that week, we just haven't picked it
8 yet. So a half-day we'd be dark because I have to do
9 sweeps. So if we picked a jury on the 1st, that would still
10 give you the time you all needed to do and then still be
11 off on Veteran's Day, which is a dark day for the courts.

12 MS. CLARK NEWBERRY: Well, our office is -- has
13 multiple trial conflicts of trials starting 10/28. So,
14 November 1st meets our needs less than --

15 THE COURT: Oh, okay. I thought you said --

16 MS. CLARK NEWBERRY: -- October 14th.

17 THE COURT: Okay. I thought you said November.

18 MS. CLARK NEWBERRY: Thank you for the option
19 though.

20 THE COURT: Okay. I'm sorry. I thought you said
21 November was good for you. That's the only other time I
22 have because -- okay. So, then, it looks like October 14th.

23 Okay. So, then, at the October 14th, subject to
24 you all -- now I clicked back. I've got to go to a
25 different screen. One sec. So, October 14th, yes. So,

1 subject to you all providing me -- I'm not going to vacate
2 it today because I need that written step on the med-mal
3 three-year rule. Okay? Because October 14th is going to be
4 after your July 1st, three-year rule date. Okay?

5 MS. CLARK NEWBERRY: Yes.

6 THE COURT: So, when you give us the stip that
7 says October 14th, 2016 [sic] -- now is your stip going to
8 say -- when's your three-year rule waiver going to be good
9 to?

10 MR. HAND: I think the Complaint was filed on --
11 oh, okay. All right.

12 THE COURT: What I am saying is it going to be to
13 -- because first witness on the stand, folks. That's why I
14 am asking. Are you all going to agree to the anticipated
15 end of trial date so that if you get pushed -- you know
16 what I mean? You get pushed back a day or so you won't --
17 I assume jury selection is only going to take a day.
18 Traditionally, in these type of cases, I mean, past
19 experiences --

20 MS. CLARK NEWBERRY: I mean, we can fashion
21 something that's reasonable and [indiscernible] for court
22 issues. I mean, typically I'll do it until the end -- you
23 know, probably say until the end of the October or
24 something like that.

25 THE COURT: Okay.

1 MS. CLARK NEWBERRY: You know, or something that
2 gives us a, you know, wiggle room for life's unexpected
3 issues.

4 THE COURT: Okay. Okay. So, and then I
5 anticipate that you can get us the stip by the end of the
6 week. Is that correct?

7 MS. CLARK NEWBERRY: Yes. We can do that.

8 THE COURT: Okay.

9 MR. HAND: Yeah.

10 THE COURT: So what we're going to do is we're
11 going to have the Clerk put for today's minutes, that
12 provided that the parties provide us a stipulation that has
13 a waiver of the med-mal three-year rule, then the Court is
14 going to continue the trial date of March 18th, 2019 to a
15 firm trial date of October 14th, 2019 and then you would get
16 your calendar call the week before, which would be October
17 8th, 2019, which means I'm going to have to create a
18 pretrial conference date of September 12th, 2019. Your
19 pretrial conference time will be 10:15. Okay? You -- I'm
20 going to give you a new status check date that's going to
21 be with that new trial date and it's just going to be out
22 of your new trial order. My JEA will put an appropriate
23 status check date. Okay? Just since --

24 MS. CLARK NEWBERRY: And what time for the
25 calendar call?

1 THE COURT: Calendar calls are 9 a.m. Pretrial
2 conference is at --

3 MS. CLARK NEWBERRY: Thank you.

4 THE COURT: Pretrial conferences will be at 10:15.
5 This will be on your new trial order.

6 Now, I did not see in the request -- everything is
7 closed, correct? Or are you -- just one moment. Let me
8 look at your stipulation. One second, please. Your fifth
9 stipulation to extend discovery deadlines had -- is the one
10 that's the operative one and that shows that your -- that's
11 the operative one, your fifth stipulation, correct? So all
12 dates are pursuant to your fifth stipulation

13 ?

14 MR. HAND: Right.

15 THE COURT: Which is dated -- it was
16 electronically filed on November 30th, 2018. Correct?

17 MR. HAND: Correct.

18 MS. CLARK NEWBERRY: Yes.

19 THE COURT: Okay. So, motions in limine date, are
20 motions in limine pursuant to the prior trial date or do
21 you wish them to be -- because they're not specifically set
22 out in your fifth stipulation. Are they --

23 MS. CLARK NEWBERRY: This is Aimee Clark Newberry.
24 I'd like them to be tied to the new trial date to allow for
25 a number of issues in the case.

1 THE COURT: Does that work for you, plaintiffs'
2 counsel?

3 MR. HAND: Yes, Judge.

4 THE COURT: Okay. So then that's eight weeks from
5 the new trial date, so that would be eight weeks before the
6 October date that they would need to be filed. Okay? And
7 then these dates -- so I'm not vacating any dates until we
8 get the stip signed, filed and notice of entry thereof, and
9 then you'll have all this taken care of.

10 Is that all that the parties need or is there
11 anything else the Court can assist the parties with?

12 MR. HAND: No. I think that's it.

13 MS. CLARK NEWBERRY: Mr. Hand, are you -- do you
14 want our office to prepare the stipulation or can you
15 prepare the stipulation?

16 MR. HAND: If you can prepare it, that's fine.
17 And if you e-mail it to me, I'll sign it --

18 MS. CLARK NEWBERRY: Yes. That's fine.

19 MR. HAND: -- and get it over to you.

20 MS. CLARK NEWBERRY: Great. That's fine.

21 THE COURT: Okay. Well, perfect. Hope everyone
22 had a nice holiday and everyone had a very nice New Year
23 and if there's nothing else the Court --

24 MR. HAND: Thank you.

25 THE COURT: -- can do for the parties, then we'll

1 wish you a nice rest of your day and week.

2 MR. HAND: Okay.

3 MS. CLARK NEWBERRY: Thank you.

4 MR. HAND: Thank you very much.

5 THE COURT: Thank you so very much.

6 MR. HAND: All right. Bye.

7 THE COURT: Bye-bye.

8

9 PROCEEDING CONCLUDED AT 9:52 A.M.

10 * * * * *

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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

9/25/19
9:30am

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

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

HEARING DATE REQUESTED

*To Be Heard Before the Discovery
Commissioner*

**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' REBUTTAL WITNESSES SARAH
LARSEN, R.N., BRUCE ADORNATO, M.D. AND SCOTT KUSH, M.D., AND TO LIMIT
THE TESTIMONY OF LANCE STONE, D.O. AND KIMERLICH, M.D., FOR GIVING
IMPROPER "REBUTTAL" OPINIONS, ON ORDER SHORTENING TIME**

COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their
attorney of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices
of BIGHORN LAW and GEORGE F. HAND, ESQ., with the Law Offices of HAND &

1 SULLIVAN, LLC, and hereby submit this Motion to Strike and Limit Defendants' Rebuttal Experts
2 on Order Shortening Time ("Motion").

3 This Motion is made and based upon all of the pleadings and papers on file herein and the
4 attached Memorandum of Points and Authorities.

5 DATED this 16th day of September, 2019.

6 BIGHORN LAW

7 By: /s/ Kimball Jones

8 KIMBALL JONES, ESQ.

9 Nevada Bar.: 12982

JACOB G. LEAVITT, ESQ.

10 Nevada Bar No.: 12608

11 716 S. Jones Blvd.

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12 GEORGE F. HAND, ESQ.

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14 3442 N. Buffalo Drive

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15 *Attorneys for Plaintiffs*

NOTICE OF MOTION ON ORDER SHORTENING TIME

TO: ALL INTERESTED PARTIES, AND THEIR ATTORNEYS OF RECORD

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS
HEREBY ORDERED that the foregoing MOTION shall be heard on the 25th day of
September, 2019 at the hour of 9:30 a.m.

DATED this 18th day of September, 2019.


DISCOVERY COMMISSIONER

Respectfully submitted by:

BIGHORN LAW

By: /s/ Kimball Jones

KIMBALL JONES, ESQ.

Nevada Bar.: 12982

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Attorneys for Plaintiffs

**AFFIDAVIT OF KIMBALL JONES, ESQ. IN COMPLIANCE WITH EDCR 2.34 AND IN
SUPPORT OF PLAINTIFF'S MOTION ON ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

KIMBALL JONES, ESQ., being first duly sworn, under oath deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and an attorney with the Law Offices of BIGHORN LAW.
2. I am personally familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.
3. That the reason this Motion must be heard on an Order Shortening Time is because discovery is closed in this matter and trial is imminent.
4. That on September 11, 2019, I met with Defense Counsel and spoke with him about my concerns as to Defendant's improperly called rebuttal experts, as well as to the testimony of rebuttal experts which veered into purely initial expert territory, dealing with issues of causation and standard of care opinions.
5. That Defense Counsel refused to stipulate to not call the witnesses and otherwise limit their testimony.
6. As trial is beginning October 14, 2019, and as discovery is closed, it is imperative that this issue be heard prior to trial. As such, Order Shortening Time is warranted.

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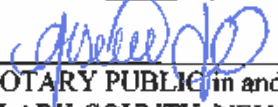
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1 7. This Affidavit is made in good faith, and not for the purposes of delay.

2 FURTHER YOUR AFFIANT SAYETH NAUGHT.

3
4 
KIMBALL JONES, ESQ.

5 SUBSCRIBED AND SWORN to before
6 me on this 11th day of September, 2019.

7 
8 NOTARY PUBLIC in and for
CLARK COUNTY, NEVADA



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF RELEVANT FACTS

3 Plaintiff Titina Farris was a patient of Defendant Rives. Rives, while performing surgery on
4 Plaintiff, negligently cut her colon in at least two (2), and possibly three (3), places. Thereafter, Rives
5 failed to adequately repair the colon and/or sanitize the abdominal cavity. With feces actively in her
6 abdomen, Plaintiff predictably went into septic shock and was transferred to the ICU. Nevertheless,
7 Rives still failed to recommend any surgery to repair the punctured colon for eleven (11) days, during
8 which time Plaintiff's organs began shutting down and her extremities suffered permanent
9 impairment. Ultimately, Plaintiff developed critical care neuropathy, destroying all nerve function in
10 her lower legs and feet, commonly referred to as bilateral drop foot.
11

12
13 On December 19, 2018, Defendants disclosed eight (8) Rebuttal experts: Dr. Bart Carter, Dr.
14 Brian Juell, Dr. Lance Stone, Nurse Sarah Larsen, Dr. Bruce Adornato, Dr. Kim Erlich, Dr. Scott
15 Kush, and Erik Volk. See Rebuttal Expert Disclosure, attached hereto as Exhibit "1."

16 Defendants noted that Larsen, Adornato, and Kush are all "rebuttal witnesses and that their
17 reports are being produced to "rebut" a report from Plaintiffs' initial experts:
18

19 Ms. Larsen is an life care planner. Ms. Larsen is a rebuttal witness. She will provide
20 opinions rebutting the opinions of plaintiffs' expert, Dawn Cook.
See Id. at Page 3:1-3.

21 Dr. Adornato is a neurologist. Dr. Adornato is a rebuttal witness. He will provide
22 opinions rebutting the opinions of plaintiffs' expert, Dr. Justin Willer.
See Id. at Page 3:7-8.

23 Dr. Kush is a life expectancy expert. Dr. Kush is a rebuttal witness. He will provide
24 opinions rebutting the opinions of plaintiffs' expert, Dr. Alex Barchuk, as they pertain
25 to life expectancy.
See Id. at Page 3:19-21.

26 However, despite the description which Defendants provided to these three (3) witnesses, they
27 are not, in fact, rebuttal witnesses. All three (3) of these reports are, in fact, Initial reports masquerading
28 as Rebuttal reports.

1 The reports from Larsen and Kush never once addressed the reports they claim to be rebutting.
2 Larsen's report notes, "Pursuant to your request, I have prepared a Life Care Plan Report in connection
3 with the above entitled matter based on my review of the expert reports, depositions and medical
4 records provided, and upon the recommendations of Lance Stone, M.D. The life Care Plan Report has
5 been prepared in accordance with Federal Rules of Civil Procedure- Rule 26 and is attached." See
6 *Larsen Report*, attached hereto as Exhibit "2."

8 Kush's report notes, "My analyses and opinion of Ms. Titina Farris' life expectancy is based
9 on (1) a review of the materials provided including her medical records, a report, depositions, and other
10 documents, (2) a review of a relevant body of medical and scientific literature, (3) the standard
11 scientific methods for calculating life expectancy, (4) my education, training, experience and
12 expertise." See *Kush Report*, attached hereto as Exhibit "3."

14 These reports, as will be more fully outlined below, not only fail to address Plaintiffs' experts'
15 reports, but they are entirely created to combat long-known aspects of Plaintiffs' case in chief. These
16 are initial expert reports, disclosed after the deadline and after Plaintiffs' chance to rebut these claims
17 had passed.

19 This same issue is inherent in Dr. Bruce Adornato's report. Adornato at least as the decency to
20 name-drop Dr. Willer—who he is supposedly rebutting—yet, Adornato's report is nothing but initial
21 expert opinions, which are addressing the long-known aspects of Plaintiffs' case-in-chief. See
22 *Adornato Report*, attached hereto as Exhibit "4." As such, Defendants' "Rebuttal" experts, Adornato,
23 Larsen, and Kush are properly Stricken from Trial.

25 Other named witnesses: Carter, Juell, Stone and Erlich, all delve into standard of care opinions
26 or causation opinions. Neither is appropriate from a "Rebuttal" witness. As such, these aspects of their
27 testimony are properly limited.

28 ///

1 **II. LEGAL ARGUMENT AND ANALYSIS**

2 Rebuttal evidence is “intended solely to contradict or rebut evidence on the same subject
3 matter identified by another party.” *NRCP 16.1(a)(2)(C)(ii)*. For this reason, rebuttal witnesses are
4 disclosed after initial witness disclosures. *Id.* This later disclosure deadline does not apply to any
5 party’s witness whose purpose is to contradict a portion of another party’s case in chief that should
6 have been expected and anticipated by the disclosing party, or to present any opinions outside
7 of the scope of another party’s disclosure. *Id.* (emphasis added).

8
9 Nevada’s Federal Courts have repeatedly made persuasive decisions on the propriety of
10 utilizing rebuttal experts to present new theories. These courts have declared that rebuttal expert
11 reports are not the proper venue for presenting new arguments. Instead, rebuttal expert opinions should
12 only address new, unforeseen issues upon which the opposing party’s initial experts have opined.
13 *Nunez v. Harper*, 2014 WL 979933, *1 (D. Nev. Mar. 11, 2014) (citing *R&O Constr. Co.*, 2011 WL
14 2923703 at *2). “If the purpose of expert testimony is to contradict an expected and anticipated portion
15 of the other party’s case-in-chief, then the witness is not a rebuttal witness or anything analogous to
16 one.” *Id.* Presenting a new, alternative theory of causation is not a rebuttal opinion; rather, it is an
17 expected and anticipated portion of a party’s case-in-chief. *See Amos v. Makita U.S.A., Inc.*, 2011 WL
18 43092, *2 (D. Nev. Jan. 6, 2011).

19
20
21 Finally, a party cannot abuse the rebuttal date and use it as “an extension of the deadline by
22 which a party must deliver the lion’s share of its expert information.” *Amos*, 2011 WL 43092 at *2
23 (citing *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 571 (5th Cir. 1996).

24 In *R&O Constr. Co. v. Rox Pro Int’l Group, Ltd.*, 2011 U.S. Dist. LEXIS 78032 (D. Nev. July
25 18, 2011) the District Court of Nevada addressed a similar situation to that in the case at bar in which
26 an expert who was offered by the defense to address an expected and anticipated portion of the
27 plaintiff’s case in chief was improperly disclosed as a rebuttal expert.
28

1 The court explained that:

2 Fed. R. Civ. P. 26(a)(2)(C)(ii) permits the admission of rebuttal expert testimony that is
3 "intended solely to contradict or rebut evidence on the same subject matter identified"
4 by an initial expert witness. *TC Sys. Inc. v. Town of Colonie, NY*, 213 F.Supp.2d 171,
5 179 (N.D.N.Y. 2002). Rebuttal expert reports "necessitate 'a showing of facts supporting
6 the opposite conclusion' of those at which the opposing party's experts arrived in their
7 responsive reports." *Bone Care Int'l, LLC v. Peniech Pharmaceuticals, Inc.*, 2010 U.S.
8 Dist. LEXIS 104549, 2010 WL 389444 (N.D. Ill. Sep. 30, 2010) (quoting *ABB Air*
9 *Preheater, Inc. v. Regenerative Environmental Equip., Inc.*, 167 F.R.D. 668, 669 (D.N.J.
10 1996). Rebuttal expert reports are proper if they contradict or rebut the subject matter of
11 the affirmative expert report. *Lindner v. Meadow Gold Dairies, Inc.*, 249 F.R.D. 625,
12 636 (D. Haw. 2008). They are not, however, the proper place for presenting new
13 arguments. *1-800 Contacts, Inc. v. Lens.com, Inc.*, 755 F.Supp.2d 1151, 1167 (D. Utah
14 2010); see *LaFlamme v. Safeway, Inc.*, 2010 U.S. Dist. LEXIS 98815, 2010 WL
15 3522378 (D. Nev. Sep. 2, 2010); cf. *Marmo v. Tyson Fresh Meats*, 457 F.3d 748, 759
16 (8th Cir. 2006) ("The function of rebuttal testimony is to explain, repel, counteract or
17 disprove evidence of the adverse party.") (citation omitted). **"If the purpose of expert
18 testimony is to 'contradict an expected and anticipated portion of the other party's
19 case-in-chief, then the witness is not a rebuttal witness or anything analogous to
20 one'"** *Amos v. Makita U.S.A.*, 2011 WL 43092 at *2 (D. Nev. Jan. 6, 2011) (quoting *In*
21 *re Apex Oil Co.*, 958 F.2d 243, 245 (8th Cir. 1992)); see also *Morgan v. Commercial*
22 *Union Assur. Cos.*, 606 F.2d 554, 556 (5th Cir. 1979); *LaFlamme*, 2010 U.S. Dist.
23 LEXIS 98815, 2010 WL 3522378 at *3. Rather, rebuttal expert testimony **"is limited
24 to 'new unforeseen facts brought out in the other side's case.'" In re President's**
25 ***Casinos, Inc.*, 2007 Bankr. LEXIS 4804, 2007 WL 7232932 at * 2 (E.D. Mo. May 16,**
26 **2007) (quoting *Cates v. Sears, Roebuck & Co.*, 928 F.2d 679, 685 (5th Cir. 1991)).**
27 **(Emphasis added).**

18 The bright line authority in this jurisdiction is that rebuttal expert testimony "is limited to 'new
19 unforeseen facts brought out in the other side's case.'" In this case it is undisputed that the causation
20 of Plaintiffs' injuries and the future care they would require were anticipated parts of their case in
21 chief and therefore any experts designated by the Defendants regarding the Plaintiffs' loss of earnings,
22 should have been designated by the Initial Expert Disclosure Deadline.

24 The court in *R&O Constr. Co. v. Rox Pro Int'l Group, Ltd.*, 2011 U.S. Dist. LEXIS 78032 (D.
25 Nev. July 18, 2011) explained that because the "rebuttal experts" in that case were not true rebuttal
26 experts they were improperly disclosed. The court explained:

27 While both McMullin's and Hoff's reports address the same general subject matter of
28 the case, Hoff's report does not directly address the findings, i.e. "the same subject
matter," of McMullin's report. Therefore it is not a rebuttal expert report within the

1 meaning of Rule 26(a)(2)(C)(ii). See *Vu v. McNeil-PPC, Inc.*, 2010 U.S. Dist. LEXIS
2 53639, 2010 WL 2179882 at *3 (C.D. Cal. May 7, 2010) (finding that such a broad
3 meaning would all but nullify the distinction between an initial “affirmative expert” and
4 a “rebuttal expert.”); see *International Business Machines Corp. v. Fasco Indus., Inc.*,
5 1995 U.S. Dist. LEXIS 22533, 1995 WL 115421 (N.D. Cal. Mar.15, 1995) (“rebuttal
6 experts cannot put forth their own theories; they must restrict their testimony to
7 attacking the theories offered by the adversary’s experts.”). McMullin’s report offers
8 opinions and conclusions regarding the structural insufficiency of the design for the
9 installation of a stone veneer on the project, the requirement that the stone veneer
10 installation be accomplished with an anchored system and the resulting irrelevance of
11 the bond between stone and mortar, and R&O’s role in bringing potential design
12 deficiencies to the attention of WD Partners. By comparison, Hoff’s report details
13 theories regarding the failure of the stone and mortar, and makes observations regarding
14 the “responsibilities” of the various players — general contractor/subcontractor and
15 architect — with regard to installation. **The report’s findings do not speak to “new
16 unforeseen facts” brought out in McMullin’s report, see *In re President’s Casinos,***
17 ***Inc.*, 2007 Bankr. LEXIS 4804, 2007 WL 7232932 at * 2; rather, they set forth an**
18 **alternate theory, viz., that the stone failure is related to installation and mortar errors.**
19 **Although causation may be demonstrated in various ways, “simply because one method**
20 **fails, the other does not become “rebuttal.” See *Morgan v. Commercial Union Assur.***
21 ***Cos.*, 606 F.2d at 555. Nor is a rebuttal expert report the proper place for presenting new**
22 **arguments. *1-800 Contacts, Inc. v. Lens.com, Inc.*, 755 F.Supp.2d at 1167.**
23 **(Emphasis added).**

15 Because the report is not a rebuttal report, it is untimely and must be stricken unless
16 Real Stone can show that the untimely disclosure was substantially justified or harmless.
17 See *Rule 37(c)(1)*. Here, Real Stone’s late disclosure is not substantially justified.
18 Notably, it had named Hoff as an expert and provided his curricula vitae within the time
19 limit set for the disclosure of initial experts, but it did not produce a report. Despite the
20 relevant inspections having been performed on February 11 and 16, 2009, prior to the
21 filing of the lawsuit, Real Stone does not justify its failure to timely disclose the report.

20 As to the issue of harm, the Hoff report was not disclosed until nearly nine weeks after
21 the initial expert cutoff date of November 10, 2010. Discovery cutoff has already been
22 extended three times in this case, and the latest cutoff date has passed. Although no trial
23 date has yet been set, the dispositive motion deadline was April 8, 2011. Accordingly,
24 R&O is prejudiced by the Hoff report, because the time to designate rebuttal experts has
25 passed, as well as the discovery cutoff and dispositive motion deadlines. A scheduling
26 order “shall not be modified except upon a showing of good cause and by leave of . . .
27 a magistrate judge.” *Fed.R.Civ.P. 16(b)*. Real Stone did not seek an extension of the
28 deadline to disclose initial experts, nor has it shown good cause for the failure to do so.
Accordingly, Hoff’s report must be stricken. See e.g. *Yeti by Molly*, 259 F.3d at 1107.
(Emphasis added).

27 The facts in the *R&O Construction* case are very similar to the facts in the subject case. *Larsen,*
28 *Adornato, and Kush* were not disclosed as initial experts and their reports were not made to the

1 Plaintiffs until a month after the initial expert disclosure deadline. This designation was improper and
2 untimely and this Court should follow the reasoning of the *R&O Construction* case and Strike the
3 untimely and improper expert designation of these three "rebuttal" experts.

4
5 In the instant case, Defendants negligently failed to care for Plaintiff Titina before and after
6 she developed sepsis. The effect this damage had on her health and her future are catastrophic. This—
7 liability and damages, including future damages—was the entire sum and substance of Plaintiffs'
8 initial complaint and Defendants' subsequent answer. Plaintiffs' initial Complaint spelled out with
9 laser precision that they believed that Defendants were liable for Plaintiffs' injuries and for the damage
10 caused by Defendants' negligence. That causation was an expected and central component to the case
11 precludes any rebuttal witnesses from offering faux-rebuttal testimony which opines on alternative
12 causation opinions in their rebuttal reports:

13
14 Rebuttal experts are not allowed to put forth their own theories; instead, "they must
15 restrict their testimony to attacking the theories offered by the adversary's
16 experts."

17 *Downs v. River City Grp., LLC*, No. 3:11-CV-00885-LRH, 2014 WL 814303, at *5 (D.
18 Nev. Feb. 28, 2014) (Emphasis added).

19 Even if it is not outside that scope, the subject of the causation of the fire is an expected
20 and anticipated portion of Defendant's case-in-chief, and therefore Hyde cannot be a
21 rebuttal expert or anything analogous to a rebuttal expert. *Apex Oil*, 985 F.2d at 245.

22 Allowing Hyde to testify as more than a rebuttal expert would allow Makita to use the
23 30 day deadline for disclosure of rebuttal experts as an extension of time for disclosing
24 the lion's share of its expert information. See *Sierra Club*, 73 F.3d at 571. Causation of
25 the fire is the central issue of this entire litigation. Makita knew that long before the
26 expert disclosure deadlines.

27 *Amos v. Makita U.S.A., Inc.*, No. 2:09-CV-01304-GMN, 2011 WL 43092, at *2 (D. Nev.
28 Jan. 6, 2011).

Furthermore, Plaintiffs quickly identified and disclosed their initial expert witnesses, in their
disclosure of initial experts. Indeed, Defendants had every reason to anticipate, expect and prepare for

1 their side of the adversarial process. Defendants' preparation for their case in chief did just that—as
2 they timely disclosed their own initial Medical Providers.

3 Despite clearly understanding that reasonableness of medical care, causation, and damages,
4 including future life care, was part of the Plaintiffs' case-in-chief, Defendants are now abusing the
5 disclosure process by attempting to ambush Plaintiffs by sneaking in *additional* medical experts and
6 life care experts to give entirely new alternate theories of causation for Plaintiffs' injuries when it is
7 no longer possible for Plaintiffs to hire experts to rebut these new opinions. Defendants added these
8 new voices a month after the deadline for initial experts had passed.

9 Furthermore, these "Rebuttal" expert reports provided do not appropriately address or rebut
10 Plaintiffs' initial expert opinions, but instead seek to introduce new opinions—including reports which
11 fail to even reference Plaintiffs' initial expert reports, which they are supposedly rebutting.

12 This masquerade will confuse the jury and significantly prejudice the Plaintiffs, who have
13 appropriately followed Nevada Rules of Civil Procedure and the Court's process for disclosures, in a
14 timely and respectful manner. Therefore, this Court should Strike Defendants' rebuttal experts'
15 testimony, and allow Defendants to make their arguments through their initial experts.

16
17
18
19 **A. The Opinions of Larsen, Adornato, and Kush Address Issues That Were Long-**
20 **Anticipated Portions of Plaintiffs' Case in Chief; As Such, They Are Properly Stricken.**

21 Nevada Rules of Civil Procedure state in plain language what qualifies as rebuttal testimony,
22 stating definitively that rebuttal deadlines are not created to give counsel a second chance to argue
23 what "should have been expected and anticipated by the disclosing party." *NRCP 16.1(a)(2)(C)(ii)*.
24 Furthermore, Nevada Courts, as addressed above, have declared the impropriety of subverting process
25 by utilizing rebuttal experts to present a new case-in-chief or to present new theories after the period
26 for disclosing initial expert witnesses has passed.

27 Defendants should easily have expected and anticipated that Plaintiffs would make one of their
28 core causes of action against Defendants for their negligence in causing Plaintiff Titina to undergo

1 substantial medical treatment and damages, that the treatment provided after the subject incident was
2 reasonable, and that Plaintiff Titina would require care in the future. Defendants had every reason to
3 expect, anticipate and prepare for that debate in their disclosure of initial experts.

4
5 Plaintiffs were again circumspect about this goal to prove that Defendants' behavior led to the
6 medical care sought by Plaintiffs, and that such subsequent care was reasonable in light of Plaintiff
7 Titina's injuries. Plaintiffs disclosed their initial experts and noted that they would be testifying as to
8 the reasonableness of Plaintiff Titina's medical care. In their reports, Plaintiffs' initial experts testified
9 to the nature of Plaintiffs' injuries, how they were caused by Defendants' negligence and how the
10 subsequent care, and cost thereof, was reasonable.

11
12 Nevertheless, more than a month after the deadline to disclose initial expert witnesses,
13 Defendants disclosed eight (8) experts as "rebuttal experts," including Jensen, Kush, and Adornato.
14 While Plaintiffs take issue with each of these witnesses, Adornato most blatantly fails to conform to
15 those restrictions required for rebuttal disclosure.

16 Adornato Report Deficiencies:

17
18 Dr. Adornato's report mentions Dr. Willer's initial report. However, each and every one of his
19 opinions critiques a long-known portion of Plaintiffs' case-in-chief, and could only be properly
20 disclosed through an initial expert disclosure, if at all. See Exhibit 4.

21
22 Adornato attacks Plaintiffs' long-known causation opinions, which were outlined in Plaintiffs'
23 Complaint from the beginning of the case. Moreover, these opinions were found within the medical
24 records Plaintiffs disclosed early on. Adornato takes issue with elements of Plaintiff Titina's medical
25 records, which were available to Defendants – for years. Adornato does not comment on anything new
26 or novel; he simply fills the role of an additional initial expert, though he is disclosed as "rebuttal"
27 only.

28 ///

1 In addition, Adornato gives a new, novel theory that was never addressed by Dr. Willer—and
2 one that is a direct causation opinion, which is inappropriate in a rebuttal report:

3 Based on my education, training, and experience and review of the pertinent documents,
4 I have reached the opinion that Ms. Farris suffered from a significant painful diabetic
5 neuropathy prior to the events of August 2015 and that this was in part due to her poorly
6 controlled diabetes, which continues to the present time.

7 See Exhibit 4, at Page 2.

8 This causation opinion is couched as one Dr. Willer failed to consider—yet, if this was
9 Defendants' belief as to the causation of Plaintiff Titina's injuries, it may only enter from an initial
10 expert. This is true for numerous reasons. First, expert medical causation opinions are always initial.
11 Second, Dr. Willer's opinion that Adornato departs from was not new, but was rather a well-known
12 opinion in Plaintiffs' case-in-chief from the commencement of the case, requiring Defendants to
13 contradict it, if at all, in their initial expert disclosure. Third, Adornato's opinion is entirely formed
14 from medical records in Defendants' possession – for years.

15 As this is the sum of Adornato's testimony, it is properly Stricken. As Adornato does not have
16 a single appropriate rebuttal opinion in this matter, but has instead offered initial opinion only, he must
17 be Stricken in this matter to avoid further prejudice to Plaintiffs and abuse by Defendants.

18 This resolution is strengthened by the Court's finding in *R&O*—which notes that Rebuttal
19 Testimony is exclusively limited to “unforeseen” facts:

20 **[R]ebuttal expert testimony “is limited to ‘new unforeseen facts brought out in the
21 other side’s case.’”** *In re President's Casinos, Inc.*, 2007 Bankr. LEXIS 4804, 2007 WL
22 7232932 at * 2 (E.D. Mo. May 16, 2007) (quoting *Cates v. Sears, Roebuck & Co.*, 928
23 F.2d 679, 685 (5th Cir. 1991)).

24 *R&O Constr. Co. v. Rox Pro Int'l Group, Ltd.*, 2011 U.S. Dist. LEXIS 78032 (D. Nev.
25 July 18, 2011). (Emphasis added).

26 The bright line authority in this jurisdiction is that rebuttal expert testimony “is limited to ‘new
27 unforeseen facts brought out in the other side’s case.’” In this case it is undisputed that the causation
28 of Plaintiffs' injuries and the future care they would require were anticipated parts of their case in

1 chief and therefore any experts designated by the Defendants regarding the Plaintiffs' loss of earnings,
2 should have been designated by the initial expert disclosure deadline. Everyone was aware of Plaintiff
3 Titina's diabetes even prior to her surgery, and certainly long before the lawsuit was filed. Moreover,
4 the fact that Defendants' initial experts both note the role of diabetes in their analysis makes it clear
5 that Defendants were aware of the matter long before rebuttal disclosures.
6

7 Adornato's report is inappropriate because he is not addressing "new" "unforeseen" facts
8 elicited by Dr. Willer—he is simply creating new, novel theories based on the medical records that
9 Willer (and all of Defendants' initial experts) already relied upon. These facts have been known by
10 Defendants – for years, prior to Dr. Willer's reports.

11 Larsen Report Deficiencies:

12
13 Nurse Larsen's report consists of twenty-two (22) pages of new, novel theories for Plaintiff
14 Titina's life care plan—testimony which should have been part of Defendants' case in chief. Larsen
15 notes that she based her report on Defendants' own "rebuttal" expert of Dr. Stone, and not as any
16 rebuttal to Plaintiffs' initial expert reports:

17 My opinions, which are set forth in the Life Care Plan Report for Ms. Farris, are based upon
18 the review of expert reports, my 19 years of experience in nursing, academia and life care
19 planning, and the current costs associated from the Las Vegas and Henderson, Nevada areas
20 for the outlined recommendations for medical care, treatment and supplies. I have consulted
21 with Dr. Stone regarding his opinions of future care needs for Ms. Farris. I have outlined the
22 recommendations of Dr. Stone in the Life Care Plan Report. I reserve the right to modify my
23 report in the event additional information is provided.

24 See Exhibit 2, at Page 2.

25 This opinion is inappropriate from a "rebuttal" witness. Plaintiffs' future medical needs are an
26 anticipated part of their case in chief, particularly in a case where it is well known by all parties that
27 Plaintiff Titina lost her ability to walk independently as a result of the subject incident. Defendants
28 failed to present these wholly initial expert opinions until a month after they were required to be
submitted. Larsen is not contradicting or pointing out deficiencies in any initial report by Plaintiffs'

1 experts—she is merely delving into new opinions which are inappropriate coming from a rebuttal
2 expert. It is crystal clear that this is a causation opinion which is being shoe-horned into a rebuttal
3 report.

4 Further, it is telling that, in a report where Larsen is supposed to be rebutting Cook, she is
5 instead quoting from Defendants' "rebuttal" expert, Dr. Stone, to prove her initial opinions. Larsen
6 does not even discuss or note the opinions of Plaintiffs' experts in her report, neither does she
7 incorporate or consider their opinions. Rather, Larsen simply creates a new set of novel opinions about
8 Plaintiff Titina's future care needs based on nothing more than the information that was readily
9 available from the commencement of the case, combined with the other opinions offered by
10 Defendants' "rebuttal" expert Dr. Stone. There was nothing new in Plaintiffs' initial expert disclosure
11 that surprised Defendants, or that Larsen needed for the opinions formed here. Defendants' attempt to
12 circumvent the discovery deadlines in this matter disqualifies them from presenting this opinion.
13 Therefore, Larsen should be Stricken as a witness in this matter.
14

15
16 Kush Report Deficiencies:

17 Likewise, Dr. Kush's report is wholly an initial expert report. As noted above, Dr. Kush fails
18 to address Plaintiffs' experts' reports in any regard, never once referring to them in his reports—aside
19 from a one-line claim, that he reviewed them. Its contents, however, are never addressed.
20

21 Kush, after noting Plaintiff Titina had diabetes then concludes:

22 **To a reasonable degree of scientific certainty, I have calculated Ms. Titina Farris'**
23 **life expectancy, as of the date of this report, to be 21.5 additional years.**

24 See Exhibit 3 (Emphasis in original).

25 Dr. Kush's report is another initial report. Kush provides opinions about Plaintiff Titina's
26 physical condition both before and after the subject incident. Kush provides opinions about how long
27 Plaintiff Titina will live. These opinions should have come from an initial expert—one that Plaintiffs
28 could have rebutted. Instead, Defendants have snuck this initial opinion in from their rebuttal

1 witness—making a rebuttal impossible in this matter. Defendants had the opportunity to calculate
2 Plaintiff Titina's lifespan in the initial stages of litigation in this matter—yet they chose not to do so.
3 Instead they are violating this Court's scheduling order by presenting initial opinions in the guise of
4 rebuttal opinions. As such, Dr. Kush's initial testimony, couched as rebuttal, must be Stricken.

5
6 **i. Additional Support in Striking these "Rebuttal" Reports.**

7 Both Kush and Larsen's report exemplify the type of inappropriate "rebuttal" report noted by
8 the Federal District Court:

9 "Courts have repeatedly held that an expert is improperly designated as a rebuttal expert
10 when he has failed to review the initial expert report, or otherwise failed to indicate that
11 he was aware of the opinions offered by the initial expert." *See, e.g., Clear-View Techs.,*
12 *Inc. v. Rasnick*, 2015 WL 3509384, at *4 (N.D. Cal. June 3, 2015) (internal quotations
13 and alterations omitted) (citing *Houle v. Jubilee Fisheries, Inc.*, 2006 WL 27204, at *3
14 & n.4 (W.D. Wash. Jan. 5, 2006) and *Amos*, 2011 WL 43092, at *1). Quite simply, "an
15 expert cannot be said to 'rebut' testimony he or she has never seen or reviewed." *Clear-*
16 *View Technologies*, 2015 WL 3509384, at *4.

17 *Felix v. CSAA Gen. Ins. Co.*, No. 215CV02498APGNJK, 2017 WL 1159724, at *3 (D.
18 Nev. Mar. 28, 2017).

19 These three (3) experts, Adornato, Larsen and Kush, were improperly utilized and violate the
20 Nevada Rules of Civil Procedure, because any issues that Defendants thought would pertain to
21 causation of damages and reasonableness of care must have been included in their initial expert
22 disclosure. This is obvious since damages, reasonable care and causation are essential to Plaintiffs'
23 case in chief and were a well-known portion of Plaintiffs' case from the commencement of this
24 litigation. Defendants chose to ignore the proper role and scope of rebuttal experts in order to stack
25 the deck against Plaintiffs and compensate for the oversights of their initial experts' reports. This
26 prejudices the entire testimonial process and leaves Plaintiffs without recourse to the luxuries of time
27 and lavish testimony that Defendants enjoy as a result of their strategy.

28 The ultimate result, of course, is that Plaintiffs are now ambushed by Defendants' false-rebuttal
disclosure, with no way to offset this unfair advantage, since all expert deadlines are now passed.

1 Commissioner Beecroft in this jurisdiction came to the same conclusion as the Federal Courts
2 did in *Nunez* and *Amos*—that rebuttal experts are not to be used to establish a new case-in-chief.
3 Commissioner Beecroft gave this opinion in a decision on an automobile crash case, *Mangus v. Abram*,
4 A-11-634090-C, (8th Judicial District Court January 7, 2013). In *Mangus*, Defendant disclosed a
5 biomechanical accident reconstructionist as an initial expert, and plaintiff scrambled to rebut, seeking
6 permission to examine defendant's vehicle in order to disclose a rebuttal expert. Defendant refused,
7 arguing that plaintiff knew prior to the initial expert disclosure deadline that defendant would enlist a
8 biomechanical expert because defendant requested permission for his expert to inspect plaintiff's
9 vehicle. *Id.* As a result of this disclosure, plaintiff could anticipate that the biomechanical expert would
10 be part of defendant's case in chief and should have disclosed her own initial biomechanical expert
11 instead of abusing the rebuttal process to compensate for her oversight. Commissioner Beecroft not
12 only denied plaintiff's motion to compel inspection of defendant's vehicle, but went further, striking
13 plaintiff's biomechanical rebuttal expert altogether on the grounds that plaintiff should have disclosed
14 said expert as initial. *Id.*

17 In the instant case, Defendants have had ample reason to acknowledge and anticipate Plaintiffs'
18 damages, including reasonableness of care, future life care and medical causation, all central to
19 Plaintiffs' case. Importantly, Defendants did attack these positions through the use of their initial
20 experts – proving Defendants' knew of these elements in Plaintiffs' claimed damages. Therefore,
21 Defendants should not be allowed to abuse rebuttal disclosures, which by their very nature are limited
22 in scope, to further bolster initial expert opinions. Like Plaintiffs, Defendants should have prepared
23 their best case in line with the law, and debated damages, causation, and reasonableness on an even
24 playing field, disclosing all initial expert opinions on the deadline to do so, as Ordered by this Court.
25 To do otherwise prejudices the judicial process and rewards the Defendants' circumvention of this
26 Court's Rules and Processes. Therefore, this Court must Strike Defendants' rebuttal experts, Adornato,
27
28

1 Larsen, and Kush, and focus on the debate between the properly retained initial and rebuttal expert
2 witnesses.

3 **B. The Opinions of Stone and Erlich must be Limited to Preclude Testimony on Standard**
4 **of Care and Causation.**

5 As noted above, the bright line authority in this jurisdiction is that rebuttal expert testimony
6 "is limited to 'new unforeseen facts brought out in the other side's case.'" As the standard of care
7 (including breaches of the same) and medical causation are always part of Plaintiffs' case-in-chief,
8 these are areas that can only be addressed by initial experts, rather than by rebuttal experts. Yet,
9 Defendants' Rebuttal experts delve into declaring that Rives' actions were within the standard of care,
10 and gave opinions on causation.

11
12 Dr. Stone opines on Causation:

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

16 See Stone Report, attached hereto as Exhibit "5."

17 Whether Plaintiffs' injuries were actually preexisting is a new and novel theory, and one which
18 is not based on new evidence. Stone admits that his opinion is coming from a record review, not from
19 Barchuck's report. This opinion may properly be made by an initial expert, but cannot be made by Dr.
20 Stone, who is exclusively a rebuttal expert. As such, Plaintiffs request that Dr. Stone's testimony be
21 limited to pure rebuttal opinions and that he be precluded from offering any opinions regarding the
22 standard of care of medical causation of injury, which issues are exclusively initial in nature.

23
24 Similarly, Dr. Erlich presents improper standard of care opinions:

25 It is my opinion that, from an Infectious Diseases standpoint, Dr. Rives met the standard
26 of care in his evaluation and management of Ms. Farris.

27 See Erlich Report, attached hereto as Exhibit "6."

28 ///

1 All of the information regarding infectious disease was known by Defendants – for years. The
2 primary source of infectious disease analysis comes from Plaintiff Titina's treatment from July 3 – 15,
3 2015. To permit Dr. Erlich to provide opinions regarding the standard of care, as a purely "rebuttal"
4 expert, would prejudice Plaintiffs and reward Defendants for violating Nevada rule.

5
6 Dr. Erlich also states:

7 The abnormalities seen on July 15, 2015 had not been present on the CT scan which was
8 performed on July 9, 2015, and therefore the patient did not have a bowel perforation at
9 that time. It is my opinion that the bowel perforation was a relatively recent event and
10 occurred sometime between the July 9, 2015 and July 15, 2015 CT scans.

11 *Id.*

12 From the commencement of the case, the issue of how/when Plaintiff Titina developed a bowel
13 leak, was questioned. This was such a central issue of the case, from the beginning, that Defendants
14 produced two (2) initial experts in this case to comment on it. Both provided the same opinion outlined
15 here by Dr. Erlich. Clearly, this was not a new issue and is not the province of rebuttal experts. As
16 such, Dr. Erlich must be precluded from offering opinions about when Plaintiff Titina developed an
17 active and ongoing bowel leak, as this has been a central point of the case from the beginning, has
18 already been addressed by Defendants' initial experts, is now an improper "rebuttal" opinion and is
19 clearly Defendants attempt to gang up against Plaintiffs through expert numerosity.

20 Therefore, the Opinions of Stone and Erlich must be Limited to Preclude Testimony on
21 Standard of Care and Causation.

22 III.

23 CONCLUSION

24 Clearly, all of the information opined about by these "rebuttal" experts was well known by all
25 parties – long before the initial expert disclosure deadline. As such, any expert opinions about this
26 information were required to be produced, if at all, no later than the initial expert disclosure deadline.
27
28

1 Giving Defendants carte blanche to untimely interject new theories and arguments is severely
2 prejudicial to Plaintiffs and will confuse the basic issues of the case. It also allows a dangerous
3 precedent of abusing rebuttal disclosures to gain unfair adversarial advantage. Therefore, this Court
4 should Strike Defendants' rebuttal experts Adornato, Larsen, and Kush, while precluding Defendants'
5 other rebuttal experts from offering any opinions as to standard of care or medical causation, as such
6 topics are well known portions of Plaintiffs' case-in-chief and are reserved for initial experts.
7

8 Again, Defendants' Rebuttal Experts Larsen, Adornato, and Kush have given exclusively
9 inappropriate testimony that should have been (and certainly was) anticipated as part of Plaintiffs'
10 case in chief. Therefore, based on the foregoing law, facts, and analysis, Plaintiffs respectfully requests
11 their Motion to Strike Defendants' Rebuttal Experts be Granted.
12

13 DATED this 16th day of September, 2019.

BIGHORN LAW

14 By: /s/ Kimball Jones

15 **KIMBALL JONES, ESQ.**

16 Nevada Bar.: 12982

JACOB G. LEAVITT, ESQ.

17 Nevada Bar No.: 12608

18 716 S. Jones Blvd.

Las Vegas, Nevada 89107

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

20 Nevada Bar No.: 8483

HAND & SULLIVAN, LLC

21 3442 N. Buffalo Drive

22 Las Vegas, Nevada 89129

23 *Attorneys for Plaintiffs*
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCp 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
BIGHORN LAW, and on the 19th day of September, 2019, I served the foregoing **PLAINTIFFS'**
MOTION TO STRIKE DEFENDANTS' REBUTTAL WITNESSES SARAH LARSEN, R.N.,
BRUCE ADORNATO, M.D. AND SCOTT KUSH, M.D., AND TO LIMIT THE TESTIMONY OF
LANCE STONE, D.O. AND KIM ERLICH, M.D., FOR GIVING IMPROPER "REBUTTAL"
OPINIONS, ON ORDER SHORTENING TIME as follows:

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

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



An employee of **BIGHORN LAW**

EXHIBIT “1”

1 **[DOE]**
2 THOMAS J. DOYLE
3 Nevada Bar No. 1120
4 CHAD C. COUCHOT
5 Nevada Bar No. 12946
6 SCHUERING ZIMMERMAN & DOYLE, LLP
7 400 University Avenue
8 Sacramento, California 95825-6502
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11 Email: calendar@szs.com

12 KIM MANDELBAUM
13 Nevada Bar No. 318
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16 Las Vegas, Nevada 89106
17 (702) 367-1234
18 Email: filing@memlaw.net

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

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

23	TITINA FARRIS and PATRICK FARRIS,)	CASE NO. A-16-739464-C
24)	DEPT. NO. 31
25	Plaintiffs,)	
26)	DEFENDANTS BARRY J. RIVES, M.D.
27	vs.)	AND LAPAROSCOPIC SURGERY OF
28)	NEVADA, LLC'S REBUTTAL
29	BARRY RIVES, M.D.; LAPAROSCOPIC)	DISCLOSURE OF EXPERT WITNESSES
30	SURGERY OF NEVADA, LLC, et al.,)	AND REPORTS
31)	
32	Defendants.)	

33 Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC
34 ("Defendants") hereby disclose pursuant to Nevada Rules of Civil Procedure Rule 26 and
35 16.1 the name of their rebuttal expert witnesses who may be called at trial.

36 ///

37 ///

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

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

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

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

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

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

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

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

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

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

3 **NON-RETAINED EXPERTS**

4 1. See NRCP 16.1 disclosures.

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

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

12 Dated: December 19, 2018

13 **SCHUERING ZIMMERMAN & DOYLE, LLP**

14
15 By 

16 CHAD C. COUCHOT
17 Nevada Bar No. 12946
18 400 University Avenue
19 Sacramento, CA 95825-6502
20 (916) 567-0400
21 Attorneys for Defendants BARRY J. RIVES,
22 M.D.; LAPAROSCOPIC SURGERY OF
23 NEVADA, LLC
24
25
26

EXHIBIT “2”



December 19, 2018

Chad Couchot, Esq.
Schuering, Zimmerman & Doyle
400 University Avenue
Sacramento, CA 95825

Re: Titina Farris v. Barry Rives, M.D.; Laparoscopic Surgery of Nevada, LLC, et al.

Mr. Couchot:

Pursuant to your request, I have prepared a Life Care Plan Report in connection with the above entitled matter based on my review of the expert reports, depositions and medical records provided, and upon the recommendations of Lance Stone, M.D. The Life Care Plan Report has been prepared in accordance with Federal Rules of Civil Procedure - Rule 26 and is attached.

Opinions and Life Care Plan:

My opinions, which are set forth in the Life Care Plan Report for Ms. Farris, are based upon the review of expert reports, my 19 years of experience in nursing, academia and life care planning, and the current costs associated from the Las Vegas and Henderson, Nevada areas for the outlined recommendations for medical care, treatment and supplies. I have consulted with Dr. Stone regarding his opinions of future care needs for Ms. Farris. I have outlined the recommendations of Dr. Stone in the Life Care Plan Report. I reserve the right to modify my report in the event additional information is provided.

Records Reviewed:

A list of the expert reports, depositions and medical records reviewed is attached.

Qualifications:

I have been working in the nursing field since 1999. As a Master's prepared Registered Nurse and Family Nurse Practitioner my experience includes, but is not limited to, the following: (1) Medical – Surgical Nursing for Adult and Pediatric patients in the acute care setting; (2) Skilled Nursing care for critically ill patients in the Pediatric Intensive Care Unit of the hospital, including trauma patients and patients with

cardiac, neurological, surgical, hematological and respiratory problems; (3) Supervision and instruction of student nurses in classroom, hospital and home care settings in all areas of patient care; (4) Supervision and training of Registered Nurses, Licensed Vocational Nurses, and Nursing Assistants in Adult Acute and Long Term care, and Neonatal and Pediatric Acute and Long Term care; (5) Medical assessment, management, and education of adult and pediatric patients in the specialty ambulatory care / primary care settings with acute and chronic comorbidities; (6) Continuing Education units for individual licensure and certification; (7) Life Care Planning and Legal Nurse Consulting. My current Curriculum Vitae is attached.

Compensation:

My fee for Trial or Deposition Testimony is \$400.00 an hour. My fee for preparation of the Life Care Plan Report, record review and all other services is \$275.00 an hour. A copy of my fee schedule is attached.

List of Previous Cases:

A list of cases in which I have testified in depositions, arbitrations and trials is attached.

Resources for Life Care Plan:

A list of resources used for the costs in the Life Care Plans is attached.

After your review of this report, please do not hesitate to contact me if you have any questions or comments.

Sincerely,



Sarah Larsen, R.N., MSN, FNP, C.L.C.P.
Olzack Healthcare Consulting, Inc.

SL:bc
Enclosures

LIFE CARE PLAN

FOR

TITINA FARRIS

*** * ***

Dated: December 19, 2018

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

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Name: Taina Farris

Date of Birth: 10-24-1962

Date Prepared: 12-19-2018

LIFE CARE PLAN

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

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

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

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 2092 Peace Ct, Alhambra, CA 95301

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

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LIFE CARE PLAN

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 2092 Peace Ct, Abwater, CA 95301

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

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

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

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Name: Trina Farris
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LIFE CARE PLAN

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FUTURE MEDICAL CARE - Continued	
<p style="text-align: center;">TOTALS:</p>	Annual Cost
	One Time Only \$12,762.36
	Annually To Age 57 \$1,003.00
	Age 57 to Life \$813.00
<p>Resources:</p> <div style="display: flex; justify-content: space-between;"> <div> Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D.- Psychiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy </div> <div> Bree Mullin, Psy.D. - Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection </div> </div>	

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

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

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

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

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

LIFE CARE PLAN

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

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Name: Tifina Farris

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

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

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RESOURCES

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

Physical Medicine and Rehabilitation

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

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

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

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

Physical Medicine and Rehabilitation - Cont.

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

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RESOURCES

Podiatry

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

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

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

Apache Foot and Ankle Specialist
 Lee Wittenberg, DPM
 4940 South Fort Apache Road, Suite 101
 Las Vegas, NV 89147
 (702) 362-6634 / Jasmine
 Evaluation: \$110.00
 Follow Up Visit: \$45.00

Podiatry - Cont.

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

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

Psychology

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

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

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

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RESOURCES

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Dietician

Anders and Dunaway Nutrition Consultants, Inc.
 2121 East Flamingo Road, Suite 110
 Las Vegas, NV 89119
 (702) 352-8841 / Brenda
 Evaluation: \$75.00
 Follow Up Visit: \$45.00

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

Nutrition Moves

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

Nutrition by Joey

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

Dietician - Cont.

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

Physical Therapy

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

ATI Physical Therapy

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

Matt Smith Physical Therapy

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

Tim Soder Physical Therapy

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

Tru Physical Therapy

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

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Name: Tina Farris
 Date of Birth: 10-24-1952
 Date Prepared: 12-19-2018

RESOURCES

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Physical Therapy - Cont.

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

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

Occupational Therapy

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

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

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

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

Gym Membership with Pool

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

Las Vegas Athletic Clubs
 2655 South Maryland Parkway
 Las Vegas, NV 89109
 (702) 734-5822 / Tony
 Enrollment Fee: \$49.00 - \$98.00
 Monthly Fee: \$23.00 - \$31.00
 Annual Fee: \$0.00

Anytime Fitness Desert Inn
 8480 West Desert Inn Road
 Las Vegas, NV 89117
 (702) 820-0660 / Steve
 Enrollment Fee: \$40.00 - \$50.00
 Monthly Fee: \$35.99 - \$44.99
 Annual Fee: \$45.00

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RESOURCES

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DATA AND REPORTS

Bureau of Labor Statistics

Home • Search • Data Tools • Publications • Current Release • Surveys • Help

SEARCH BY: [Occupation] [Geography] [Period] [Date Range] [Report Type] [Format] [Sort] [Filter] [Advanced Search]

Occupational Employment Statistics Query System

Occupational Employment Statistics

Multiple occupations for one geographical area

SEARCH

Area: Los Angeles-Long Beach-Anaheim, CA
Period: May 2017

Occupation	Employment	Percentage	Change
Healthcare Support Occupations	1,234	12.3%	1.2%
Healthcare Support Occupations - excluding Healthcare Support Occupations	1,234	12.3%	1.2%

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LIST OF RECORDS REVIEWED FOR TITINA FARRIS

Depositions:

- Deposition of Patrick Farris taken 10-11-18
- Deposition of Titina Farris taken 10-11-18

Medical Reports:

- PM&R Life Care Planning Evaluation Report by Alex Barchuk, M.D. dated 3-20-18
- Life Care Plan Report by Dawn Cook, R.N. dated 6-6-18; Includes:
 - Past Medical Bill Review by Dawn Cook, R.N. dated 11-15-18
- Expert Report by Justin Aaron Willer, M.D. dated 10-22-18

Medical / Billing Records:

- Medical and Billing Records from Advanced Orthopedics Sports Medicine
- Medical and Billing Records from Barry Rives, M.D.
- Medical and Billing Records from Bess Chang, M.D.
- Medical and Billing Records from Care Meridian
- Medical and Billing Records from Desert Valley Therapy
- Medical and Billing Records from Naomi Chaney, M.D.
- Medical and Billing Records from Elizabeth Hamilton, M.D. (x2)
- Medical and Billing records from Steven Y. Chinn, M.D.
- Medical and Billing Records from Laparoscopic Surgery of Nevada
- Medical and Billing Records from St. Rose Dominican - Siena Campus
- Medical Records from St. Rose Dominican Hospital

Miscellaneous Records and Reports:

- 15 Wound Photos
- Video "M2U00211" (00:48 seconds)
- Video "M2U00212" (01:03 minutes)
- Video "M2U00213" (01:07 minutes)
- Video "M2U00214" (01:17 minutes)

- Video "M2U00215" (00:42 seconds)
- Video "M2U00216" (00:27 seconds)
- Video "M2U00217" (00:44 seconds)
- Video "M2U00218" (00:10 seconds)
- Video "M2U00219" (00:59 seconds)
- Video "M2U00220" (00:37 seconds)
- Video "M2U00221" (00:18 seconds)
- Video "M2U00222" (00:11 seconds)
- Video "M2U00223" (00:10 seconds)
- Video "M2U00224" (00:33 seconds)
- 2 Photos - In LCP File

SARAH LARSEN, RN, MSN, FNP, LNC, CLCP

1120 Commerce Avenue #15 | Atwater, CA 95301 | 661-205-6917 | slarsen@olzakhealthcare.com

EDUCATION AND DEGREES

- University of Florida Life Care Planning Post Graduate Certification Program - Completion August, 2014
- National Association of Legal Nurse Consultants Certification Program - December, 2012
- California State University Bakersfield, Bakersfield, CA, Masters of Science in Nursing - 2004
- California State University Bakersfield, Bakersfield, CA, Bachelors of Science in Nursing - 1999
- California State University Fresno, Fresno, CA, General Education 1993-1995

CERTIFICATIONS AND LICENSURES

- Certified Life Care Planner, August 2014
- Legal Nurse Consultant, December 2012
- Nurse Practitioner, California Board of Registered Nursing, 2004
- Registered Nurse, California Board of Registered Nursing, 1999
- Pediatric Advanced Life Support - ongoing certification

EMPLOYMENT HISTORY

1/20/2017 - current

California State University, Bakersfield – Nursing Professor

Bakersfield, CA

- Lecturer, content expert, and lead instructor for pediatric nursing - Educate students at the baccalaureate degree RN level in both didactic and clinical instruction
- Comply with regulatory board standards
- Developed lectures, assignments and exams relating to pharmacology and pediatric didactic content
- Coordinate and conduct clinical and simulation laboratory experiences for nursing students
- Participate in faculty meetings

October 2016 – March 2017

All Season's Hospice – Nurse Practitioner

Lancaster, CA

- Home / Site visits with hospice patients under service of All Season's Hospice
- Conduct physical assessments, assess for any changes in client's status
- Prescribing medications and necessary supplies for self-care and medical management
- Collaborate with the patient care team for plan of care
- Documentation of client progress in the medical chart

January 2014 - current

Olzack Healthcare Consulting - Life Care Planner

Atwater, CA

- Medical record review, summarization, and chronologies for litigation
- Participate in independent medical examinations
- Development of life care plans
- Medical – legal consulting for litigation
- Expert witness testimony

June 2012 - current

SS Legal Consulting - Legal Nurse Consulting

Bakersfield, CA

- Medical record review, summarization, and chronologies for litigation
- Participate in initial intake interviews and provide professional nursing opinion on standard of care
- Participate in independent medical examinations

8/2/2001 – 11/2015

Bakersfield Memorial Hospital – Registered Nurse

Bakersfield, CA

- Registered nurse working in pediatric acute care and pediatric intensive care
- Continually assess patients in the inpatient setting with acute and chronic healthcare needs

- Develop and implement individualized plan of care for each patient including medication administration, procedures, equipment and various treatment modalities and therapies
- Evaluate patient response to treatment and therapies
- Work collaboratively with multidisciplinary team of physicians, dieticians, respiratory therapists, case managers, and occupational and physical therapists
- Precept, mentor and educate new graduate nurses in the clinical and classroom settings

8/1/2007 - 7/31/2013

Bakersfield College – Nursing Professor

Bakersfield, CA

- Tenured professor, content expert, and lead instructor for pediatric nursing - Educated students at the associate degree RN and LVN level in both didactic and clinical instruction
- Complied with regulatory board standards
- Developed lectures, assignments and exams relating to medical surgical and pediatric didactic content
- Coordinated and conducted clinical and simulation laboratory experiences for nursing students
- Participated in faculty meetings and committees

12/30/2004 - 8/1/2007

Kaiser Permanente – Nurse Practitioner

Bakersfield, CA

- Coordinator of pre and post bariatric surgery/weight management clinic
- Coordinated care and case management for pre and post bariatric patients through the Health Education Department
- Instructed classes for weight management and pre and post bariatric healthcare information
- Examined adult and pediatric patients, evaluated and managed care and comorbid conditions while in the weight management program
- Collaborated with primary care physicians, specialty services and case management as needed for patient care
- Ordered and interpreted diagnostic tests, and ordered medications to manage comorbid conditions
- Initiated referrals to specialty care providers as necessary for medical conditions

8/1/2004 - 7/31/2007

California State University, Bakersfield – Lecturer, Clinical Instructor

Bakersfield, CA

- Tenured professor, content expert, and lead instructor for pediatric nursing - Educated students at the baccalaureate degree RN level in both didactic and clinical instruction
- Complied with regulatory board standards
- Developed lectures, assignments and exams relating to pediatric didactic content
- Conducted clinical and simulation laboratory experiences for nursing students
- Participated in faculty meetings

7/6/1999 - 8/1/2001

Mercy Southwest Hospital – Registered Nurse

Bakersfield, CA

- Registered nurse for inpatient medical surgical and pediatric units
- Continually assess patients in the inpatient setting with acute and chronic healthcare needs
- Develop and implement individualized plan of care for each patient including medication administration, procedures, therapies and various treatment modalities
- Evaluate patient response to treatment and therapies
- Work collaboratively with multidisciplinary team of physicians, dietitians, respiratory therapists, case managers, and occupational and physical therapists
- Precept, mentor and educate new graduate nurses in the clinical and classroom setting

PROFESSIONAL ORGANIZATIONS

- AANLCP America Association of Nurse Life Care Planners
- AALNC American Association of Legal Nurse Consultants
- Sigma Theta Tau International Honor Society for Nursing



Olzack Healthcare Consulting, Inc.

1120 Commerce Avenue #15, Atwater, CA 95301

Phone: 209-358-8104 Fax: 209-358-8115

olzackhealthcare@gmail.com

FEE SCHEDULE

To Whom It May Concern:

Effective November 1, 2017:

Fee Schedule for Professional Services rendered by Sarah Larsen, R.N., C.L.C.P.:

Review of Medical Records, Life Care Plans, Depositions, Responses to Interrogatories; Research; Preparation of Life Care Plans and Reports; Evaluation of Facilities for Placement; Patient Evaluations; Consultation; and Travel: (Travel rate same as hourly rate)	\$275.00 per hour
ALL REPORTS (VERBAL OR WRITTEN) REQUESTED WITHIN 8 WEEKS OF DUE DATE WILL BE BILLED AT A RUSH RATE:	\$325.00 per hour
Deposition, Arbitration and Trial Testimony:	\$400.00 per hour 1 hour minimum
Printing Fee:	\$0.10 per page
Scanning Fee: (We request all case material be sent to us electronically, i.e. CD, flash drive, email or secure website. All hard copy material will be scanned by our office)	\$0.15 per page

Make checks payable to: **Olzack Healthcare Consulting, Inc. Tax ID#46-1649947**



Olzack Healthcare Consulting

2092 Peace Court, Atwater, CA 95301
 Phone: 209-358-8104 Fax: 209-358-8115
 olzackhealthcare@gmail.com

DEPOSITIONS

2015 to 2018

Name	Year	Name	Year
Corey Abrahms (D)	2015	Heather Campbell (D)	2017
Mikala Osborn (D)	2015	Elizabeth Bolden (D)	2017
Florence Kuhlmann (D)	2015	Steven Handrop (D)	2017
Paulette Johnson (D)	2015	Steven Meier (D)	2017
Linda Crete (D)	2016	Patricia Colombo (D)	2017
Charles Draper (D)	2016	Robert Fisher (D)	2017
Alexa Simpson (D)	2016	Mason Banuelos (D)	2017
Michael Crump (P)	2016	Anthony Ford (D)	2017
Bai Quan Su (D)	2016	Banuelos, Mason (D)	2018
Steven Kennedy (D)	2016	Winstead, Porche (D)	2018
Leslie Topping (D)	2017	Ramirez, Sonia (D)	2018
D.M. (D)	2017	Smith, Paul (D)	2018
Jorge Frias (D)	2017	Su Kyong Pae (D)	2018
Sabrina Zavala (D)	2017	Culinane, Karan (P)	2018
Ali, Tchezeeb (D)	2017		
Total Depositions			29

ARBITRATIONS

2015 to 2018

2015 to 2018	
Name	Year
Veronica Bland (D)	2016
Su Kyong Pae (D)	2018
Total Arbitrations	2



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TRIALS

2015 to 2018

Name	Year
Florence Kuhlmann (D)	2015
Linda Crete (D)	2016
Alexa Simpson (D)	2016
Jorge Frias (D)	2017
Steven Meier (D)	2017
Steven Kennedy (D)	2017
Stephen Handrop (D)	2017
Culinane, Karen (P)	2018
Total Trials	8

EXHIBIT “3”



Life Expectancy Report

Ms. Titina Farris

December 19, 2018

Chad C. Couchot, Esq.
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825-6502

Mr. Couchot,

This report responds to your request for my opinions on Ms. Titina Farris' life expectancy, as of the date of this report, and for a summary of my scientific analyses.

Information Reviewed

My information on Ms. Titina Farris is taken from the materials that have been provided and which include:

Medical records

- St. Rose Dominican Hospital - San Martin Campus
- St. Rose Dominican Hospital - Siena Campus
- Laparoscopic Surgery of Nevada
- Elizabeth Hamilton, MD
- Steven Y. Chinn, MD
- Naomi Chaney, MD
- Desert Valley Therapy
- Care Meridian
- Bess Chang, MD
- Barry Rives, MD
- Advanced Orthopedics & Sports Medicine

Report

- Justin Willer, MD (10/22/2018)

Depositions

- Titina Farris (10/11/2018)
- Patrick Farris (10/11/2018)
- Barry Rives, MD (10/24/2018)

Other

- Plaintiff's responses to First Request for Production of Documents
- Plaintiff's responses to First Set Interrogatories
- Plaintiff's Expert Disclosure with exhibits
- Defendant's Expert Disclosure

Life Expectancy Group
101 Jefferson Drive, Menlo Park, CA 94025
Phone: (650) 387-7972 Fax: (650) 745-1034

An Introduction to Life Expectancy

In medicine and science, the term *life expectancy* is defined as the average survival time in a large group of similar persons. Survival time is the actual number of years, months, days, and hours a person will live. Life expectancy is not survival time.

The National Center for Health Statistics reports that the life expectancy of a U.S. female at birth is 81.3 additional years.¹ This represents the average, arithmetic mean, survival time of U.S. females born today. It is a summary measure of more extensive information contained in a life table including annual probabilities of survival and age-specific mortality rates. Life expectancy is not intended to predict the actual survival time of any individual and it does not mean that we expect a given female, born today, will die *precisely* at age 81.3 (her actual survival time may be longer or shorter).

The US life tables provided by the National Center for Health Statistics and the Center for Disease Control and Prevention account for age, sex, and race/ethnicity. However, once we know more than simply the age and sex of an individual, we must use the peer-reviewed medical literature to take into consideration any *significant* additional risks of mortality.

For instance, an overwhelming body of government data reports that the mortality rates for persons who *diabetes* and/or *significant reductions in mobility* are higher than the age and sex-matched general population.

Ms. Titina Farris' Condition

Ms. Titina Farris is a U.S. female who was born on October 24, 1962. She is 56.2 years of age as of the date of this report. The general population life expectancy for a female this age is 28.0 additional years (or to age 84.2). However, Ms. Farris' risk factors and condition must be taken into consideration when assessing her life expectancy. The details and the effects of these factors are noted and discussed below.

Ms. Farris has had long-standing history of type II diabetes. Her diabetes requires insulin. She has diabetic peripheral neuropathy dating back to at least mid 2014. Ms. Farris also has hypertension that is generally controlled with medication. Ms. Farris has hyperlipidemia. The records indicate that she has had compliance issues that have led to elevated Hemoglobin A1c and lipid levels.

Ms. Farris had surgery in August 2014 for repair of an incarcerated ventral hernia. In July 2015, she had a laparoscopic reduction and repair of an incarcerated incisional hernia. She experienced colon perforations, sepsis, and ultimately the need for trach placement. She then had an abdominal washout, partial colectomy, right ascending colon end-ileostomy, and lysis of adhesions. She improved and was extubated and discharged in August 2015 to the Care Meridian Facility. Ms. Farris underwent rehabilitation there until discharge home in late August 2015. In July 2016 Ms. Farris was able to have her colostomy reversed.

Ms. Farris developed severe distal weakness and sensory loss of the lower extremities. She was diagnosed with a bilateral foot drop with neuropathic pain in her legs. Ms. Farris continues to experience foot drop and difficult walking. She uses a walker and wheelchair for mobility. She complains of shoulder pain to her ill-fitting walker. She has a history of chronic pain (bilateral foot

and ankle, and shoulder). She continues to experience chronic pain which she requires medication for. She depends heavily on her husband and family to assist with daily activities. She was previously independent and active. She misses walking her daughter to school, being outside with their four dogs, going dancing with her husband, and general activities such as taking care of the household chores.

Ms. Farris also has gastroesophageal reflux disease and Dupuytren's contractures in her bilateral hands. She has been experiencing anxiety and depression (Cymbalta) and she complains of impaired short-term memory.

Ms. Farris' is married and lives with her husband Patrick and her daughters Elizabeth and Sky. She has a high school education and currently works as a clairvoyant.

Diabetes / Hypertension / Hyperlipidemia

Serious medical conditions increase mortality rates and reduce life expectancy. In the case of diabetes, there is a significant body of peer-reviewed medical and scientific literature documenting this increased mortality and reduced life expectancy.^{2-10,36}

Diabetes is characterized by a defective response of the body tissue to insulin (resistance). Increased mortality results from both macrovascular and microvascular processes. From a macrovascular standpoint, there is increased risk of death due to cardiovascular disease, stroke, and peripheral vascular disease. From a microvascular standpoint, there is an increased rate of retinopathy (causing blindness), neuropathy (causing damage to the nervous system and leading to potential amputation), and nephropathy (causing kidney disease).^{2-10,36}

Hypertension is high blood pressure. It is a measurement of the force against the walls of your arteries as your heart pumps blood through your body. Blood pressure readings are given as two numbers and one or both of these numbers can be too high (normal being 120/80). High blood pressure increases the chance of heart disease, stroke, and kidney problems and results in higher mortality rates.^{4,10-15,36} Hyperlipidemia is the presence of elevated levels of lipids in the bloodstream. It is strongly associated with cardiovascular disease & stroke as it promotes plaque formation in the arteries.^{15,36}

Dr. Naomi Chaney stated in her March 23, 2018 note: "The patient was asked to come in with her husband for frank discussion regarding noncompliance with recommendations. ... the patient will need to be on cholesterol lowering medications as I explained that she is at high risk for pancreatitis and quite frankly death."

I have considered Ms. Farris' diabetes (with polyneuropathy), her hypertension, and her hyperlipidemia. I have examined the peer-reviewed articles on this subject and found the studies clearly indicate an increase in mortality as compared to the rates of the general population.

I have found the literature to be broadly consistent and indicative of a relative risk of 1.5 for diabetes without complications (or an excess risk of 50%). This is *conservative* in that Ms. Farris actually has polyneuropathy (a complication) and additionally has hypertension and hyperlipidemia. I have also *conservatively* assumed that she will no longer have compliance issues in the future. The corresponding excess death rates appear in **column DIAB** on page 8.^{2-15,36}

Physical Impairments / Reduced Mobility / Chronic Pain

Ms. Farris was previously independent and fully ambulatory prior to August 2015. However, she now has physical impairments which include bilateral foot drop and severe truncal instability requiring physical contact. She uses a walker and wheelchair for mobility. She has severe sensory loss below the knees, quadriparesis, and a right ankle fracture. She is unable to lift more than three pounds. She requires her husband and family to assist with daily activities.

Mild to moderate physical impairments and disabilities, such as those seen with reductions in mobility, impact life expectancy.^{16-24,36} This should not be surprising given that long term reduced mobility that occurs, even by choice (i.e., being sedentary), is associated with increased mortality rates.^{25-28,36}

Persons who lose a portion of their mobility become subject to increased risk of death from a variety of causes. The leading causes are pneumonia and other diseases of the respiratory system. Other major causes are pulmonary embolisms, urinary tract infections and septicemia. And diseases of the circulatory system, the leading cause of death in the general population, have even higher rates in the reduced mobility population.^{16-28,36}

Ms. Farris also has a history of bilateral foot, ankle, and shoulder pain. She continues to experience chronic pain which now includes neuropathic leg pain and some additional shoulder pain she attributes to her ill-fitting walker. She requires pain medication for relief.

Chronic pain increases mortality and reduces life expectancy. Possible reasons for higher mortality rates include increased cancer rates, psychological stress (anxiety and depression), body fatigue, reductions in mobility, and polypharmacy.^{29-33,36}

Ms. Farris' physical impairments and disabilities are quite similar to that of a person with an ASIA (American Spinal Injury Association) classification D spinal cord injury (SCI). Ms. Farris' impairments and resulting reduction in physical activity closely mirror those of an ASIA D SCI (a mild to moderate spinal cord injury) with similarities to preserved motor function and some ability to walk.

The corresponding excess death rates appear in **column PHYS** on page 8.^{18-20,36}

Additional Risk Factors

Additional risk factors were considered but not explicitly quantified in the life expectancy calculations. These factors would not be expected to have *significantly* changed Ms. Farris' life expectancy *after* explicit consideration of her diabetes (including hypertension and hyperlipidemia) and physical impairments (including reduced mobility and chronic pain).

These additional factors included: Gastroesophageal reflux disease, Dupuytren's contractures in her bilateral hands, anxiety and depression, and impaired short-term memory.

These factors were not quantified into my analyses.

My Opinion

My analyses and opinion of Ms. Titina Farris' life expectancy is based on (1) a review of the materials provided including her medical records, a report, depositions, and other documents, (2) a review of a relevant body of medical and scientific literature,^{2-33,36} (3) the standard scientific methods for calculating life expectancy,^{1,34-54} and (4) my education, training, experience and expertise.

To a reasonable degree of scientific certainty, I have calculated Ms. Titina Farris' life expectancy, as of the date of this report, to be 21.5 additional years.

The life table is provided on page 9 of this report. A summary table is provided, for quick reference purposes, below.

Life expectancies for various risk profiles of a 56.2 year-old U.S. female	
Risk Profiles	Remaining Years
General Population of females this age	28.0
... including diabetes	24.5
... including physical impairments	24.0
... including diabetes AND physical impairments	21.5

I reserve the right to amend this report and revise my opinions if further information becomes available.

Methodology

It is not possible for anyone to predict an individual's *exact survival time* (i.e., the exact date and time of death of an individual). Rather, medical researchers, scientists, epidemiologists, biostatisticians, life actuaries, and medical doctors can calculate a person's *average survival time* by comparing that person to the survival data derived from large groups ("cohorts") of people with similar characteristics and circumstances. This *average survival time*, by the exact definition, is the *life expectancy*.^{1,34-54}

In arriving at my opinion, I used standard and generally-accepted scientific methods that are routinely used by other researchers, annuitists, and scientists concerned with life expectancy. The methodology consists of: (1) reviewing the medical records of treating or examining physicians, hospital records, reports of experts, and other available information to understand an individual's medical history, past medical conditions, and to determine medical risk factors; (2) reviewing relevant peer reviewed medical literature and other scientific evidence in order to identify groups of similar persons; (3) determining the individual or joint effects of the various risk factors on survival; and (4) constructing a life table using similar methods as those used by the U.S. government to construct life tables for the general population.^{1,34-54}

A precise and detailed description of this procedure has been subjected to peer review and published.^{41,46,53} It is also covered, more generally and conceptually, in the many books and articles which I have cited under scientific methods.^{1,34-54} Many medical conditions have been demonstrated to be associated with increased rates of mortality compared to those of the standard tables, and much has been written about how to make adjustments to the life table to account for such factors.^{34-36,41-42,46,49-54}

This process of calculating relative risks and excess death rates is the standard by which the insurance industry produces rated ages and table ratings for life annuities and life insurance. It is discussed in actuarial textbooks and is regularly discussed in a multitude of articles published by the Journal of Insurance Medicine.^{34-36,42,44} This is not simply my methodology but rather the generally accepted methodology that is utilized and has been conducted by medical researchers, scientists, life actuaries, and the insurance industry for well over 100 years (life tables have been constructed and used since the 1600s).^{35-36,41-44,46,49-50,52-54} This process is used daily to calculate rated ages, table ratings, and life expectancies for life annuities and life insurance (e.g., with smoking and/or diabetes).^{34-36,41-42,49,53-54} If this process did not properly result broadly in accurate life expectancies, the insurance and life actuarial industry would most certainly have ceased to exist.

Much like the work of an economist or life care planner, the numbers I have extracted and calculated can be verified, validated, and/or critiqued by another trained and experienced expert. This scientist can perform an analysis and assess if an error or improper assumption was made. To the extent there is disagreement by similarly qualified experts, one would need to examine the underlying assumptions and evidence (including the peer reviewed research and any data) that were relied upon. Furthermore, ongoing validation comes in the underlying peer reviewed research that the calculations are based upon.²⁻⁵⁴

Additional longitudinal research continually becomes available which consistently reveals and confirms that mortality rates have been and are currently consistently elevated (above the general population rates) in particular conditions and ailments.

In each case, I review the literature and consider all the factors listed in the medical records. I am aware, from reviewing the literature extensively and week to week, that major conditions such as diabetes and reduced mobility do impact one's mortality rate and life expectancy and that other factors have a far less significant impact. Careful research in each case and of each factor, over a decade of research in this area, and experience from having researched and worked on over 1800 cases aid me in identifying the factors that are most significant for life expectancy and performing a life expectancy calculation.

Academic and Professional Qualifications

I am a medical researcher in the area of life expectancy. I have presented and consulted in that capacity. I have been both an author of peer-reviewed articles as well as a peer reviewer on the subject. I have taught instructional sessions on life expectancy to clinicians receiving continuing medical education (CME) credits.

I am a Fellow with the American Academy for Cerebral Palsy & Developmental Medicine and the founder of the Life Expectancy Group. This is a research & consulting group whose focus is on

life expectancy, factors that impact it, and legal issues surrounding it. This includes statistical and epidemiological mortality research on persons with developmental disabilities, injuries, and myriad chronic medical conditions across the various body systems including the cardiovascular, respiratory, gastrointestinal, endocrine, urinary, and neurologic systems.

I earned an MD from Stanford University School of Medicine in 2004, a JD from Stanford University School of Law in 2000, and an MPH from San Diego State University in 1995. You will find further professional qualifications provided in my curriculum vitae.

Thank you for the opportunity to assist on this matter and please do not hesitate to contact me if you would like any clarification of this report.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Scott Kush".

Scott Kush, MD JD MPH
Medical Researcher
Life Expectancy Group

Schedule of Mortality Rates & Excess Death Rates

AGE	GP	DIAB	PHYS	TOTAL
56	0.0052	0.0026	0.0061	0.0139
57	0.0055	0.0028	0.0063	0.0146
58	0.0059	0.0030	0.0065	0.0154
59	0.0063	0.0032	0.0067	0.0162
60	0.0067	0.0034	0.0070	0.0171
61	0.0072	0.0036	0.0072	0.0181
62	0.0078	0.0039	0.0075	0.0191
63	0.0084	0.0042	0.0078	0.0203
64	0.0090	0.0045	0.0081	0.0217
65	0.0098	0.0049	0.0084	0.0230
66	0.0106	0.0053	0.0087	0.0246
67	0.0115	0.0058	0.0091	0.0264
68	0.0126	0.0063	0.0095	0.0283
69	0.0138	0.0069	0.0099	0.0306
70	0.0153	0.0076	0.0104	0.0333
71	0.0169	0.0084	0.0109	0.0362
72	0.0187	0.0093	0.0114	0.0393
73	0.0206	0.0103	0.0119	0.0427
74	0.0226	0.0113	0.0125	0.0464
75	0.0249	0.0124	0.0132	0.0505
76	0.0275	0.0138	0.0138	0.0551
77	0.0306	0.0153	0.0146	0.0604
78	0.0342	0.0171	0.0154	0.0666
79	0.0385	0.0192	0.0163	0.0740
80	0.0430	0.0215	0.0173	0.0819
81	0.0480	0.0240	0.0182	0.0903
82	0.0535	0.0267	0.0193	0.0995
83	0.0599	0.0300	0.0205	0.1104
84	0.0676	0.0338	0.0218	0.1232
85	0.0755	0.0377	0.0231	0.1363
86	0.0853	0.0427	0.0248	0.1527
87	0.0963	0.0481	0.0264	0.1708
88	0.1085	0.0542	0.0281	0.1909
89	0.1221	0.0610	0.0302	0.2133
90	0.1371	0.0685	0.0319	0.2375
100	0.4348	0.2174	0.0639	0.7160

GP = U.S female general population mortality rates
DIAB = *Excess death rates* (EDRs) for diabetes, hypertension, and hyperlipidemia
PHYS = EDRs for physical impairments, reduced mobility, and chronic pain
TOTAL = GP + DIAB + PHYS

This total also appears in the **m(x)** column of the life table on the next page.

Life Table for Ms. Titina Farris

Age	$l(x)$	$d(x)$	$q(x)$	$m(x)$	$L(x)$	$T(x)$	$e(x)$
56.2	100000	1170	0.0117	0.0139	84503	2153632	21.5
57	98830	1434	0.0145	0.0146	98113	2069129	20.9
58	97396	1490	0.0153	0.0154	96651	1971016	20.2
59	95906	1543	0.0161	0.0162	95135	1874365	19.5
60	94364	1598	0.0169	0.0171	93564	1779230	18.9
61	92765	1662	0.0179	0.0181	91934	1685666	18.2
62	91103	1728	0.0190	0.0191	90239	1593731	17.5
63	89375	1799	0.0201	0.0203	88476	1503492	16.8
64	87576	1876	0.0214	0.0217	86638	1415016	16.2
65	85700	1952	0.0228	0.0230	84724	1328378	15.5
66	83748	2036	0.0243	0.0246	82730	1243654	14.8
67	81712	2127	0.0260	0.0264	80648	1160924	14.2
68	79585	2222	0.0279	0.0283	78473	1080276	13.6
69	77362	2329	0.0301	0.0306	76198	1001802	12.9
70	75033	2454	0.0327	0.0333	73806	925604	12.3
71	72579	2580	0.0356	0.0362	71288	851799	11.7
72	69998	2701	0.0386	0.0393	68648	780510	11.2
73	67297	2813	0.0418	0.0427	65891	711862	10.6
74	64484	2925	0.0454	0.0464	63022	645972	10.0
75	61559	3032	0.0493	0.0505	60043	582950	9.5
76	58527	3139	0.0536	0.0551	56958	522907	8.9
77	55389	3246	0.0586	0.0604	53766	465949	8.4
78	52143	3361	0.0645	0.0666	50462	412183	7.9
79	48782	3479	0.0713	0.0740	47042	361720	7.4
80	45303	3560	0.0786	0.0819	43522	314678	6.9
81	41742	3604	0.0863	0.0903	39940	271156	6.5
82	38138	3612	0.0947	0.0995	36332	231216	6.1
83	34526	3609	0.1045	0.1104	32721	194884	5.6
84	30917	3583	0.1159	0.1232	29125	162162	5.2
85	27333	3482	0.1274	0.1363	25592	133037	4.9
90	11521	2436	0.2114	0.2375	10303	37769	3.3
100	228	116	0.5113	0.7160	169	331	1.5

Table Terminology:

x	age
$l(x)$	the number of persons alive at age x
$d(x)$	number of deaths in the interval from x to $x+1$
$q(x)$	probability of dying at age x
$m(x)$	age-specific mortality rate
$L(x)$	total number of person-years lived by the cohort from x to $x+1$
$T(x)$	total number of person-years lived by the cohort from age x until all members of the cohort have died
$e(x)$	the life expectancy of persons alive at age x

Medical & Scientific Literature

US Life Tables

- 1) Arias E. United States Life Tables, 2014 (2017). National Vital Statistics Reports, Volume 66, Number 4. Hyattsville, Maryland: Centers for Disease Control and Prevention, National Center for Health Statistics.

Diabetes and Hypertension

- 2) Dailey, G (2011). Overall Mortality in Diabetes Mellitus: Where Do We Stand Today? Diabetes Technology & Therapeutics. 13: Supplement S65-S74.
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- 4) Fisman EZ, Tenenbaum A (eds) (2008). Hypertension and Diabetes. Cardiovascular Diabetology: Clinical, Metabolic and Inflammatory Facets. Adv Cardiol Basel, Karger, vol 45, pp 82-106.
- 5) Franco OH, Steyerberg, EW, et al. (2007). Associations of diabetes mellitus with total life expectancy and life expectancy with and without cardiovascular disease. Arch Intern Med, 167:1145-1151.
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- 8) Leal J, Gray AM, et al. (2009). Development of life-expectancy tables for people with type 2 diabetes. Eur Heart J, 30(7):834-839.
- 9) Milano AF (2001). Diabetes Mellitus and Life Insurance. Journal of Insurance Medicine, 33:50-103.
- 10) Takahashi N, Nakagawa M, et al. (2001). Effect of Essential Hypertension on Cardiac Autonomic Function in Type 2 Diabetic Patients. J Am Coll Cardiol. 38(1):232-237.
- 11) Gudmundsson LS, Johannsson M, Thorgeirsson G, et al. (2005). Hypertension control as predictor of mortality in treated men and women, followed for up to 30 years. Cardiovasc Drugs Ther. 19:227-235.
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- 14) Wei YC, George NI, et al. (2017). Assessing sex differences in the risk of cardiovascular disease and mortality per increment in systolic blood pressure: a systematic review and meta-analysis of follow-up studies in the United States. PLOS One. 12(1):e0170218.
- 15) Westin S, Heath I (2005). Thresholds for normal blood pressure and serum cholesterol. BMJ.330:1461-1462.

Reduced Mobility / Physical Impairments / Chronic Pain

- 16) DeVivo MJ, Savic G, Frankel HL, Jamous MA, Soni BM, Charlifue S, Middleton JW, Walsh J (2018). Comparison of statistical methods for calculating life expectancy after spinal cord injury. *Spinal Cord*, 2018 Feb 12. doi: 10.1038/s41393-018-0067-1.
- 17) Middleton JW, Dayton A, Walsh A, et al. (2012). Life expectancy after spinal cord injury: a 50-year study. *Spinal Cord*. 50:803-811.
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Exhibits

U.S. Life Expectancy

<u>Age</u>	<u>Male</u>	<u>Female</u>
0	76.5	81.3
10	67.1	71.8
20	57.3	61.9
30	48.0	52.2
40	38.8	42.6
50	29.8	33.4
60	21.7	24.7
70	14.5	16.7
80	8.4	9.8
90	4.1	4.9
100	2.1	2.3

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Spinal Cord Injury Comparison

Person's current age	<input type="text" value="58"/>
Injury Date	<input type="text" value="7/3/2015"/>
Male or Female	<input checked="" type="radio"/> Male <input type="radio"/> Female
Ethnicity	<input checked="" type="radio"/> White <input type="radio"/> Black <input type="radio"/> American Indian <input type="radio"/> Hispanic <input type="radio"/> Asian <input type="radio"/> Other
Highest Level of Education	<input type="radio"/> Less than HS <input checked="" type="radio"/> HS Graduated <input type="radio"/> College Grad <input type="radio"/> Post Grad
Type of Income	<input checked="" type="radio"/> Worker Comp/Private <input type="radio"/> Medicare/Medicaid/Other
Ventilator Used	<input checked="" type="radio"/> No Ventilator <input type="radio"/> Ventilator

Please answer the next questions based on the cause of injury, current neurologic level of injury and degree of completeness of the injury (American Spinal Injury Association Impairment Scale (AIS)). Determination of the level and AIS grade should be based on the Motor Exam Guide and Sensory Exam Guide which are part of the International Standards for Neurological Classification of Spinal Cord Injury.

Cause of the spinal cord injury	<input type="radio"/> Sport <input checked="" type="radio"/> MVA <input type="radio"/> Fall <input type="radio"/> Violence <input type="radio"/> Other
Current level of the spinal cord injury	<input type="radio"/> C1-4 <input type="radio"/> C5 <input type="radio"/> C6-C7 <input checked="" type="radio"/> C8-S3
Current completeness of the SCI (AIS)	<input type="radio"/> A <input type="radio"/> B <input type="radio"/> C <input checked="" type="radio"/> D

Click the "Calculate" button for results based on your selections.

Life Expectancy:	24.11
Gender number for general population	28
	<input type="button" value="Calculate"/>

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https://www.nscisc.uab.edu/Public_Pages/LifeExp

Scott J. Kush

Contact Information	Life Expectancy Group, 101 Jefferson Drive, Menlo Park, CA 94025		
	Phone (650) 387-7972		
	Fax (650) 745-1034		
	skush@LifeExpectancyGroup.com		
Education	MD	Medicine	Stanford University, School of Medicine 2004
	JD	Law	Stanford University, School of Law 2000
	MPH	Public Health	San Diego State University 1995
	BS	Biochemistry	University of California, San Diego 1992
	BA	Psychology	University of California, San Diego 1992
Present Position	2009 – current	Medical Researcher/Consultant	
	Life Expectancy Group	<i>Menlo Park, California</i>	
Employment	2006 – 2009	Medical Researcher/Consultant	
	Life Expectancy Project (Strauss & Shavelle Inc.)	<i>San Francisco, California</i>	
	2005 – 2006	Physician Health Care Utilization Review	
	Physician based Medical Management	<i>Menlo Park, California</i>	
	2005	Instructor	
	American River College	<i>Sacramento, California</i>	
	2000 – 2005	Project Developer – Enterprise Services, Education	
	Sun Microsystems	<i>Menlo Park, California</i>	
Employment	2003 – 2004	Management Consultant	
	Boston Consulting Group	<i>San Francisco, California</i>	
	1998 – 2003	Residential Computer Consultant	
Employment	Stanford Academic Computing	<i>Stanford, California</i>	
	1997 – 2003	Special Projects Lead/Multimedia Developer	
	Stanford School of Medicine	<i>Stanford, California</i>	

1997 - 2001, 1988 - 1992 **Teaching Assistant**

Stanford: Venture Capital, Corporate Finance, and Intro to Economics

UCSD: Genetics, Nutrition, Intro to Psych, Drugs & Behavior, and Electrochemistry

1992 - 1996 **Instructor**

Kaplan Educational Services

San Diego, California

1992 **Research Associate**

DepoTech Inc.

San Diego, California

Publications

Day SM, Reynolds RJ, Kush SJ (2016). Extrapolating published survival curves to obtain evidence-based estimates of life expectancy in cerebral palsy. *Developmental Medicine & Child Neurology*. DMCN 12849.

Day SM, Reynolds RJ, Kush SJ (2015). The relationship of life expectancy to the development and valuation of life care plans. *NeuroRehabilitation*. 36:253-266.

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Presentations

Kush S (2017). Life Expectancy – Statistics from Around the World. Keynote Speech. Life Expectancy Symposium. October 27, 2017. Durban, South Africa.

Reynolds RJ, Kush S, Day SM (2017). Using Machine Learning to Identify Diagnostic Profiles for Children with Cerebral Palsy and Other Developmental Disabilities in the 2011-2012 National Survey of Children's Health. 71st Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine. September 15, 2017. Montreal, Quebec. Canada.

Kush S (2017). Life Expectancy in Cerebral Palsy and Brain Injury. The South African Medico-Legal Association. September 8, 2017. Cape Town, South Africa.

Heine, SJ, Kush S (2017). Exploration of Life Expectancy. The National Association of Railroad Trial Counsel. 2017 Winter Meeting. March, 2017. Phoenix, Arizona.

Day, SM, Reynolds RJ, Kush S (2016). What Can a Telephone Survey Tell Us About the Health and Well-Being of Children With Cerebral Palsy and Other Developmental Disabilities? Findings of the US 2011-2012 National Survey of Children's Health. Presentation. September 2016. 70th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine.

Reynolds RJ, Day SM, Kush S (2014). Life Expectancy in Cerebral Palsy: Methods for Clinicians. Instructional Course. September 2014. 68th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine.

Kush S, Sharpe J (2014). Life Expectancy and Worklife Expectancy Calculations in Valuations. June 19, 2014. National Association of Certified Valuators and Analysts. NACVA 2014 Conference.

Kush S, Day SM, Reynolds RJ (2013). Evidence-Based Calculations of Life Expectancy of Children and Adults with Cerebral Palsy and Other Developmental Disabilities. Seminar on October 19th. 67th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine.

Kush S (2011). Life Expectancy – The Basics. Luncheon. Business Entrepreneurs of Silicon Valley.

Kush S (2010). Life Expectancy Issues. 11th Annual Neuroscience of Brain Injury: Research Informing Medical Treatment and Legal Practice Conference. California Brain Injury Association.

Durack J, Grappone T, Kush S, Nevarez A (2001). SKOLAR Cards – mobile access to high quality clinical information. Biomedical Computation at Stanford (BCATS) Symp, 43. http://bcats.stanford.edu/previous_bcats/bcats01/BCATS2001Abstract.pdf

Dev P, Rindfleisch T, Kush S, Stringer J (2000). An analysis of technology usage for streaming digital video in support of a preclinical curriculum. Proc AMIA Symp., 180-184. <http://www.amia.org/pubs/symposia/D200922.pdf>

Dev P, Stringer J, Kush S (1999). Institutional approaches to web-enabled curriculum delivery: The curriculum web. Proc AMIA Sym. www.amia.org/pubs/symposia/D005705.htm

Professional Organizations

Member of the American Medical Association

Member of the American Statistical Association

Fellow - American Academy for Cerebral Palsy & Developmental Medicine

Deposition Testimony

July 30, 2007	Stewart v. Welch Community Hospital, et al.; West Virginia U.S. No. 06-C-151-M Stephen New (Law Office of Stephen New; Beckley, West Virginia)
August 24, 2007	H. Christine Gregory, deceased v. GHA, et al.; Cincinnati, Ohio No. A0602988 Joel L. Peschke (Triona, Calderhead & Lockemeyer; Cincinnati, Ohio)
November 14, 2007	Exxford v. City of Zion, et al.; County of Lake, Illinois No. 05L855 Gerard W. Cook (O'Halloran Kosoff Geitner & Cook, LLC; Northbrook, Illinois)
February 8, 2008	Exxford v. City of Zion, et al.; County of Lake, Illinois No. 05L855 Gerard W. Cook (O'Halloran Kosoff Geitner & Cook, LLC; Northbrook, Illinois)
April 9, 2008	Roy Skinner v. Florida Power and Light Company; Tampa District Office, Florida No. 82-00014IJEM Timothy A. Dunbrack (Kelley Kronenberg Attorneys at Law; Orlando, Florida)
August 15, 2008	Daniel Budd, et al. v. Edward Schuesser, MD, et al.; Warren County, Missouri No. 06AU-CC00055-01 Edward Clausen (Carson & Coil, P.C.; Jefferson City, Missouri)
December 9, 2008	Estate of Ida McQueen v. Earline Drumgoole, et al.; County of Alameda, California No. HP 05 237 122 James Reed (Nichols, Catterton, Downing & Reed, Inc.; Lafayette, California)
January 6, 2009	Kenneth Taylor, et al. v. Michael Schmerler, MD et al.; Hamilton County, Ohio No. A0606042 Joel L. Peschke (Triona, Calderhead & Lockemeyer; Cincinnati, Ohio)
January 28, 2009	Ivonne Guerrero, et al. v. County of San Benito; County of San Benito, California U.S. District Court Case No. C08-00307 PVT Michael C. Serverian (Rankin, Landsness, Lahde, Serverian, & Stock; San Jose, CA)
February 4, 2009	Rodney F. Gimpel v. Kadlec Medical Center et al.; Benton County, Washington No. 07-2-03128-3 Felix Luna (Peterson Young Putra; Seattle, WA)
April 16, 2009	Renate Herrera v. Best Buy Company; Harris County, Texas No. 2008-00818 J. Daniel Woodall (Gauntt, Earl & Binney, LLP; The Woodlands, TX)
June 11, 2009	James Olliphant, Sr., et al. v. Nissan Motor Co., LTD, et al. No. 32567 John Gersch (Rodriguez, Ghorayeb & Gersch, LLP; Dallas, TX)

June 17, 2009	Bridgette Jeffries v. United States of America No. C08-1514RSL Jeffrey Sullivan (U.S. Department of Justice, WA)
July 16, 2009	Ivon Toe, et al. v. Cooper Tire and Rubber Company, et al. No. CL 106914 Stephen A. Rothschild (Shumaker, Loop & Kendrick, LLP; Des Moines, IA)
January 21, 2010	Mary E. O'Neal, et al. v. Forest Park Hospital Corp., et al. No. 0722-CC00939 J. Thaddeus Eckenrode (Eckenrode-Maupin; St. Louis, MO)
February 15, 2010	Sebastian Rinelli, et al. v. Danbury Hospital, et al. No. DBD-CV-07-6000490-S Edward W. Mayer, Jr (Danaher, Lagnese & Sacco, P.C.; Hartford, CT)
July 26, 2010	Vivian Fisher, et al. v. United States of America No. C08 5146 BHS Priscilla T. Chan (U.S. Department of Justice; Seattle, WA)
July 30, 2010	Kathy Profitt, et al. v. DaimlerChrysler Corp., et al. No. CV-03-512980 Kevin M. Young (Tucker, Ellis & West LLP; Cleveland, OH)
September 16, 2010	Lynette Wells v. Kaiser No. 9873 George E. Clause (Hayes, Scott, Bonino, Ellingson & McLay; Santa Clara, CA)
September 21, 2010	James W. Walker v. Cleveland Clinic Health System No. CV-08-655236 George M. Moscarino (Moscarino & Treu LLP; Cuyahoga County, CA)
November 3, 2010	Roger Taylor v. Kathryne Rupley et al. No. 09CE CG 02319 AMS Kevin M. Smith (Bradley, Curley, Asiano, Barrabee & Gale, PC; Fresno, CA)
November 9, 2010	Peggie Bacon-McDaniel v. Kaiser Foundation Hospitals Ram Fletcher (Bohn & Bohn, LLP; Santa Clara, CA)
January 14, 2011	Erica Morataya v. City of Bakersfield No. S-1500-CV267729-WDP Michael L. O'Dell (Clifford & Brown, PC; Bakersfield, CA)
March 22, 2011	John Curtis v. Stuart A. Nerzig No. AAN-CV-08-5007001-S Jonathan A. Kocienda (Danaher, Lagnese & Sacco, CT)
April 4, 2011	John Cox, et al. v. Tom Ivey, MD et al. No. A 0810744 Joel L. Peschke (Triona, Calderhead & Lockemeyer; OH)

April 26, 2011	Estate of Lalone et al. v. Riedstra Dairy Ltd. et al. No. 07-914-NH C. Zachary Vaughn (Patton & Ryan, LLC; St. Joseph, MI)
May 6, 2011	Carol Ropella et al. v. Red Cedar Medical Center et al. No. 10CV93 Carolyn J. Nearing (Geraghty O'Loughlin & Kenney, P.A.; Dunn County, WI)
June 20, 2011	Alison Skamangas v. Valley Care Health System, et al.; County of Alameda, CA No. VG09438029 David Lucchese (Galloway, Lucchese, Everson; Walnut Creek, CA)
June 21, 2011	Donald E. Koehne et al. v. American Multispecialty Group, Inc., et al.; St. Louis, MO No. 22052-08776 J. Thaddeus Eckenrode (Eckenrode Maupin; St. Louis, MO)
August 12, 2011	Nicholas Onofrio v. City of Riviera Beach; Palm Beach County, FL No. 50 2010 CA 019126 MB AJ Lonniciell Olds (Olds, Stephens & Harper; West Palm Beach, FL)
August 27, 2011	L'Heureux v. Maine Medical Center, et al.; Cumberland, ME No. CV-008-191 Philip M. Coffin III (Lambert Coffin; Portland, ME)
December 8, 2011	Castro-Reyes v. United States of America; Southern District of California No. 10-cv-1559-IEG-JMA Stephen L. Waldman (Law Offices of Stephen L. Waldman; San Diego, CA)
April 17, 2012	Zechariah Bonner v. Woodland Women's Health et al.; Hartford, CT No. HHD CV 08 50211331S David A. Haught (Cooney, Scully and Dowling; Hartford, CT)
May 17, 2012	Robert Rodriguez v. JLG Industries, Inc., Oskosh Corp, et al.; U.S. District Ct, CA No. 2:11-cv-04586 Susan E. Foe (Dryden, Margoles, Schimaneck & Wertz, CA)
June 4, 2012	Bruce Beard, et al. v. Emad Mahmoud Hasan et al.; Boone County, MO No. 09BA-CV03578 R. Max Humphreys (Ford, Parshall & Baker, MS)
June 11, 2012	Pauline Gogol v. Mills Peninsula Health Services, et al.; San Mateo County, CA No. CIV 509469 Cyrus A. Tabari (Sheuerman, Martini, & Tabari; San Jose, CA)
July 9, 2012	Tucker v. Kaiser Foundation Hospitals et al.; Los Angeles, CA No. ARB Cyndi Douglass (La Follette, Johnson, De Haas, Fesler & Ames; CA)

August 28, 2012 Zion Emerson v. Alta Bates Medical Center, et al.; County of Alameda, CA
No. RG094747
Sukhwinder K. Bajwa (Galloway, Lucchese, Everson; Walnut Creek, CA)

September 11, 2012 J. Jacobs and A. Jacobs v. Sacramento Regional Transit District, et al.; Sacramento, CA
No. 34-2008-00028013
Tim Spangler (Sacramento Regional Transit District, CA)

September 19, 2012 Green v. Darnall, et al.; Shawnee County, KS
No. 11C379
N. Larry Bork (Goodell Stratton Edmonds & Palmer, KS)

December 7, 2012 Joann R. Kay, et al. v. Harper Excavating, Inc., et al.; Juab County, UT
No. 100600079
Terry M. Plant (Plant, Christensen & Kanell, UT)

December 12, 2012 Takaria Hosea v. Long Beach memorial Med Center, et al.; San Bernardino Cty, CA
No. CIVDS1112997
Louis H. DeHaas (LaFollette Johnson, CA)

January 21, 2013 David S. Gronik v. Susan Balthasar, et al.; US District Court, Northern District of CA
No. 10-CV-954
Timothy Bascom (Bascom, Budish & Ceman, S.C., WI)

June 24, 2013 James Diaz v. Sutter Memorial Hospital, et al.; Superior Court, Sacramento, CA
No. 34-2009-00056031
Larry Thornton (LaFollette, Johnson, DeHaas, Fesler, & Ames)

July 19, 2013 Zaya Carter v. United States of America; US District Court, Eastern District, PA
No. 11-6669
Richard Bernstein (US DOJ, Eastern District of Pennsylvania)

July 22, 2013 Sanjiv Barse v. San Gorgonia Memorial Hospital, et al.; Superior Court, Riverside, CA
No. RIC10019685
Alphonsie Nelson (Watten. Discoc. Bassett. & McMains)

August 15, 2013 Becky S. Anderson v. Central Washington Health, et al.; Superior Court, WA
No. 12-2-17928-0 SEA
Jerry R. Aiken (Meyer, Fluegge & Tenney, P.S.)

September 13, 2013 Brian M. Stoedter v. BNSF Railway Company; Rock Island Cty, IL
No. 10L 157
Stephen J. Heine (Heyl, Royster, Voelker & Allen)

October 7, 2013 Woodrow Gruninger v. Sabitha Srinivasan Sehgal, MD et al.; Los Angeles, CA
No. BC401650
Michael A. Dembicer (Lewis Brisbois Bisgaard & Smith LLP)

December 23, 2013 Gilberto Rebollar v. LA Cty Metropolitan Transportation; County of Los Angeles, CA
No. BC421357
William J. Glazer (Veatch Carlson, LLP)

December 31, 2013	Tenaya Strand v. Memorial Medical Center, Modesto et al.; County of Stanislaus, CA No. 648369 Larry Thornton (La Follette, Johnson, DeHaas, Fesler, & Ames)
February 21, 2014	Taja Allen v. The Regents of the University of California.; County of Sacramento, CA No. 34-2011-00104589 Kat Todd (Schuering Zimmerman & Doyle)
March 7, 2014	Aidan Lee v. Jolene Caruso-Soares.; County of Santa Clara, CA No. 112CV227044 Stephen L. Dahm (Cesari Werner and Moriarty)
June 12, 2014	Martha O. Cahan v. D.D. Real Estate Holdings & Travelynx Inc.; Brevard County, FL No. 05-2012-CA-038994 Cary N. Bos (Kubicki Draper)
August 21, 2014	Nicolas Mercado et al. v. Kaiser Foundation Hospital; County of Los Angeles, CA No. BC512365 Brenda Ligorsky (Carroll, Kelly, Trotter, Franzen, McKenna, & Peabody)
August 29, 2014	Caryl Harrison v. Derek A. Taggard, MD., et al.; County of San Francisco, CA No. CGC-12-524952 David J. Van Dam (Schuering Zimmerman & Doyle, LLP)
November 13, 2014	Victoria Adarmes v. David Klain MD, et al.; Superior Court California, Cty of Stanislaus No. 677305 Daniela P. Stoutenburg (Dummit, Buchholz & Trapp)
November 19, 2014	Isabella Palacio v. United States of America; District Court for the ED of California No. 2:13-CV-01012-JAM-CKD Thomas J. Doyle (Schuering Zimmerman & Doyle)
November 25, 2014	Jose Sanchez v. James Gatrost, et al.; Superior Court of CA, County of Los Angeles No. BC506397 Scott Mizen (Veatch Carlson, LLP)
December 4, 2014	Alan Hoskins v. Michael James Shannon, et al.; Weber County, UT No. 130904254 C. Ryan Christensen (Siegfried & Jensen)
January 7, 2015	Manuel Gonzalez Lopez et al. v. Preston Pipelines, et al.; Alameda County, CA No. HG13699138 Joshua S. Goodman (Goodman Neuman Hamilton, LLP)
March 24, 2015	Julian Albarado et al. v. James Babcock, Ahern Rental, et al.; Orange County, CA No. 30-2012-00604351-CU-PP-CJC Jorge Martinez (Taylor Anderson, LLP)
April 6, 2015	Jodie Bullock v. Philip Morris USA, Inc. et al.; US District Court, Central Dist. of CA No. 2:14 cv 01258 DSF (JC) Patrick Gregory (Shook Hardy & Bacon LLP)

May 12, 2015	A. Sharma v. Dignity Health et al.; Superior Court of CA, County of Sacramento No. 34-2013-00138981 Patrick Lanius (Lanius & Associates)
May 19, 2015	A. Haywood v. Bethesda Memorial et al.; Circuit Court of FL, Palm Beach County No. 2012 CA 007494 AN Steven M. Lury (Sonneborn, Rutter & Cooney)
July 30, 2015	I. Hernandez v. Tenet California et al.; Superior Ct of CA, County of San Luis Obispo No. 14CVP0083 Stephanie Bowen (Hall, Hieatt & Connely)
August 18, 2015	Jacqueline Clinton v. Kaiser Foundation; Folsom, CA No. 12699 Mark Muro (Muro & Lampe)
August 27, 2015	Booker Page v. Mark Dawson, Desoto Cab, et al.; San Francisco, CA No. CGC-14-537297 Amy Maclear (Gordon & Rees)
September 2, 2015	Gawronski et al. v. Andrew Nelson MD, et al.; Sauk County, WI No. 13-CV-240 Michael Luebke (Gingras, Cates & Luebke)
September 3, 2015	Un Suk Guernsey v. Sammut Brothers Development, et al.; Monterey County, CA No. M126693 James D. Biernat (Biernat Law Group)
September 10, 2015	Reyes Flores v. New Mexico Dept of Trans., et al.; County of Santa Fe, NM No. D101-CV-2013-00632 John Anderson (Holland & Hart)
September 15, 2015	Carolyn Baker v. Mercy Hospital Anderson, et al.; Hamilton County, OH No. A1400720 Joel L. Peschke (Calderhead, Lockemeyer & Peschke)
September 22, 2015	Burton and Kincaid v. Florida Hospital Orlando, et al.; Orange County, FL No. 2011 CA 014421-O J. Charles Ingram (Estes, Ingram, Foels & Gibbs P.A.)
October 22, 2015	Powell v. Joel Kahn MD, et al.; County of Solano, CA No. FCS042540 Kevin Smith (Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C.)
December 15, 2015	Ruiz v. Willowglen Academy, et al.; Stephenson County, IL No. 12 L 5 Sheila N. Osei (Kopka Pinkus Dolan)
January 7, 2016	Reed v. UCLA Medical Center, et al.; County of Los Angeles, CA No. SC116173 Benjamin R. Minkow (Law Offices of David J. Weiss)

January 21, 2016	Graham v. Stormont-Vail Healthcare, et al.; Shawnee County, KS No. 2012-CV-1079 Nathan D. Leadstrom (Goodell Stratton Edmonds & Palmer)
July 8, 2016	Gutierrez v. Le, Mandel, et al.; County of Orange, CA No. 30-2015-00797352-CU-MM-CJC Michael C. Ting, Esq. (Schmid & Voiles)
August 12, 2016	Lingenfelser v. United Parcel Service, et al.; Camden County, NJ No. L 735-15 Roman T. Galas, Esq. (Ansa Assuncao LLP)
September 1, 2016	Johnson v. The Christ Hospital, et al.; Hamilton County, OH No. A1501878 Joel Peschke, Esq. (Calderhead Lockemeyer & Peschke Law Office)
October 7, 2016	E.R. vs. Sutter Davis Hospital, et al.; District Court, East District of CA No. 2:14-2053 WBS CKD Larry Thornton, Esq. (La Follette, Johnson, DeHaas, Fesler, & Ames)
October 20, 2016	Cordero v. Anhalt.; Superior Court, San Mateo County, CA No. CIV536193 Jon A. Heaberlin, Esq. (Rankin Stock Heaberlin)
October 21, 2016	Breanna Romero v. Robert Prada, et al.; Superior Court, Imperial County, CA No. ECU08320 James Brown, Esq. (Law Office James Matthew Brown APLC)
October 25, 2016	James Mayfield v. Ivan Orozco, et al.; U.S. District Court, Eastern District, CA No. 2:13-CV-02499-JAM-AC Robert F. Tyler, Esq. (Wilke, Fleury, Hoffelt, Gould & Birney, LLP)
December 1, 2016	William Baxter v. Dignity Health, et al.; District Court, Clark County, NV No. A-13-687208-CF Chad Couchot, Esq. (Schuering Zimmerman & Doyle LLP)
January 6, 2017	Dawn & Cree Miller v. Sutter Amador Hosp. et al.; Sup. Ct, Cty of Amador, CA No. 13-CV-8253 Kevin Smith, Esq. (J. Supple Law, P.C.)
February 22, 2017	Perez v. MultiCare Health System, et al.; Sup. Court, County of King, WA No. 15-2-18647-7 SEA James B. Meade Jr., Esq. (Fain Anderson Vanderhoef)
February 23, 2017	Perez v. City of Anaheim et al.; Sup. Court, County of Orange, CA No. 30-2015-00807504 Jade Tran, Esq. (Wood Smith Henning & Berman LLP)
March 3, 2017	Woods v. Ralph Prezioso, Jr MD et al.; Sup. Court, J.D. of Hartford, CT No. HHD-CV-13-6043250-S Gina M. Hall, Esq. (Morrison Mahoney LLP)

March 14, 2017	York v. Trader Joe's Company, Inc. et al.; Sup. Court, WA No. 15 2 00024 9 Ted Buck, Esq. (Frey Buck P.S.)
April 7, 2017	Ledesma, et al. v. Joyce Anne Stotz, et al.; Sup. Court, Cty of Riverside, CA No. INC1302238 Janice Walshok, Esq. (Tyson & Mendes)
April 12, 2017	McFarlane v. Urbana Tahoe. et al.; Sup. Court, Cty of El Dorado, CA No. SC20150085 David Hunt, Esq. (Anderson, McPharlin & Conners LLP.)
April 14, 2017	Sanchez v. County of San Bernardino.; Sup. Court, Cty of San Bernardino, CA No. CIVDS1309504 Robert S. Rubin, Esq. (Law offices of Norman R. Nadel)
May 4, 2017	Tobin v. Scripps Health, et al.; Sup. Court, Cty of San Diego, CA No. 37-2016-00004169-CU-MM-CTL Samuel R. Crockett, Esq. (Doyle, Schafer, McMahon LLP)
May 11, 2017	Richards v. Palo Verde Healthcare, et al.; Sup. Court, Cty of Riverside, CA No. PSC1600219 Jeffery W. Grass, Esq. (Davis, Grass, Goldstein & Finlay)
May 19, 2017	Androlia v. Entertainment Center LLC, et al.; Sup. Court, Cty of Los Angeles, CA No. BC534479 Kate Stimeling, Esq. (Riley Safer Holmes & Cancila LLP)
August 22, 2017	Nisley v. Bay Imaging Consultants, et al.; Sup. Court, Cty of Alameda, CA No. RG15796088 Lisa T. Ungerer, Esq. (Rankin, Sproat, Mires, Reynolds, Shuey & Mintz)
August 25, 2017	Davis v. Lifemark Hospitals of Florida, et al.; Miami-Dade County, Florida No. 2016-019843-CA-01 James C. Sawran, Esq. (McIntosh Sawran & Cartaya, P.A.)
September 26, 2017	Quezada v. Kaiser Foundation Hospitals, et al.; Miami-Dade County, Florida No. 14465 David Rubaum, Esq. (Reback, McAndrews, Kjar, Warford & Stockalper LLP)
November 6, 2017	Arteaga v. Fresno Community Med Ctr, et al.; Sup. Court, County of Fresno No. 13CECG03906 William White, Esq. (White Canepa LLP)
February 15, 2018	Gonsalves v. Machado et al.; Sup. Court, County of Sacramento No. 34-2014-00167270 Bruce Salenko, Esq. (Low McKinley Baleria & Salenko, LLP)
February 28, 2018	Ingle v. Dignity Health et al.; Sup. Court, County of Sacramento No. 34-2015-00178462 Barry Vogel, Esq. (La Follette Johnson De Haas Fesler & Ames)

March 13, 2018	Frances Durbin v. Gustavo Barajas et al.; Sup. Court, County of Los Angeles No. BC655001 Ashley R. Morris, Esq. (Wilson Elser Moskowitz Edelman & Dicker, LLP)
March 28, 2018	Antoinette Satchel v. Sacramento RTD et al.; Sup. Court, County of Sacramento No. 34-2014-00171169 Timothy S. Spangler, Esq. (Sacramento Regional Transit District)
April 4, 2018	Littlejohn v. Intown Suites Piedmont, LLC; Sup. Court, County of Fulton, Georgia No. 13EV018439 Jake Daly, Esq. (Freeman, Mathis & Gary)
May 2, 2018	Aki v. Dr. Alfred Roland Lonser, MD, et al.; Sup. Court, 3 rd Judicial District, Alaska No. 3AN-17-04308 CI Chester D. Gilmore, Esq. (Cashion Gilmore LLC)
June 14, 2018	Licciardi v. Lutheran Hospital Assoc., et al.; District Court, Colorado No. 16-cv-3000-RBJ Andrew C. Efaw, Esq. (Wheeler Trigg O'Donnell LLP)
July 19, 2018	Steadman v. Shawn P. McManus, DO, et al.; 4 th Judicial District Court, Utah No. 160400870 Kurt M. Frankenburg, Esq. (Frankenburg Jensen)
August 15, 2018	England v. Dignity Health, et al.; Sup. Court, Yolo County, CA No. CVPO-2017-1027 Sarah C. Gosling (Schuering Zimmerman)
August 30, 2018	Gutierrez v. Santa Rosa Memorial Hospital, et al.; District Court, Northern District of CA No. 3:16-cv-02645-SI Diana Kaempfer (La Follette, Johnson De Haas, Fesler, & Ames)
September 11, 2018	Brantley v. UPS Ground Freight, et al.; District Court, Eastern District of Arkansas No. 3:16-CV-352 (DPM) Robert Cox (Glassman, Wyatt, Tuttle, & Cox, PC)
October 30, 2018	Hernandez v. Kaiser; San Francisco, CA Arbitration John S. Simonson (Hayes Scott Bonino Ellingson Guslani Simonson & Clause LLP)
November 20, 2018	Aurelia Rivas v. Kaiser Foundation Health Plan, Inc., et al. Arbitration Gillian N. Pluma (La Follette, Johnson, DeHaas, Fesler & Ames)

Trial and Arbitration Testimony

June 7, 2007	Ryan Todd Schweizer v. The City of Fredericton et al.; New Brunswick, Canada; No. F/C/533/02 Barry Spalding (Barry Spalding Lawyers; Saint John, New Brunswick)
August 30, 2007	Stewart v. Welch Community Hospital, et al.; WV No. 06-C-151-M Stephen New (Law Office of Stephen New; Beckley, West Virginia)
January 7, 2009	Kenneth Taylor, et al. v. Michael Schmerler, MD et al.; Hamilton County, OH No. A0606042 Joel L. Peschke (Triona, Calderhead & Lockemeyer; Cincinnati, Ohio)
September 15, 2009	Bianchi v. Salazar Equipment Co., Inc., et al.; Santa Clara, CA No. 1-08-CV104548 John Simonson (Hayes Scott Bonino Ellingson McLay, LLP; Redwood Shores, CA)
September 30, 2009	Bridgette Jeffries v. United States of America; Seattle, WA No. C08-1514 RSL Jeffrey C. Sullivan (U.S. Department of Justice, WA)
September 16, 2010	Lynette Wells v. Kaiser; Santa Clara, CA No. 9873 George E. Clause (Hayes, Scott, Bonino, Ellingson & McLay; Santa Clara, CA)
July 14, 2011	Alison Skamangas v. Valley Care Health System, et al.; County of Alameda, CA No. VG09438029 David Lucchese (Galloway, Lucchese, Everson; Walnut Creek, CA)
December 21, 2011	Gann, et al. v. Ferrellgas, LP; County of Madera, CA No. MCV052091 Michael C. McMullen (Schlee, Huber, McMullen & Krause PC; Kansas City, MO)
March 7, 2012	Frankel v. Palo Alto Foundation & Medical Group, et al.; Santa Clara, CA No. 1-08-CV103310 Susan Foe (Dryden, Margoles, Schimaneck & Wertz; Santa Clara, CA)
June 29, 2012	Pauline Gogol v. Mills Peninsula Health Services, et al.; San Mateo County, CA No. CIV 509469 Cyrus A. Tabari (Sheuerman, Martini, & Tabari; San Jose, CA)
August 3, 2012	Tucker v. Kaiser Foundation Hospitals et al.; Los Angeles, CA Arbitration Cyndi Douglass (La Follette, Johnson, De Haas, Fesler & Ames; CA)
October 25, 2012	J. Jacobs and A. Jacobs v. Sacramento Regional Transit District, et al.; Sacramento, CA No. 34-2008-00028013 Tim Spangler (Sacramento Regional Transit District, CA)

February 3, 2014	William E. Wilson et al. v. State of Oregon, et al.; Multnomah, OR No. 1204-04632 Ted Buck (Frey Buck P.S. Seattle, WA)
August 19, 2014	O'Neill v. Pentin; Seattle, WA Ruth Laura Edlund (Law Offices Wechsler Becker, LLP)
December 12, 2014	Caryl Harrison v. Derek A. Taggard, MD., et al.; County of San Francisco, CA No. CGC-12-524952 Thomas J. Doyle (Schuering Zimmerman & Doyle, LLP)
March 16, 2015	Martha O. Cahan v. D.D. Real Estate Holdings & Travelynx Inc.; Brevard County, FL No. 05-2012-CA-038994 Cary N. Bos (Kubicki Draper)
May 8, 2015	A. Sharma v. Dignity Health et al.; Superior Court of CA, County of Sacramento No. 34-2013-00138981 Patrick Lanius (Lanius & Associates)
May 12, 2015	J. Axelrad v. Morgan Stanley et al.; County of San Francisco, CA Arbitration Peter Boutin (Keesal, Young & Logan)
June 23, 2015	State of Washington v. Christopher Monfort; County of King, WA No. 09-1-07187-6 SEA Todd Gruenhagen (Associated Counsel for the Accused)
August 28, 2015	Jacqueline Clinton v. Kaiser Foundation; Folsom, CA No. 12699 Mark Muro (Muro & Lampe)
November 2, 2015	Un Suk Guernsey v. Sammut Brothers Dev, et al.; County of Monterey CA No. M126693 Vincent P. Hurley (Law Offices of Vincent P. Hurley)
November 13, 2015	Carolyn Baker v. Mercy Hospital Anderson, et al.; Hamilton County, OH No. A1400720 Joel L. Peschke (Calderhead, Lockemeyer & Peschke)
March 15, 2016	Ruiz v. Willowglen Academy, et al.; Stephenson County, IL No. 12 L 5 Robert J. Kopka (Kopka Pinkus Dolan)
November 9, 2016	Gutierrez v. Le, Mandel, et al.; County of Orange, CA No. 30-2015-00797352-CU-MM-CJC Michael C. Ting, Esq. (Schmid & Voiles)
June 9, 2017	Diane Lewis v. Muhammad Alghannam MD, et al.; County of Sutter, CA No. CVCS-12-0874 Anthony D. Lauria, Esq. (Lauria Tokunaga Gates & Linn, LLP)

September 11, 2017	Sanchez v. County of San Bernardino.; Sup. Court, Cty of San Bernardino, CA No. CIVDS1309504 Kate Stimeling, Esq. (Riley Safer Holmes & Cancila LLP)
October 6, 2017	Miller v. Sutter Amador Hospital, et al.; Sup Court, Cty of Amador, CA No. 13-CV-8243 Kevin M. Smith, Esq. (Law Offices of Kevin M. Smith)
October 13, 2017	Quezada v. Kaiser Foundation Hospitals, et al.; Miami-Dade County, Florida No. 14465 David Rubaum, Esq. (Reback, McAndrews, Kjar, Warford & Stockalper LLP)
April 20, 2018	McKnight v. Mercy Health-Fairfield Hospital, et al.; Hamilton County, Ohio No. A1601099 Joel Peshke, Esq. (Calderhead, Lockemeyer & Peschke)



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EXHIBIT “4”

December 18, 2018

Chad C. Couchot, esq.
Schuering, Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

RE: FARRIS VERSUS RIVES

Dear Mr. Couchot:

Per your request, I reviewed this matter to rebut the opinions of Dr. Justin Willer and to comment on the cause of Titina Farris' injuries.

My qualifications to offer an opinion are detailed in my attached Curriculum Vitae. I am a physician licensed to practice medicine in the State of California. I earned a medical degree from UC San Diego in 1972. From 1973 to 1976 I attended residencies in internal medicine and neurology at the University of California, San Francisco Hospitals. From 1976 to 1978, I was a fellow at the National Institutes of Health in Neuromuscular Disease and served as a lieutenant commander in the United States Public Health Service. I am board certified in internal medicine, neurology, electrodiagnostic medicine and sleep medicine. I have practiced neurology for nearly 40 years and I have been on the adjunct clinical faculty at Stanford School of Medicine since 1978. I am currently an adjunct clinical professor at Stanford University School of Medicine and have active privileges as attending physician at the Palo Alto Veterans Administration Hospital.

I have extensive experience in diagnosing and treating patients with peripheral neuropathy, having completed a fellowship in peripheral nerve and muscle disease and being board certified in electrodiagnostic medicine. In addition, I have conducted independent research in the area of diabetic neuropathy and I have published several papers in that area. I was Director of the Stanford Neuromuscular Laboratory for five years and have performed and reviewed hundreds of peripheral nerve biopsies.

My publication history is included in my attached CV. My fee schedule is attached as is also a statement of my court and deposition testimony in the past 4 years.

With respect to this matter, I have reviewed extensive medical records including those of Advanced Orthopedics and Sports Medicine, Desert Valley Therapy, the medical records of Dr. Naomi Chaney, St. Rose Dominican Hospital records, and records of Dr. Beth Cheng, and the report of plaintiff's expert Dr. Justin Willer.

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My review of the records has revealed the following pertinent facts: Ms. Farris has longstanding diabetes mellitus, which, according to her physician, historically been "poorly controlled" and "the patient continues to engage in dietary indiscretion".

Her history of diabetes mellitus is recorded in the 09/16/14 office note of Dr. Naomi Chaney. At the time, her symptoms included foot pain as a result of her diabetic neuropathy. In 2014, a year prior to the events in question, Ms. Farris was treated with substantial amounts of oral narcotics in the form of Norco and was also taking gabapentin for nerve pain.

In her intake questionnaire in her visits to the orthopedists, she in her own hand describes "nerve pain" ... "since 2012".

With respect to her hospitalization in 2015 and her clinical care therein, I believe that the attending physicians are correct in that she most likely did suffer what is termed critical care neuropathy, a poorly understood, but well recognized sensory and motor neuropathy which can be precipitated by prolonged critical care status and which may have been exacerbated by her underlying and longstanding diabetic peripheral neuropathy.

I find that the report of Dr. Willer, plaintiff's expert neurologist, is lacking in that he fails to acknowledge Ms. Farris's pre existent diabetic neuropathy as a significant factor in her current disability. Her preexistent history of severe diabetic neuropathy required narcotic medication, and gabapentin, a medication commonly used to treat nerve pain. Most of Dr. Chaney's office visit notes before and after August 2015 mention the diabetic neuropathy and poor control of blood sugars. In the section of Dr. Willer's report regarding reviewed materials, he acknowledges that the records of Advanced Orthopedics and Sports Medicine from 07/02/14, 11/25/14, and 05/05/15 indicate a history of "diabetic neuropathy," but he does not comment as to the severity of the problem, which required narcotic medication and consultation. In addition, he did not mention that following the events in the summer of 2015 when she underwent her hernia surgery and ICU hospitalization, she continued to engage in dietary indiscretion and continued to have neuropathic pain.

For example, the 04/26/17 office note of Dr. Naomi Chaney notes that the patient continues to have neuropathic pain. She says: "I have explained this is in part related to diabetes." She notes that the patient continued to have poorly controlled diabetes.

Based on my education, training, and experience and review of the pertinent documents, I have reached the opinion that Ms. Farris suffered from a significant painful diabetic neuropathy prior to the events of August 2015 and that this was in part due to her poorly controlled diabetes, which continues to the present time.

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It is my opinion that it is more likely than not that she will continue to have painful diabetic neuropathy and that this characteristically and typically worsens with time in terms of disability due to pain, weakness, and impaired sensation, often accompanied by gait imbalance.

None of these facts are considered by Dr. Willer in his report.

Furthermore, it is my opinion that a substantial portion of her current disabilities and pain are related to her underlying neuropathy in addition to her critical care neuropathy.

All the opinions offered in this report are offered to a reasonable degree of medical probability.

A handwritten signature in black ink, appearing to read "Bruce T. Adornato", is written over a horizontal line.

Bruce T. Adornato, M.D.
Adjunct Clinical Professor of Neurology
Stanford School of Medicine
Palo Alto Neurology

BRUCE T. ADORNATO, M.D.

177 Bovet Road, Suite 600
San Mateo, California, 94402
TELEPHONE: 650.638.2308
Email: bador nato@stanford.edu
adornato@gmail.com

PERSONAL INFORMATION:

Year of Birth: 1946
Citizenship: USA
Medical Licensure: California G25289

EDUCATION:

- University of California, Santa Barbara, 1964-1968, A.B.
- University of California, San Diego, 1968-1972, M.D.
- University of California, San Francisco, 1973-1976, internal medicine and neurology
- National Institutes of Health, Bethesda, Maryland, 1976-1978, neurology fellowship

HONORS AND AWARDS:

- Cum Laude, University of California, 1968
- Award for Research Promise, Department of Psychology, University of California, Santa Barbara, 1968
- USPHS Traineeship in Physiological Psychology, 1966-1968
- USPHS Traineeship in Neurosciences, 1969
- USPHS Traineeship in Neuropathology, 1970
- "Doctor's Recommended – Physicians Name 621 of the Best Doctors in the Bay Area", September, 1992, Focus magazine
- "Top 500 Doctors in the Bay Area", 2001, San Francisco magazine
- American Academy of Neurology Annual Meeting, Neuro Bowl Competition, Toronto, 1999, winning team captain
- "Top Doctors in the San Francisco Bay Area", Focus magazine, Jan 2000
- "Top Docs in the San Francisco Bay Area-The A List", San Jose Magazine, Feb, 2003
- American Academy Neurology Annual Meeting, Neuro Bowl Competition, 2004, winning team captain
- American Academy of Neurology, Annual Meeting, Neuro Bowl Competition, Miami, Finalist, 2005
- American Academy of Neurology, Annual Meeting, Neuro Bowl winning team captain, San Diego, 2006
- Participant, Presidential Address, Annual Meeting, American Academy of Neurology, Boston, 2007
- Recipient, Serra High School Award of Merit, Science and Technology, October 2007

- American Academy of Neurology, Annual Meeting, Neuro Bowl Competition Team Participant, Seattle Washington, 2009; Honolulu, 2011
- Top Doctor , San Francisco Magazine, January 2015
- Lifetime Honorary Staff Membership, Stanford Hospital, May 2016

TRAINING:

-
- Internship, Internal Medicine, University Hospital, San Diego, 1972-1973
 - Resident, Internal Medicine, University of California, San Francisco, 1973-1974
 - Resident, Neurology, University of California, San Francisco, 1974-1976
 - Clinical Fellowship, National Institutes of Health, Medical Neurology Branch, Bethesda, Maryland, 1976-1978 (LT.CDR, USPHS)

BOARD CERTIFICATION:

-
- American Board Internal Medicine, 1975
 - American Board Psychiatry & Neurology, 1978
 - American Board Electrodiagnostic Medicine, 1983
 - American Board Sleep Medicine, 1991

PRESENT PRACTICE POSITIONS:

-
- Adjunct Clinical Professor of Neurology, Stanford University Medical School
 - Attending Physician, active staff, Palo Alto Veterans Administrative Hospital
 - Chief Medical Officer, Core Mobility Inc, San Jose, California

ADMINISTRATIVE POSITIONS:

-
- Membership Committee, American Academy of Neurology, 2011-2012
 - Community Liaison, International Medical Services, Stanford Hospital, 2003-2006
 - Department of Neurology and Neurosciences, Stanford Medical School, Adjunct Clinical Faculty Review Committee, 2003-2006
 - Dean's Committee on Adjunct Clinical Faculty, 2002-2008
 - Bylaws Committee, Stanford Hospital 2004- 2012
 - Presidential Nominating Committee, American Academy of Neurology, 2012
 - Council Member, Society of Clinical Neurologists, 2010-2013
 - American Academy of Neurology, President's Physician Burnout Task Force, 2015

PREVIOUS POSITIONS:

-
- American Academy of Neurology, Member Research Committee, 2005- 2011

- Finance Committee, Stanford Hospital, 2006-2007
- Stanford Hospital Medical Board, 2005-2006
- President, Stanford Hospital Medical Staff 2003-2005
- Active medical staff, Stanford Hospital, 1978-2016
- Examiner American Board Psychiatry and Neurology 1978-2004
- Vice-President, Stanford Hospital Medical Staff, 2001-2003
- Deputy Chief, Department of Neurology, 2001-2004
- Neurologist, Palo Alto Medical Foundation, 1978-1983
- Clinical Assistant Professor, Department of Neurology, Stanford University, 1979-1990
- Director, Neuromuscular Laboratory, Stanford University Hospital, 1979-1983
- Neurologist, Neurological Associates, Boise, Idaho, 1983-1986
- Clinical Assistant Professor, Department of Medicine, University of Washington, Seattle, 1983-1986
- Director, CPMC Sleep Center, San Francisco, 1987-1996
- President, San Francisco Neurological Society, 1993-1994
- Credentials Committee, Stanford Hospital, 1986-1995
- Member, Physician Assisted Suicide Committee, Stanford Hospital, 1996-1997
- Clinical Advisory Committee, Blue Shield (Medicare) 1995-1997
- Member, Ad Hoc Physician Credentials Committee, Stanford Hospital, 1997
- Medical Director, Stanford Health Services Sleep Clinic, San Francisco, California, 1996-2000
- Examiner, American Board of Psychiatry and Neurology 1979-1991
- Legislative Affairs Committee, American Academy of Neurology, 1994-1998
- Program Chairman, Society of Clinical Neurologists, 1999
- Legislative Affairs Committee, American Academy of Neurology, 1994-2000
- Member, Strategic Planning Committee, American Academy of Neurology, 1999-2000
- Member, Strategic Planning Committee, American Academy of Neurology, 1999-2000
- Council Member, San Francisco Neurological Society, 1994-2001
- Qualified Medical Examiner, State of California, 1986-2002
- Medical Director, Sleep Solutions, Inc., 1998-2002
- Chairman, Bylaws Committee, Stanford Hospital, 2002-2003
- Medical Advisor, Blue Shield of California, 1998-2005
- Member, Palliative Care Committee, Stanford Hospital, 2000-2003
- American Academy Neurology Speakers Bureau, 2000-2003
- Stanford Medical Quality Assurance Review 2002-2005
- Stanford Hospital Medical Staff Nominating Committee 2008

CONSULTANT ACTIVITIES:

-
- Stanford Research Institute: Calcium Channel Blockers and Multi-infarct Dementia, 1990
 - Syntex: Ticlopidine Antiplatelet Study – Adjudicator, 1986-1989
 - Physiometrix: Electrode Technology Development, 1991-1996
 - Genentech: Nerve Growth Factor Testing, 1992-present
 - Stanford Hospital: Occupational Injury Evaluation Program, 1993
 - Krames Communication: Sleep Apnea, 1993
 - JP Morgan Partners, Healthcare Group

- Sofinnova Biotechnology
- Interwest Partners, Biomedical Venture Capital
- Skyline Ventures, Palo Alto venture capital
- Panorama Capital, Menlo Park venture capital
- Coleman Research Group

MEMBERSHIPS:

-
- American Academy of Neurology
 - Society of Clinical Neurologists
 - San Francisco Neurological Society
 - Bay Area Stroke Society
 - Sleep Section, American Academy of Neurology
 - Movement Disorders Section, American Academy of Neurology
 - Neuromuscular Section, American Academy of Neurology
 - Spine Section, American Academy of Neurology
 - American Heart Association, Fellow, Stroke Council

FELLOWSHIPS:

-
- Fellow, American College of Physicians, 1980
 - Fellow, American Academy of Neurology, 1982
 - Fellow, American Sleep Disorders Association, 1992
 - Fellow, American Association of Electrodiagnostic Medicine, 1991

PREVIOUS POSITIONS:

-
- Program Committee, American Association of Electromyography and Electrodiagnosis, 1985-1987
 - President, Society of Clinical Neurologists, 1987-1989
 - Assistant Secretary, Scientific Advisory Panel, CMA, 1987-1989
 - Editor, Health Tips, CMA, 1988-1989
 - Examiner, American Board of Neurology and Psychiatry, 1980-1992
 - Examiner, American Board of Electrodiagnostic Medicine, 1985-1988
 - Membership Committee, American Academy of Neurology, 1986-1991
 - Section Chairman, Scientific Advisory Panel, California Medical Association, 1989-1990
 - Program Chairman, San Francisco Neurological Society, 1992, 1993 Meetings
 - Independent Medical Examiner, State of California, Neurology and Internal Medicine, 1989-present
 - Secretary-Treasurer, San Francisco Neurological Society, 1989-1990
 - Vice President, San Francisco Neurological Society, 1991-1992
 - Lecturer, Department of Pathology, Neuropathology, Stanford Medical School, 1986-present
 - Department Chairmanship Search Committee, Neurology, Stanford, 1992
 - Board of Directors, Stanford Private Physicians Group, 1993-1994
 - Founder, Sleep Disorders Center, St. Lukes Hospital, Boise, Idaho, 1984

- Founder, Director, Sleep Disorders Center, Pacific Presbyterian Hospital, San Francisco, 1986
- Instructor, School of Sleep Medicine, Palo Alto, 1994

HOSPITAL AFFILIATIONS:

-
- Stanford University Medical Center; Lifetime Honorary Staff Member, former Attending Physician
 - Veterans Administration Hospital, Palo Alto; Active Staff, Attending Physician

PREVIOUS RESEARCH PROJECTS:

-
- Clinical Investigator, Ticlopidine Antiplatelet Stroke Study, 1982-1988
 - Clinical Investigator, Naproxen Headache Study, 1989
 - Principal Investigator: "Syntex Bioequivalence Study of Two Oral Contraceptives", 1990
 - Principal Investigator: "Pilot Study of Phase 1 Triphasal, An Oral Contraceptive"
 - Co-Investigator: "Study of Mitochondrial DNA and Oxidative Phosphorylation In Skeletal Muscle In Parkinson's Disease", 1991-1993
 - Principal Investigator: "Dynamic Imaging of the Nasopharynx In Sleep Apnea", 1991-present
 - Principal Investigator: "A New Proportional-fit Electrode Placement Device For Ambulatory Monitoring", 1991-1992
 - Principal Investigator: "Clopidogrel vs. Aspirin In Patients At Risk For Ischemic Events", 1992-1996
 - Principal Investigator: "A Phase 1 Open-label Study Of The Safety of Recombinant Human Nerve Growth Factor (rhNGF) In Patients With Small fiber Sensory Neuropathy", 1993-1995
 - Principal Investigator: "A Phase 1 Double-blind Study Of The Safety And Pharmacokinetic Profile of Recombinant Human Nerve Growth Factor (rhNGF) In Healthy Volunteers"
 - Principal Investigator: "Multicenter Dose-ranging Safety And Effectiveness Study Of Peg-Superoxide Dismutase In Severe Head Injury", 1992-1993
 - Co-investigator: "Signal Analysis Of A New EEG Capsule Electrode And Comparison To The Electro-cap And Silver-silver Chloride Electrodes," 1993
 - Principal Investigator: "Phase II Multicenter Double Blind, Placebo Controlled Study Of The Safety And Efficacy Of Nerve Growth Factor In Diabetic Peripheral Neuropathy", 1994-1996
 - Principal Investigator: "Lymphocyte Characterization In Multiple Sclerosis", (Immulogic), 1993-1995
 - Principal Investigator: "Phase II Trial of Botulinum B Toxin In Cervical Dystonia", 1995-1996
 - Principal Investigator: "NGF Trial In HIV Polyneuropathy", 1995-1998
 - Principal Investigator: "Phase III Trial NGF In Diabetic Neuropathy", 1997-1999
 - Principal Investigator: "Open Label Botulinum B In Cervical Dystonia", 1997-present
 - Principal Investigator: "Open Label NGF In Diabetes", 1998-1999
 - Principal Investigator: "Ambulatory Sleep Recording In Sleep Apnea" 2000

- Principal Investigator: "NINDS trial of magnets in diabetic peripheral neuropathy" 2000-2001

ABSTRACTS PRESENTED:

-
- Association of Professional Sleep Societies 6th Meeting, Phoenix, Arizona; "Dynamic CT Pharyngeal Imaging During Sleep In Patients With Sleep Apnea", BT Adornato, M.D., T Pace, R.Psgt.T., G Gamsu, M.D. et al
 - Symposium On Etiology, Parkinson's Disease, Boston, MA, October, 1993
 - "ATP Production by Intact Mitochondria Is Not Decreased in Parkinson's Disease", DA DiMonte, MS Sandy, BT Adornato, S Jewell, C Tanner and JW Langston
 - "Phase Ib Study of Nerve Growth Factor In Peripheral Neuropathy", S Apfel, BT Adornato, D Cornblath, et al, ANA, 1996
 - Benign Transient Neuromyalgic Response, AAN, Boston, 1997
 - "Clinically Relevant Doses of Recombinant Human Nerve Growth Factor (rhNGF) Have a Large Margin of Safety", C Rask, B Adornato, C Sansers, Endocrine Society, New Orleans, June, 1998
 - Severe Sleep Apnea in Non-obese Asians, AAN, Toronto, April, 1999

RECENT PRESENTATIONS:

-
- "Stroke as a cause of hemidiaphragmatic palsy", Society of Clinical Neurologists, Death Valley, Nov 4, 2010
 - "A novel treatment for Restless Leg Syndrome", Society of Clinical Neurologists, Asheville, North Carolina, October 15, 2011
 - "Tarlov's Cyst: A cause of persistent orthostatic headache", Society of Clinical Neurologists, St. John's, Newfoundland

A Puzzling Case, Diagnosis and Treatment, Society of Clinical Neurologists, Cranwell, Massachusetts, October 13, 2016

"Unsafe at Any Speed- a novel handsfree upright mobility device". Society of Clinical Neurologists, Lincoln Oregon, September 2017

INVITED LECTURES:

-
- "Sleep Disorders", Annual Meeting of the San Francisco Neurological Society, February 11, 1990
 - "Neck Pain", Annual Meeting of California Society of Industrial Medicine and Surgery, Monterey, August, 1990
 - "Tryptophan-induced Myalgias", Society of Clinical Neurologists, October, 1991
 - "Parkinson's Disease", Stanford Medical Center, February, 1991

- "Antiplatelet Agents: Clopidogrel", Physical Medicine Department Rounds, Stanford/Palo Alto VA, February 3, 1993
- "Neuropathology of Muscle Disease", Stanford School of Medicine, January 20, 1993
- "The Normal Neurologic Exam", Stanford School of Medicine, February 10, 1993
- "What Every Doctor Needs to Know About Stroke", Natividad Medical Center, December 7, 1992
- "Antiplatelet Agents And Stroke", Lompoc District Hospital, November 20, 1992
- "New Agents And Stroke", Circle City Medical Center, Corona, CA, October 28, 1992
- "Stroke Prevention", Riverside Community Hospital, November 10, 1992
- "New Treatment Options In Stroke", South Coast Medical Center, Laguna Beach, September 15, 1992
- "Update On Stroke", Samaritan Hospital, San Clemente, CA, May 15, 1992
- "New Options For Stroke Prevention", Petaluma General Hospital, May 21, 1992
- "Update On Stroke Prevention", HOAG Hospital, Newport Beach, March 19, 1992
- "Reducing The Risk of Stroke", Samaritan Hospital, San Jose, March 18, 1992
- "Stroke Update", Salinas Valley Memorial Hospital, August 11, 1992
- "New Agents in Stroke", Tucson Memorial Hospital, April 20, 1992
- "Strategies In Stroke Prevention", Marin General Hospital, July 21, 1992
- "CAPRIE – New Stroke Agent Clopidogrel", Kaiser Hospital, Redwood City, May 19, 1992
- "Clopidogrel – New Antiplatelet Agent", Mills Hospital, November 23, 1992
- "Stroke And A New Agent – Clopidogrel", Department of Medicine Resident Rounds, June 5, 1992
- "Sleep Disorders", California Pacific Medical Center, August 14, 1992
- "Polysomnography In A Clinical Sleep Center", Eight Annual Meeting Of The American Academy of Clinical Neurophysiology, June 18, 1993
- "Nerve Growth Factor", Society of Clinical Neurologist, Sedona, AZ, October, 1993
- "Practical Neurology, The Old, The New, and The Promising: Sleep Disorders", California Medical Association, Anaheim, CA, March, 1994
- "Sleep Apnea", Department of Otolaryngology, UCSF, November, 1993
- "Narcolepsy", Stanford Sleep School, Palo Alto, November, 1993 and May, 1994
- "Head Injury", Stanford University Emergency Room, March, 1993
- "Muscle Disease", Stanford Department Pathology Medical Student Series, January, 1994
- "Diseases Of The Motor Unit", Stanford Physical Medicine and Rehabilitation, VA Hospital, March, 1994
- "Stroke", VA Hospital Resident's Lecture, Palo Alto, March, 1994
- "Stroke Implications Of Therapy For Patients", REACH Program, Palo Alto, July, 1994
- "Sleep Disorders", St. Francis Hospital, San Francisco, October, 1994
- "Sleep Disorders", UCSF Rounds, September, 1995 and November, 1995
- "Diabetic Neuropathy", El Camino Hospital Rounds, July, 1995
- "Muscle Disorders", Stanford Neuropathology, January, 1995
- "Nerve Growth Factor", Basic Science Rounds, UCSB, March, 1995
- "Narcolepsy", Stanford School of Sleep Medicine, January, 1996
- "Sleep Phenomena", Neurology Grand Rounds, CPMC, San Francisco, June, 1996
- "Neurology of Sleep Disorders", UCSF, November, 1996
- "Diabetic Neuropathy", Santa Clara County Diabetes Association, October, 1996
- "Diabetic Neuropathy", O'Connor Hospital, San Jose, August 2, 1997
- "Diabetes and NGF", Palo Alto Medical Clinic Diabetes Support Group, August 5, 1997

- "Nerve Growth Factor Neuropathy Trials", Genentech Quarterly Meeting, October 14, 1997
- "Approaches to Peripheral Neuropathy", Medicine Grand Rounds, El Camino Hospital, November 7, 1997
- "Diabetic Neuropathy", Los Gatos Community Hospital Rehabilitation Department, November 18, 1997
- "Stroke Treatment", Medicine Grand Rounds, Mt. Diablo Hospital, November 19, 1997
- "Narcolepsy and Sleep Disorders", Department of Neurology, Resident Rounds, UCSF, November 10, 1997
- "Excessive Daytime Sleepiness and Narcolepsy", American Lung Association Meeting, Monterey, November 21, 1997
- "Narcolepsy", Stanford School Sleep Medicine, July, 1998
- "Biology of Nerve Growth Factors", Society of Clinical Neurologists, September, 1998, Dixville Notch, NH
- "Growth Factors in Diabetic Neuropathy", American Diabetes Assoc. Meeting, Orlando, FL, January, 1999
- "Nerve Growth Factors in Neuropathy", Grand Rounds, Stanford Neurology, April, 1999
- "Sleep apnea in the Surgical Patient" Surgical Resident teaching rounds, Stanford, October, 2001
- Global Pacific Stanford Conference, Manila: Parkinson's Disease, Dementia, Migraine, November 2003

VIDEO CONSULTANT:

-
- AMA Video Clinic, April 22, 1987, "Understanding the Neuropathies"
 - Video Back Program, Karen Perlroth, March, 1992
 - Physiometrix Instructional Video: "Electroencephalographic Electrodes", August, 1994
 - Genentech Video Presentation "NGF in Diabetic Neuropathy", November, 1997
 - Sleep Solutions Video Presentation

REVIEWER:

-
- Annals of Neurology
 - Annals of Internal Medicine
 - Diabetes Care
 - Neurowatch
 - American College of Physicians Medicine, Neurology Section
 - "Continuum" American Academy of Neurology Continuing Education in Neurorehabilitation, 2010
 - Practice Guidelines, American Academy of Neurology, Peripheral Neuropathy, 2011
 - American Academy of Neurology, 2015

PUBLICATIONS:

1. Meeker MR, Reynold RW and Adornato BT: The Effect Of Thiosemicarbazide And Mild Shock Treatment On Subsequent Probabilistic Escape Behavior In Rats. *Psychonomic Bulletin* 1:27-31, 1967
2. O'Brien JS, Okada S, Fillerup DL, Veath MI, Adornato BT and Brenner PH: Tay-Sachs Disease: Prenatal Diagnosis. *Science* 172:61-64, 1971
3. O'Brien JS, Okada S, Fillerup DL, Veath MI, Adornato BT and Brenner PH: Tay-Sachs Disease: Prenatal Diagnosis. In: *Antenatal Diagnosis*, Albert Dorman, ed., University Press, 1972, pp 175-184
4. Adornato BT, O'Brien JS, Lampert PW, Roe TF and Neustein HB: Cerebral Spongy Degeneration Of Infancy, A Biochemical And Ultrastructural Study of Affected Twins. *Neurology* 22:202-210, 1972
5. Adornato BT and Lampert PW: Status Spongiosus Of Nervous Tissue: An Electron Microscopic Study. *Acta Neuropath.* 19:271-289, 1971
6. Adornato BT: Faciatal Pulmonary Edema. *JAMA* 235:101, 1976
7. Adornato BT, Winestock D: Acute Renal Failure, *Arch Neurology* 33:687-688
8. Adornato BT, Winestock D: Acute Renal Failure: In: *Contemporary Aspects Of Cerebrovascular Disease*. G.M. Austin, ed., 1976. Professional Information Library, Dallas
9. Adornato BT: Hemopexin In Neuromuscular Disease. *Neurology* 27:380, 1977, (Abstract)
10. Askanas V, Engel WK, Brittan DE, Adornato BT and Elben RM: An Unusual Mitochondrial Abnormality Re-innervated Ex Aergro and Induced De Novo In Cultured Muscle Fibers. *Neurology* 27:348, 1977 (Abstract)
11. Adornato BT and Berg BO: Diencephalic Syndrome And Von Recklinghausen's Neurofibromatosis. *Ann Neurol* 2:159-160, 1977
12. Adornato BT and Engel WK: MB-Creatinine Phosphokinase Not Diagnostic Of Myocardial Infarction. *Arch Int Med* 137:1089-1090, 1977
13. Adornato BT, Corash I and Engel WK: Erythrocyte Survival In Duchenne Muscular Dystrophy. *Neurol* 27:1093-1094, 1977
14. Eil C and Adornato BT: Radiculopathy In Multifocal Eosinophilic Granuloma: Successful Treatment With Radiotherapy. *Arch Neurol* 34:786-787, 1977
15. Adornato BT, Kagen LJ, Garger FA and Engel WK: Depletion of Serum Hemopexin In Fulminant Rhabdomyolysis. *Arch Neurol* 35:547-548, 1978
16. Adornato BT, Engel WK and Foidart-DeSalle M: Elevations of Hemopexin In Fulminant Rhabdomyolysis. *Arch Neurol* 35:577-590, 1978
17. Peylan-Ramu N, Poplack DG, Pizzo PA, Adornato BT and Di Chiro G: Abnormal CT Scans Of The Brain In Asymptomatic Children With Acute Lymphocytic Leukemia After

- Prophylactic Treatment Of The Central Nervous System With Radiation And Intrathecal Chemotherapy. *N Eng J Med* 298:815-816, 1978
18. Stump WI, Adornato BT, Engel WK, McIntosh CL and Castleman BJ: Thymectomy In Myasthenia Gravis. *Neurol* 28:372-373, 1978 (Abstract)
 19. Adornato BT, Blei CL, Engel WK and Kirkpatrick CH: Gallium Citrate Scanning Of The Thymus In Myasthenia Gravis. *Neurol* 28:382, 1978 (Abstract)
 20. Adornato BT, Engel WK, Kucera J and Bertorini TE: Benign Focal Amyotrophy. *Neurol* 28:399, 1978 (Abstract)
 21. Adornato BT, Houff SA, Engel WK, Dalakas M, Madden DL and Sever JL: Abnormal Immunoglobulin Bands In Cerebrospinal Fluid In Myasthenia Gravis. *Lancet* 11:367-368, 1978
 22. Eli C and Adornato BT: Caution On Bone Scans In Eosinophilic Granuloma. *Ann Int Med* 89:289, 1978
 23. Adornato BT, Kagen LF and Engel WK: Myoglobulinemia In Duchenne Muscular Dystrophy Patients And Carriers: A New Adjunct To Carrier Detection. *Lancet* 11:499-501, 1978
 24. Adornato BT, Houff AS, Engel WK and Sever JL: Oligoclonal Bands In ALS, *Arch Neurol* 36:119, 1979
 25. Askanas V, Engel WK, Brittan DE, Adornato BT and Elben RM: Reincarnation In Cultured Muscle Of Mitochondrial Abnormalities. *Arch Neurol* 35:801-809, 1978
 26. Adornato BT: Nitrous Oxide and Vitamin B12: *Lancet* 11:1318, 1978
 27. Askanas V, McLaughlin J, Engel WK and Adornato BT: Abnormalities In Cultured Muscle And Peripheral Nerve Of A Patient With Adrenomyeloneuropathy. *N. Eng J Med* 301:588-590, 1979
 28. Adornato BT: Hazards Of Exercise In Neuromuscular Disease. *West J Med* 131:334-335, 1979
 29. Adornato BT, Foidart M, Muller-Eberhard U and Engel WK: 1-125 Hemopexin Turnover In Neuromuscular Diseases. *Neuro* 29:566, 1979
 30. Adornato BT, Zweig MH, Van Steirteghem A and Engel WK: Radioimmunoassay Of Serum Creatinine Kinase BB and MM Isozymes In Neuromuscular Diseases. *Neurol* 29:566, 1979
 31. Adornato BT, Corash L, Dostz J, Shafer B, Stark H, Murphy D and Engel WK: Abnormality Of Platelet Dense Bodies In Duchenne Dystrophy. *Neurol* 29:822, 1979 (Abstract)
 32. Adornato BT, Eli C, Head G and Loriaux L: Cerebellar Abnormalities In Multifocal Eosinophilic Granuloma. *Ann Neurol* 7:125-129, 1980

33. Zweig MH, Adornato BT, Van Steirteghem AC and Engel WK: Serum Creatinine Kinase BB and MM Concentrations Determined By Radioimmunoassay In Neuromuscular Disorders. *Ann Neurol* 7:324-328, 1980
34. Blau HM, Webster C, Chiu CP, Guttman S, Adornato BT and Chandler R: Isolation And Characterization Of Pure Populations Of Human Normal And Dystrophic Muscle Cells. *Molecular and Cellular Control Of Muscle Development. Cold Spring Harbor Symp*, 1982
35. Elin RJ, Foidart M, Adornato BT, Engel WK and Grainick HR: Qualification of Acute Phase Reactants Following Muscle Biopsy. *J Lab Clin Med* 100:566-573, 1982
36. Foidart M, Eisman J, Engel WK, Adornato BT, Liem HH and Muller-Eberhard U: Effect of Heme Administration On Hemopexin Metabolism In The Rhesus Monkey. *J Lab Clin Med* 100:451-560, 1983
37. Hofmann WW, Adornato BT and Reich H: The Role Of The Muscle Insulin Receptor In The Periodic Paralysis. *Muscle and Nerve* 6:566-573, 1983
38. Foidart M, Liem HH, Adornato BT, Engel WK and Muller-Eberhard U: Hemopexin Metabolism In Patients With Altered Serum Levels. *J Lab Clin Med* 102(5):838-846, Nov, 1983
39. Torrington K and Adornato BT: Cough Radiculopathy: Another Cause Of Pain In The Neck. *West J Med* 141:379-380, 1984
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41. Bertorini TE, Adornato BT, Kucera J: Benign Focal Amyotrophy, (letter), *Arch Neurol* 43:432, 1986
42. Zonana J, Adornato BT, Glass ST and Webb MJ: Familial Porencephaly And Congenital Hemiplegia. *J Pediatrics* 109:671-676, 1986
43. Honig L, Wasserstein P and Adornato BT: the Anatomic Basis Of Tonic Spasms In Multiple Sclerosis. *Neuro* 38:359, 1988 (Abstract)
44. Hass WK, Easton JD, Adams HP, Pryse-Phillips W, Molony BA, Anderson S, Kamm B: A Randomized Trial Comparing Ticlopidine Hydrochloride With Aspirin For The Prevention Of Stroke In High Risk Patients. *New Eng Jour Med* 321:501-507, 1989 (Participant, Ticlopidine Study Group)
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47. Herrick MK, Chang Y, Horoupian DS, Lombard C and Adornato BT: L-Tryptophan And The Eosinophilia-myalgia Syndrome: Pathological Findings In Eight Patients. *Human Pathology* 22:12-21, 1991

48. Honig LS, Wasserstein P and Adornato BT: Tonic Spasms In Multiple Sclerosis – Their Anatomic Basis And Treatment. *W.J. Med.* 154:723-726, 1991
49. Adornato BT and Tse V: Another Health Food Hazard: Gamma Hydroxybutyrate Induced Seizures. *Wester J Med.* 157:471, 1992 (Letter)
50. Engel WK and Adornato BT: Long Term Interferon Alpha-2A Benefits Otherwise – Intractable Chronic Fever-responsive Schwannian Immune Neuropathy. *Neurol* 42:467, 1992 (Abstract)
51. Adornato BT: Clinical Evaluation Of A New Proportional-fit EEG Monitoring System, I: Accuracy Of Electrode Placement. *Neurol* 42:471, 1992 (Abstract)
52. Adornato BT and Carlini W: Pushing Palsy: A Case Of Self Induced Peroneal Palsy During Natural Childbirth. *Neurol* 42:936-937, 1992
53. Warnick RE, Raisanen J, Adornato BT, et al: Intracranial Myxopapillary Ependymoma. *J Neuro Ocol* 15:251-256, 1993
54. DiMonte D, Sandy M, Jewell S, Adornato B, Tanner C and Langston W: Oxidative Phosphorylation By Intact Muscle Mitochondria In Parkinson's Disease. *Neurodegeneration* 2:275-281, 1993
55. Lopez J, Adornato BT and Hoyt WF: Entomopia: A Remarkable Caes of Cerebral Polyopia. *Neurol* 43:2145-2146, 1993
56. Engel W, King and Adornato BT: Fever Responsive Neuropathy (FRN) Benefited By Long Term Interferon Alpha-2A Treatment. *Can J Neurol Sci* 20, Supple 44, 1993
57. Petty, Brent, Cornblath D, Adornato B, et al: the Effect of Systemically Administered Recombinant Human Nerve Growth Factor In Healthy Human Subjects. *Annals of Neurol* 36:244-246, 1994
58. Apfel S, Adornato B, Cornblath D, et al: Phase II Trial Of Human Recombinant Nerve Growth Factor In Peripheral Neuropathy (Abstract), Accepted October, 1996
59. Adornato B, Apfel S, Dyck P, et al: Benign Transient Neuromyalgic Response of NGF, (Abstract), *Neurology*, April 1997
60. Lew MF, Adornato BT, Duane DD, et al: Botulinum Toxin Type B (Bot B): A Double-blind Placebo-controlled Safety and Efficacy Study in Cervical Dystonia. *Neurology*, November 49, 701-707, 1997
61. Apfel SC, Kessler J, Adornato BT: Recombinant Human NGF In The Treatment Of Diabetic Polyneuropathy, *Neurology*, 695-701, 1998
62. Adornato BT, Li KC, Murthy HK, et al: High Frequency Severe Sleep Apnea In Non-obese Asians: Clinical And Cephalometric Observations. *Neurology* 52, A111, (Suppl 2), 1999
63. McArthur JC, Yiannoutsos SC, Simpson D, Adornato BT: A Phase II Trial of Recombinant Nerve Growth Factor For Sensory Neuropathy Associated With HIV Infection. *Neurology* 54, 1080-1088, 2000

64. Li K, Powell N, Kushida C, Riley R, Adornato B, Guilleminault C: A Comparison Of Asian And White Patients With Obstructive Sleep Apnea Syndrome. *Laryngoscope* 109, 1937-1940, December 1999
65. Apfel SC, J.A. Kessler, Adornato BT, et al: Recombinant human nerve growth factor in the treatment of diabetic polyneuropathy, *Neurology*, 51, 695-702, 1998
66. Schifito, G., Yiannoutsos, C., Simpson, D., Adornato, B., Long term treatment with recombinant nerve growth factor for HIV associated sensory neuropathy,
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69. Adornato, B.T., Drogan, O., Thoresen, P., et al: The Practice of Neurology: Report of the AAN Member Research Subcommittee, *Neurology*, November 22, 2011

BOOK REVIEW:

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- Adornato, BT: Sleep Disorders And Insomnia In The Elderly. Albarede J, Morley J, Roth T and Vellas B. In *Contemporary Gerontology*, Volume 1:50, 1994

BOOK CHAPTER:

-
- "Disorders of Sleep and Circadian Rhythms" in *Harrison's Principles of Internal Medicine Companion Handbook*, 14th Edition, McGraw-Hill, New York
 - "Diseases of The Spinal Cord In Clinical Neurology", Adornato BT and Glasberg MR, in *The Science Of Practice of Clinical Medicine*, Rosenberg RN, ed., Vol 5, Grune and Stratton, 1980
 - "Diseases of The Spinal Cord," Glasberg MR and Adornato BT, Volume 1, *The Clinical Neurosciences*, Churchill Livingstone, New York, 1983

JOURNAL REVIEW (published)

-
- Neurowatch, March 2003, Valproate in diabetic peripheral neuropathy

Bruce T. Adornato MD Testimony 2015-2018

Trials:

Yazon v Fountain Valley (2015) Orange County

Moore v Simopoulos (2015) South Lake Tahoe

Herger v Cammarosano (2015) Woodland Ca

Gunter v Schneier (2016) Van Nuys, Ca

Ubaldo v MMG, (2016) Kahilui, Hi

King v Sloan (2017) Oakland Ca

Boyle v Jordan (2017) Alameda, Ca.

Okelley v Bryant (2018) Napa, Ca

Depositions:

Nakada (2015 Palo Alto

Rosenwald v Petaluma (2015)

Yazon (2015)

Moore (2015)

Herger (2015)

Gunter (2015)

Newell (2016)

Galbreath (2016)

Bledsaw (2016)

Hash (2016)

Galinis v Bayer March 2017

Baxter v Selco June 2017

Strand v Pebble Beach March 2018

Bailey v RL Carriers October 2018

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July 15, 2018

MEDICOLEGAL CONSULTATIVE SERVICES

- | | |
|--|------------|
| 1. Retainer/Administrative Fee | \$575 |
| 2. Review of records, conferences, testimony | \$575/hour |
| 3. Depositions (one hour minimum) | \$700/hour |

4. CANCELLATION PROVISIONS

In the event of a cancellation of scheduled services, advance notification is necessary: Three full working days prior to depositions, conferences and Independent Medical Examinations and seven working days for courtroom or arbitration or mediation testimony. Late cancellations billed in full for time reserved.

The party scheduling the appointment is responsible for the late cancellation/missed appointment fee. Secondary collection of these fees from another law firm or from the examinee is the responsibility of the scheduling party.

Responsible Party

Date

EXHIBIT “5”

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

Dear Mr. Couchot

RE: Titina Marie Farris

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

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

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

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

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

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

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

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

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

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

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

Dr. Barchuck future care recommendations:

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

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

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

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

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

Lance R. Stone, DO

Lance R. Stone, DO

LANCE R STONE, D.O.

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PROFESSIONAL ACTIVITIES

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

ACADEMIC APPOINTMENTS

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

EDUCATION

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

LICENSURE & BOARD CERTIFICATION

Licensure, California 1987

Board Certification, American Osteopathic Board of Rehabilitation Medicine 1992

PUBLISHED ARTICLES

Ramachandran VS, Altschuler EL, Stone LR: Can mirrors alleviate visual hemi neglect?
The Journal of Medical Hypothesis, 1999, Volume 52, No. 4, 303-305

Stone LR, Friedlund P: Trauma top ten: Acute rehabilitation of the tetraplegic patient.
Journal of Trauma Nursing, October/December 1998, Volume 5, Issue 4, 105-107

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

Kim SJ, Shin DY, Stone L: Cranial nerve injuries in the adult with traumatic brain injury.
Journal of Korean Academy of Rehabilitation Medicine, 1993, Volume 17, No. 2, 194-201.

Stone LR, Keenan MAE: Deep Venous thrombosis of the upper extremity following traumatic brain injury.
Archives of Physical Medicine & Rehabilitation Medicine, 1992, Volume 73, No. 5, 486-489

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

Keenan MAE, Haider TT, Stone LR: Dynamic electromyography to assess elbow spasticity.
The Journal of Hand Surgery, 1990, Volume 15, No. 6, 940-944.

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

Keenan MAE, Tomas SE, Stone L, Gersten LM: Percutaneous phenol block of the musculocutaneous nerve to control elbow flexor spasticity.
The Journal of Hand Surgery, 1990, Volume 15A, No. 2, 340-346

Stone LR, Keenan MAE, Shin DY: Acquired limb loss following traumatic brain injury.
American Journal of Physical Medicine and Rehabilitation, 1990, Volume 69, No. 3, 135-139.

Aboulafia AJ, Keenan MAE, Stone LR: An uncommon cause of fever in a brain injured patient.
Brain Injury, Volume 4, Issue 3, July 1990, 307-309.

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

Stone L, Keenan MAE: Peripheral nerve injuries in the adult with traumatic brain injury.
Clinical Orthopedics and Related Research, No. 233, August 1988, 136-144.

PUBLISHED ABSTRACTS

Stone LR, Fanchiang SP, Keenan MAE, Young S: Outcome of traumatic brain injured patients with delayed admission to inpatient rehabilitation.
Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-35.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Keenan MAE, Haider T, Stone L: Electromyographic assessment of hand placement in brain injured adults.

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

Keenan MAE, Romanelli RR, Lunsford MS, Stone L: Evaluation of motor control in the hands of adults with spasticity from brain injury using dynamic EMG.

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

SCIENTIFIC PRESENTATIONS

Introduction to Transcranial Direct Current Stimulation (TDCS) in Neuropsychiatric Research.

Course Co-Director

Highland Hospital. Oakland California. *October 20, 2012.*

Neural Repair: Current Trends in Restorative Therapies Following Traumatic Brain Injury.

Faculty

Scripps Memorial Hospital - 6th Annual Brain Injury Rehabilitation Conference. Carlsbad, California. *March 17 and 18, 2011.*

Late Physical Complications Following Stroke and Traumatic Brain Injury.

Medical Grand Rounds. John F. Kennedy Memorial Hospital. Indo, California. *February 16, 1994.*

Management of Pain and Reflex Sympathetic Dystrophy Following Traumatic Brain Injury.

International Congress of Orthopaedic Rehabilitation. Anaheim, California. *June 22, 1990.*

Pathophysiology of Traumatic Brain Injury.

Neurology Grand Rounds. Harbor UCLA Medical Centers, Department of Neurology. Torrance, California. February 26, 1990.

SCIENTIFIC PRESENTATIONS *(continued)*

The Treatment of Spastic Plano valgus Foot Deformity in the Neurologically Impaired Adult.

The 57th American Academy of Orthopedic Surgeons. New Orleans, Louisiana. February 10, 1990.

Diagnosis and Incidence of Reflex Sympathetic Dystrophy in Traumatic Brain Injury.

The 51st Annual Assembly, American Academy of Physical Medicine and Rehabilitation. San Antonio, Texas. November 6, 1989.

Outcome of Traumatic Brain Injured Patients with Delayed Admission to Inpatient Rehabilitation.

The 51st Annual Assembly, American Academy of Physical Medicine and Rehabilitation. San Antonio, Texas. November 6, 1989.

Rehabilitation of Trauma Patients.

Eighth Annual Modern Concepts in Trauma Care Symposium. Orange, California. April 27, 1989.

Incidence and Diagnosis of Reflex Sympathetic Dystrophy in Traumatic Brain Injury:

Use of bone Scintigraphy. First Biennial World Congress, International Association of the Study of Traumatic Brain Injury. San Jose, California. April 9, 1989.

Pathophysiology of Traumatic Brain Injury.

Medical Grand Rounds Rancho Los Amigos Medical Center. Downey, California. March 2, 1989.

Peripheral Nerve Injuries in the Adult with Traumatic Brain Injury.

50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. November 3, 1988.

Percutaneous Phenol Block of the Musculocutaneous Nerve.

50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. November 3, 1988.

Evaluation of Motor Control in the Hand of Adults with Spasticity from brain Injury using

Dynamic Electromyography. 50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. November 3, 1988.

Intrinsic Release for Spastic Hand Deformity.

American Association for Surgery of the Hand, Annual Meeting. Toronto, Canada. October 1988.

POSTER EXHIBIT PRESENTATIONS

Foot Complications in Non-ambulatory Spastic Patients.

The 58th Annual Meeting of the American Academy of Orthopaedic Surgeons. Anaheim, California. March 7, 1991.

Autonomic Dysfunction Syndrome (ADS): Report of a case with observations at necropsy.

The 52th Annual Assembly of the American Academy of Physical Medicine and Rehabilitation. Phoenix, Arizona. October 23, 1990.

Posterior Tibial Nerve Phenol Block to Control Spastic Equinus Deformity.

The 57th Annual Meeting of the American Academy of Orthopaedic Surgeons. New Orleans, Louisiana. February 8-12, 1990. Course Objectives.

COURSE FACULTY

Critical Care Summer Session 99.

UCSD School of Medicine. Rehabilitation in the Critically Ill Patients. San Diego, California. August 5, 1999. Faculty.

Spinal Cord Injury Rehabilitation.

Third Annual Neurotrauma Nursing Conference. UCSD Medical Center. San Diego, California. November 10, 1998.

Acute Rehabilitation of the Tetraplegic Patient.

Trauma Grand Rounds. UCSD Medical Center, Department of Surgery. San Diego, California. October 13, 1998

Neuropathology As a guide to Rehabilitation Following Traumatic Brain Injury.

Trauma Grand Rounds. UCSD Medical Center, Department of Surgery. San Diego, California. May 23, 1997

Sociedad Occidental de Medicina de Rehabilitacion Annual Internal Meeting.

Peurto Vallarta, Mexico. May 15-19, 1995. Faculty.

San Diego Head Injury Foundation, Mild Traumatic Brain Injury: The Reconstruction Phase.

San Diego, California.

American Academy of Neurology, Traumatic Brain Injury Rehabilitation Course.

Daniel Freeman Memorial Hospital and Rancho Los Amigos Medical Center. October 14-18, 1991. Faculty.

Third International Symposium, Neuro-Orthopaedic Management of the Traumatic brain Injured

Adult. Anaheim, California. June 21-23, 1990. Course Director.

VOLUNTEER ACTIVITIES

2005 - 2011: Red Cross Physician Volunteer (Comprehensive Combat and Casualty Care CC5) Balboa

Naval Medical Center

San Diego, California

LETTERS TO THE EDITOR

New England Journal of Medicine. Editorials and Conflicts of Interest. Volume 336: 728-729, No. 10., March 6, 1997

BOOKS

Neuro-Orthopaedic Complication Following Traumatic Brain Injury.

Physical Medicine and Rehabilitation: State of the Art Reviews. Publisher Hanley and Belfus, Inc. 1993, Volume 7, No. 3, Editor.

CHAPTERS

Spasticity: Management Using Nerve Blocks.

Physical Medicine and Rehabilitation: State of the Art Reviews 1993, Volume 7, No. 3, 527-558.

WARRINER (F)

Fee Schedule

- *Medical Record Review-300.00/hour*
- *Telephone Consultation-400.00/hour*
- *Physician Examination-400.00/hour**
- *Preparation of Written Life Care Plan Report-500.00/hour*
- *Deposition-750.00/hour*
- *Expert Trial Testimony-2,000.00 half day, 5,000.00 full day ***
- *Retainer Fee-2,000.00*

**Office*

***Excluding travel expenses, including preparation*

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EXHIBIT “6”

DEC 03 2018

CCC

Kim S. Erlich, M.D.
Northern Peninsula Infectious Diseases Medical Group
1501 Trousdale Drive
Burlingame, California 94010
(650) 696-5777
Kerlich@Norpenid.com

November 26, 2018

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

Re: Farris, Titina v. Rives, Barry

Dear Mr. Couchot:

As per your request, I have reviewed this matter and have formed an opinion as it relates to the care provided by Barry Rives, M.D. to Titina Farris. Specifically, I have been asked to comment on the opinions and conclusions expressed by Alan Stein, M.D., an expert witness.

I am a physician licensed to practice medicine in the State of California. I am a Consultant in Infectious Diseases in a private practice named Northern Peninsula Infectious Diseases Medical Group, located at 1501 Trousdale Drive, Burlingame, California 94010. I am Board Certified by the American Board of Internal Medicine in both Internal Medicine and Infectious Diseases. I am a fellow in the Infectious Diseases Society of America. I am an Associate Clinical Professor of Medicine at the University of California, San Francisco, and I am the Medical Director of Infection Prevention and Control, and Antibiotic Stewardship at Mills Peninsula Medical Center in Burlingame California. In my day to day activities I provide Infectious Diseases consultations and follow-up care to hospitalized patients with Infectious Diseases, including patients who have had complications following surgery. A true and correct copy of my Curriculum Vitae is attached which sets forth my education, training, clinical experience, and qualifications to provide expert medical opinions regarding his case.

In preparation for this report and my opinions, I have reviewed the medical records of Titina Farris. These records include PDF files labeled St. Rose Dominican Hospital, and St. Rose Dominican Hospital – San Martin Campus (excerpts). In addition, I have reviewed reports that have been submitted by Alan Stein M.D., Bart J. Carter, M.D., and Brian E. Juell, M.D.

I disagree with the opinions and conclusions reached by Dr. Stein regarding the care provided by Dr. Rives. Specifically:

1. Dr. Stein states in his letter that, "*An Infectious Diseases (ID) consultant who saw the patient on July 4 believed Ms. Farris had fecal peritonitis.*" Later in his letter, Dr. Stein states that there was, "*.... An impression of fecal peritonitis from the ID consultant....*" I disagree with this conclusion, and believe that this misrepresents the comments made by the Infectious Diseases consultant. Although Farooq Shaikh, M.D, the Infectious Diseases physician who evaluated Ms. Farris on July 4, 2015 stated in his note that "This could represent fecal peritonitis.", this was not a definitive diagnosis. Although the diagnosis of fecal peritonitis was in Dr. Shaikh's differential diagnosis, since it was known that there had been bowel perforations during the surgery, Dr. Shaikh did not conclusively make this diagnosis, nor did he imply in his notes that this was the only possibility to explain Ms. Farris's clinical condition. Dr. Shaikh broadened the antibiotics being administered to Ms. Farris to cover for many potential infectious disease conditions, but he did not make a specific diagnosis of fecal peritonitis. Furthermore, even if a diagnosis of fecal peritonitis was confirmed at the time that Ms. Farris was evaluated by Dr. Shaikh, there was no suggestion of an active bowel perforation that was still present, nor were there indications for surgical intervention.
2. Dr. Stein states in his letter that, "*Dr. Ripplinger suspected a bowel leak and states that there should be a fairly low threshold for reoperation.*" In fact, Dr. Ripplinger stated that "that there should be a fairly low threshold for at least a diagnostic laparoscopy or even laparotomy if there are any significant abnormalities noted on the CT scan; especially if there is increase in free fluid in the abdomen." Following this clinical evaluation, a CT scan was performed that revealed a small amount of abdominal ascites, a right supra umbilical parasagittal ventral hernia, a hernia sac that contained fluid and free air with a decreased amount of free air compared to a prior study, and no extravasation of oral contrast from the bowel. These findings did not suggest the presence of a bowel perforation nor did they indicate a need for emergent surgery. These findings were not significant abnormalities that should have triggered a diagnostic laparoscopy or laparotomy.
3. Dr. Stein states in his letter that, "*The patient's persistent rapid heartbeat, high WBC, and fever were not properly evaluated by Dr. Rives.*". I disagree with this conclusion. The medical records clearly indicate that Ms. Farris was seen and managed by multiple consultants, including a hospitalist, a nephrologist, a critical care specialist, a cardiologist, and an Infectious Diseases physician. This medical team thoroughly and repeatedly evaluated the patient, and coordinated numerous diagnostic tests to be performed, including numerous blood tests and numerous radiographs. In fact, between the dates of July 3, 2015 and July 15, 2015, Ms. Farris had three plain X-rays of the abdomen and three CT scans of the abdomen. On each occasion, the radiographs were performed as part of the evaluation to determine the cause of Ms. Farris's clinical condition, with a suspicion of a possible intraabdominal process.

4. Dr. Stein states in his letter that, *"He should have re-operated to rule out a bowel leak as soon as Ms. Farris was medically stable and other obvious causes of post-operative deterioration (pneumonia, urinary tract infection, pulmonary embolism) were eliminated."* I disagree with this conclusion. Although there remained a concern over the possibility of a bowel leak, none of the diagnostic tests confirmed the presence of a bowel leak until the CT scan that was performed on July 15, 2015. In fact, all of X-ray studies performed prior to the July 15, 2015 CT scan suggested that a bowel leak was not present at the time that these studies were performed. These studies repeatedly showed the absence of free air or bowel obstruction. It was only on July 15, 2015, when her third CT scan revealed pneumoperitoneum with free fluid in the abdomen, a large pocket of air, and the presence of subcutaneous air/fluid along the right lateral abdominal wall that a bowel perforation became apparent. There were multiple possibilities to explain Ms. Farris's clinical features, and a decision to perform emergent surgery once she was stabilized to "rule out a bowel leak" was not necessarily indicated nor would it be considered standard of care.
5. Dr. Stein states in his letter that, *"Instead, he [Dr. Rives] allowed Ms. Farris to linger with a bowel leak perforation for eleven days before recommending surgery, at which point she was in critical condition."* I disagree with this conclusion. The significant change in the CT scan findings on July 15, 2015 as compared to the prior studies provides strong evidence that the perforation was a relatively new finding. The abnormalities seen on July 15, 2015 had not been present on the CT scan which was performed on July 9, 2015, and therefore the patient did not have a bowel perforation at that time. It is my opinion that the bowel perforation was a relatively recent event, and occurred sometime between the July 9, 2015 and July 15, 2015 CT scans. Once the perforation was identified, Dr. Rives immediately suggested the need for definitive surgical intervention.

In summary, I disagree with many of the statements and conclusions reached by Dr. Stein regarding the evaluation and care provided by Dr. Rives. It is my opinion that, from an Infectious Diseases standpoint, Dr. Rives met the standard of care in his evaluation and management of Ms. Farris.

All of the above professional opinions are held and expressed to a reasonable degree of medical certainty, and I am willing to testify in the above matter.

Respectfully submitted,



Kim S. Erlich, M.D.

CURRICULUM VITAE

Kim Steven Erlich, M.D.

**Northern Peninsula Infectious Diseases Medical Group
Medical Director, Infection Prevention and Control
Mills Peninsula Medical Center
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**Kerlich@NorpenID.com,
Erlichk@SutterHealth.org**

Clinical Position:	Consultant in Infectious Diseases, Northern Peninsula Infectious Diseases Medical Group
Academic Appointment:	Associate Clinical Professor of Medicine, University of California, San Francisco Guest Faculty, California STD/HIV Prevention Training Center
Hospital Positions:	<u>Mills Peninsula Medical Center, Burlingame, CA</u> Medical Director, Infection Prevention and Control Medical Director, Antibiotic Stewardship Program Chairman, Infection Control Committee Member, Pharmacy and Therapeutics Committee Chief of Staff (7/2016-6/2018) Vice-Chief of Staff (7/2014-6/2016) Chairman, Department of Internal Medicine (7/2013-7/2015) Member at Large, Executive Committee (7/2009-7/2013) <u>Seton Medical Center</u> Chairman, Pharmacy & Therapeutics (1990-2008) Co-chairman, Ethics Committee (1998-2005) Secretary-Treasurer, Medical Staff (1998-2000)
Government Position:	Committee Member California Department of Public Health Healthcare-Associated Infections Program
Licensure and certification:	2003 American Academy of HIV Medicine, HIV Specialist

1986 American Board of Internal Medicine,
Subspecialty in Infectious Diseases
1984 American Board of Internal Medicine
1984 State of California, G052407
1982 National Board of Medical Examiners
1981 State of Illinois, C36-065302 (inactive)

Professional
Organizations:

Fellow, Infectious Disease Society of America
Fellow, Society for Hospital Epidemiology of
America
American Society for Microbiology

Hospital
Appointments:

Mills-Peninsula Medical Center
1501 Trousdale Drive
Burlingame, California 94010
Membership status: Active staff

Seton Medical Center
1900 Sullivan Avenue
Daly City, California 94015
Membership status: Active staff

EDUCATION

Dates

Attended

Institution and Location

Status

1986-88

University of California,
San Francisco General
Hospital, San Francisco,
California

Postgraduate
Fellowship in
Sexually Transmitted
Diseases

1984-86

University of California,
San Francisco General
Hospital, San Francisco,
California

Postgraduate
Fellowship in
Infectious Diseases

1982-84

Northwestern University
Chicago, Illinois

Residency in
Internal Medicine

1981-82

Northwestern University
Chicago, Illinois

Internship in
Internal Medicine

1977-81	University of Illinois College of Medicine Chicago, Illinois	Doctor of Medicine
1973-77	University of Illinois Champaign-Urbana, Illinois	Bachelors of Science in Chemistry

PROFESSIONAL CAREER

<u>Dates Attended</u>	<u>Institution and Location</u>	<u>Status</u>
1988-present	Northern Peninsula Infectious Diseases Medical Group, Burlingame, California	Consultant in Infectious Diseases
1990-1994	Curaflex Infusion and Coram Health Services Ontario, California	Medical Advisor and Quality Assurance Director
1990-1994	Wound Care Center Seton Medical Center Daly City, California	Co-Medical Director
1983-84	Northwestern Memorial Faculty Foundation Clinic for Sexually Transmitted Diseases	Staff Physician

CURRENT RESEARCH INVESTIGATION

Nutritional deficits and the effects of a targeted feeding program in children ages 0 to 10 years in the municipality of Jagna on the province of Bohol in the Visayas, Philippines

SCIENTIFIC AND CLINICAL PUBLICATIONS

Varicella-Zoster Virus Infection: Update on Chickenpox and Shingles. San Mateo County Physician; A Publication of the San Mateo County Medical Assoc; March 2013; Vol 2, No. 3.

Erlach KS, Congeni B. Importance of circulating antibodies in protection against meningococcal disease. Human Vaccines & Immunotherapeutics. 8(8). 1029-1035, 2012.

Lawrence, W.D, Erlach, K.S., Management of Herpesvirus Infections (Cytomegalovirus, Herpes

Simplex Virus, and Varicella-Zoster Virus) in: Volberding, P. A., Sande's HIV/AIDS Medicine, Elsevier 2012

Erlach KS: Hot Topics in Infectious Diseases. San Mateo County Physician; A Publication of the San Mateo County Medical Association; April 2012; Vol 1, No. 3.

Erlach KS: Varicella-Zoster and HIV. In: Coffey S, Volberding PA, eds. University of California, San Francisco HIV InSite Knowledge Base [textbook on-line, revised November 2011. Available at <http://hivinsite.ucsf.edu/InSite?page=kb-05-03-01>

Erlach KS. Primary herpes simplex virus type 1 (HSV-1) in multiple areas following a facial in a commercial spa facility. Infectious Diseases in Clinical Practice. 18(6):402-403, 2010.

Erlach KS: Community Acquired Methicillin Resistant Staphylococcus Aureus (CA-MRSA) Infections. San Mateo County Medical Association Bulletin 56:10; 1-13, 2007.

Drew WL, Erlach KS: Management of herpes virus infections (CMV, HSV, VZV). In: Global HIV/AIDS Medicine, Volberding PA, Sande MA, Lange J, Greene WC (eds.), Saunders Elsevier, Philadelphia, PA; 437-462, 2008.

Herpes Virus Infections. Erlach KS: Audio-Digest Obstetrics/Gynecology 53:15, 2006.

Erlach KS: Influenza-A Outbreak and Lessons Learned. San Mateo County Medical Association Bulletin 55:5; 1-14, 2006.

Rumack JS, Erlach KS: Avian Influenza H5N1: Are We Ready for It? San Mateo County Medical Association Bulletin 54:10; 1-6, 2005.

Erlach K. Herpes Simplex Virus and HIV. In: Peiperl L, Volberding PA, eds. HIV InSite Knowledge Base [textbook on-line], revised 2003. Available at <http://hivinsite.ucsf.edu/InSite.jsp?page=kb-05-03-02>

Drew WL, Stampien MJ, Kheraj M, Erlach KS: Management of herpesvirus infections (CMV, HSV, VZV). In: Medical Management of AIDS, Sande MA, Volberding PA (eds.), W.B. Saunders, Philadelphia, PA; 429-452, 1999.

Erlach KS: Management of herpes simplex and varicella-zoster virus infections. Western J Med 166:211-215, 1997.

Drew WL, Buhles W, Erlach KS: Management of herpes virus infections (CMV, HSV, VZV). In: Medical Management of AIDS, Sande MA, Volberding PA (eds.), W.B. Saunders, Philadelphia, PA; 512-536, 1995.

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ABSTRACTS

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LECTURE SUBJECTS AND TOPICS

Herpes Simplex Virus Infections, Varicella-Zoster Virus Infections, Human Papillomavirus Infection, Sexually Transmitted Diseases, HIV and AIDS, Antibiotic Resistance and Antibiotic Stewardship, Update on "Hot-Topics" in Infectious Diseases, Meningococcal Infections

Revised 7/1/18

Kim S. Erlich, M.D.
November 20, 2018

DEPOSITION AND TRIAL TESTIMONY OVER 4 YEAR PERIOD

Date: January 25, 2013
Case: Lowy v. Peace Health
Expert for: Plaintiff
Function: Pretrial deposition
Attorney: Michael Myers and Joel Cunningham
701 5th Avenue; Suite 6700
Seattle, Washington 98104

Date: April 22, 2013
Case: Raymond Montes v. Kaiser
Expert for: Plaintiff
Function: Pretrial deposition
Attorney: Lawrence Knapp
Stuart Tabak
Tabak Law Firm
250 Dorris Place
Stockton, California 95204

Date: July 19, 2013
Case: Baires v. Kern County and USA
Expert for: Defense
Function: Pretrial deposition
Attorney: Robert K. Lawrence
Bjork Lawrence Law Firm
1850 Mt. Diablo Boulevard
Suite 120
Walnut Creek, California 94596

Date: October 23, 2013
Case: Barella v. Lucas et al.
Expert for: Defense
Function: Pre-arbitration deposition
Attorney: John Supple
Supple & Canvel, LLP
2320 Marinship Way, Suite 301
Sausalito, California 94965

Date: October 31, 2013
Case: Barella v. Lucas et al.
Expert for: Defense
Function: Arbitration
Attorney: John Supple
Supple & Canvel, LLP
2320 Marinship Way, Suite 301
Sausalito, California 94965

Date: April 9, 2014
Case: Arellano v. Polito
Expert for: Plaintiff
Function: Trial testimony
Attorney: Michael Mandel
1390 Market Street
San Francisco, California 94102

Date: July 31, 2015
Case: May-McNary v. Murray
Expert for: Plaintiff
Function: Pretrial deposition
Attorney: Michael Mandel
1438 Market Street
San Francisco, California 94102

Date: April 6, 2016
Case: Dill v. Coconut Joe's
Expert for: Defense
Function: Pretrial deposition
Attorney: Michael Mutalipassi
Cholakian & Associates
400 Oyster Point Blvd., Ste 415
South San Francisco, CA 94080

Date: April 22, 2016
Case: Korade v. Passport Health
Expert for: Defense
Function: Pretrial deposition
Attorney: Kimberlei D. Evans, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104

Date: December 22, 2016
Case: Brown v. Rives
Expert for: Defense
Function: Pretrial deposition
Attorney: Chad C. Couchot
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

Date: April 13, 2018
Case: Roshan v. Liu et al.
Expert for: Defense
Function: Pretrial deposition
Attorney: Candace Herling, Esq.
Alverson, Taylor, Mortensen & Sanders
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

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June 26, 2018


Riesa R. Rice
Legal Secretary to Thomas J. Doyle
SCHUERING ZIMMERMAN & DOYLE
400 University Avenue
Sacramento, CA 95825

Dear Ms. Rice,

Review of records:	\$400/hour
Meetings and telephone discussions:	\$400/hour
Travel	\$200/hour
Depositions:	\$1000/hour
Court testimony:	\$1000/hour or, \$3000/half-day or, \$6000/full-day

If I am required to travel out of area, all travel expenses must be reimbursed. Cancelled depositions and court testimonies are charged for three hours unless they have been cancelled within 48 hours of the scheduled time. I have sent you an updated CV with this e-mail.

Sincerely,



Kim S. Erlich, M.D.

EXHIBIT “7”



Premiere Surgical Specialists

General, Vascular, Trauma & Laparoscopic Surgery

Robert H. Davis, M.D., F.R.C.S.
Certified
American Board
of Surgery

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

Thomas E. Rantbetski, M.D.
Certified
American Board
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Vascular Surgery

12/16/2018

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

Response to Expert Report of Michael B. Hurwitz, MD

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

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

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



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

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

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

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

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

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

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

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

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

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



Brian E Juell MD FACS

EXHIBIT “8”

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

Diplomate, American Board of Surgery
General Surgery
Laparoscopic Surgery

December 19th, 2018

Dear Mr. Couchot:

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

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

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

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

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

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

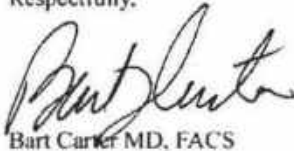
The "signs of infection" Dr. Hurwitz describes are also signs of the acute inflammatory condition which may also occur following surgery. Only in retrospect are we able to clearly see that the failure of this colotomy repair may have been the primary culprit. Further, Mrs. Farris' postoperative deterioration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

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

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

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

Respectfully,



Bart Carter MD, FACS