

CODE: **\$2515**
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Electronically Filed
Jun 12 2020 02:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOPHIA MONTANEZ,

Plaintiff,

vs.

Case No. CV19-01977

Dept. No. 4

SPARKS FAMILY HOSPITAL, INC., A
Delaware corporation doing business as
NORTHERN NEVADA MEDICAL CENTER,
and DOES 1-15

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Sophia Montanez, Plaintiff above named, hereby appeal to the Supreme Court of Nevada from the "ORDER GRANTING SPARKS FAMILY HOSPITAL, INC.'S MOTION TO DISMISS" entered in this action on the 8th day of May, 2020.

Dated: June 9, 2020.

/s/ Bradley Paul Elley
BRADLEY PAUL ELLEY, ESQ.
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Telephone: (775) 831-8800
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Attorney for Plaintiff

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1 CODE: **1310**
2 BRADLEY PAUL ELLEY, ESQ.
3 Nevada State Bar #658
4 120 Country Club Drive, Suite 5
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8 Attorney for Plaintiff Sophia Montanez

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 SOPHIA MONTANEZ,

13 Plaintiff,

14 vs.

Case No. CV19-01977

Dept. No. 4

15 SPARKS FAMILY HOSPITAL, INC., A
16 Delaware corporation doing business as
17 NORTHERN NEVADA MEDICAL CENTER,
18 and DOES 1-15

19 Defendants.
20 _____/

21 **PLAINTIFF'S CASE APPEAL STATEMENT**

22 **1. Name of appellant filing this case appeal statement:** Plaintiff Sophia Montanez.

23 **2. Identify the judge issuing the decision, judgment or order appealed from:** The Honorable .
24 Connie J. Steinheimer.
25

26 **3. Identify each appellant and the name and address of counsel for each appellant:**

27 A. Sophia Montanez.
28

1 B. Bradley Paul Elley, Esq., 120 Country Club Drive, Suite 5, Incline Village, NV 89451.

2
3
4 **4. Identify each respondent and the name and address of appellate counsel, if known, for each**
5 **respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and**
6 **provide the name and address of that respondent's trial counsel):**
7

8 A. SPARKS FAMILY HOSPITAL, INC., A Delaware corporation doing business as
9 NORTHERN NEVADA MEDICAL CENTER

10 B. Appellate counsel is unknown.

11 C. Trial Counsel:

12 JOHN H. COTTON, Esq.
13 ADAM SCHNEIDER, Esq.
14 JOHN H. COTTON & ASSOCIATES, LTD.
15 7900 W. Sahara Avenue, Suite 200
16 Las Vegas, Nevada 89117

17 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed**
18 **to practice law in Nevada and, if so, whether the district court granted that attorney permission**
19 **to appear under SCR 42 (attach a copy of any district court order granting such permission):**

20 A. No, all defense counsel are licensed to practice law in Nevada.

21
22 **6. Indicate whether appellant was represented by appointed or retained counsel in the district**
23 **court:** Retained counsel.
24

25
26 **7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**
27 Retained counsel.
28

1 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of**
2 **entry of the district court order granting such leave:** No.

3
4
5 **9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,**
6 **indictment, information, or petition was filed):** October 10, 2019.

7
8 **10. Provide a brief description of the nature of the action and result in the district court,**
9 **including the type of judgment or order being appealed and the relief granted by the**
10 **district court:** This medical malpractice personal injury action arises from the permanent
11 blinding of Plaintiff's good right eye during surgery at the defendant hospital caused by
12 unsanitary conditions causing a foreign bacterial substance to infect and destroy the vision in such
13 eye. There are two claims for relief against Defendant as the owner of the licensed hospital
14 where the surgery was performed, including: negligence-medical malpractice and premises
15 liability. The trial court granted Defendant's Motion for Order Dismissing the Complaint, per
16 NRCP Rule 12(b)(5)-Failure to State a Claim Upon Which Relief Can be Granted.
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20 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**
21 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of**
22 **the prior proceeding:** Not applicable.
23
24

25 **12. Indicate whether this appeal involves child custody or visitation:** Not applicable.
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1 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

2 Yes.

3
4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that this document, **does not** contain the social security
7 number of any person.

8
9 Dated this 9th day of June, 2020.

10 /s/ Bradley Paul Elley
11 BRADLEY PAUL ELLEY, ESQ.
12 Nevada State Bar #658
13 120 Country Club Drive, Suite 5
14 Incline Village, NV 89451
15 brad@bpelleylaw.com
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17 Attorney for Plaintiff
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PROOF OF SERVICE

In accordance with the provisions of N.R.C.P. 5(b), I hereby certify that I am an employee of Bradley Paul Elley, Attorney at Law, and that on June 9, 2020, I electronically filed a true and correct copy of **PLAINTIFF'S CASE APPEAL STATEMENT** with the Clerk of the Court by using the ECF system which served the following parties electronically:

JOHN H. COTTON, Esq.
ADAM SCHNEIDER, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

Attorneys for Defendants
Sparks Family Hospital Inc., dba
Northern Nevada Medical Center

Executed on June 9, 2020, at Incline Village, Nevada.

/s/ Elizabeth Lintner

**SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA
COUNTY OF WASHOE**

Case History - CV19-01977

Case Description: SOPHIA MONTANEZ VS SPARKS FAM. HOSP. DBA ETAL (D4)

Case Number: CV19-01977 Case Type: MEDICAL/DENTAL - Initially Filed On: 10/10/2019

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - CONNIE J. STEINHEIMER - D4	Active
PLTF - SOPHIA MONTANEZ - @1346640	Active
DEFT - SPARKS FAMILY HOSPITAL DBA NORTHERN NEVADA MEDICAL CENTER - @1236641	Active
ATTY - Adam Schneider, Esq. - 10216	Active
ATTY - Bradley Paul Elley, Esq. - 658	Active
ATTY - John H. Cotton, Esq. - 5268	Active

Disposed Hearings

- 1 Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 3/9/2020 at 14:56:00
Extra Event Text: DFT NORTHERN NEVADA MEDICAL CENTER'S MOTION TO DISMISS FILED 1-17-2020
Event Disposition: S200 - 5/8/2020

Actions

	<u>Filing Date</u>	<u>-</u>	<u>Docket Code & Description</u>
1	10/10/2019	-	\$1425 - \$Complaint - Civil Additional Text: COMPLAINT - Transaction 7532415 - Approved By: YVILORIA : 10-10-2019:16:01:11
2	10/10/2019	-	PAYRC - **Payment Receipted Additional Text: A Payment of \$260.00 was made on receipt DCDC647522.
3	1/6/2020	-	4085 - Summons Filed Additional Text: PROOF OF SERVICE OF SUMMONS AND COMPLAINT ON DEFENDANT SPARKS FAMILY HOSPITAL, INC., A Delaware corporation doing business as NORTHERN NEVADA MEDICAL CENTER - KRIS OSBORNE ADMIN ASST 12/30/19 - Transaction 7669975 - Approved By: NOREVIEW : 01-06-2020:15:44:42
4	1/6/2020	-	NEF - Proof of Electronic Service Additional Text: Transaction 7669999 - Approved By: NOREVIEW : 01-06-2020:15:47:31
5	1/17/2020	-	\$1560 - \$Def 1st Appearance - CV Additional Text: SPARKS FAMILY HOSP DBA NNMC - Transaction 7692694 - Approved By: CSULEZIC : 01-17-2020:13:53:29
6	1/17/2020	-	1817 - Initial Appear. Fee Disclosure Additional Text: SPARKS FAMILY HOSP DBA NNMC - Transaction 7692694 - Approved By: CSULEZIC : 01-17-2020:13:53:29
7	1/17/2020	-	2490 - Motion ... Additional Text: DEFENDANT'S MOTION TO DISMISS - Transaction 7692711 - Approved By: CSULEZIC : 01-17-2020:13:55:49
8	1/17/2020	-	PAYRC - **Payment Receipted Additional Text: A Payment of \$208.00 was made on receipt DCDC653372.
9	1/17/2020	-	NEF - Proof of Electronic Service Additional Text: Transaction 7692917 - Approved By: NOREVIEW : 01-17-2020:13:54:29

Report Does Not Contain Sealed Cases or Confidential Information

- 10 1/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7692935 - Approved By: NOREVIEW : 01-17-2020:13:57:04
- 11 2/24/2020 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO DEFENDANT'S MOTION TO DISMISS - Transaction 7756896 - Approved By: CSULEZIC : 02-25-2020:08:41:55
- 12 2/25/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7757238 - Approved By: NOREVIEW : 02-25-2020:08:43:36
- 13 3/9/2020 - 3795 - Reply...
Additional Text: DEFENDANT'S REPLY RE: MOTION TO DISMISS - Transaction 7782271 - Approved By: CSULEZIC : 03-09-2020:14:28:11
- 14 3/9/2020 - 3795 - Reply...
Additional Text: Defendant's Reply Re: Motion To Dismiss - Transaction 7782420 - Approved By: CSULEZIC : 03-09-2020:15:03:03
- 15 3/9/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7782421 - Approved By: NOREVIEW : 03-09-2020:14:29:09
- 16 3/9/2020 - 3860 - Request for Submission
Additional Text: transaction 7782583 - Approved By: NOREVIEW : 03-09-2020:14:57:53
DOCUMENT TITLE: DEFT SPARKS FAMILY HOSPITAL INC DBA NORTHERN NEVADA MEDICAL CENTER'S MOTION TO DISMISS FILED 1-17-2020
PARTY SUBMITTING: JOHN H COLTON ESQ
DATE SUBMITTED: 3-9-2020
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 17 3/9/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7782610 - Approved By: NOREVIEW : 03-09-2020:15:01:31
- 18 3/9/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7782641 - Approved By: NOREVIEW : 03-09-2020:15:05:29
- 19 5/8/2020 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 20 5/8/2020 - 3060 - Ord Granting Mtn ...
Additional Text: ORDER GRANTING SPARKS FAMILY HOSPITAL, INC.'S MOTION TO DISMISS - Transaction 7869323 - Approved By: NOREVIEW : 05-08-2020:17:16:22
- 21 5/8/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7869324 - Approved By: NOREVIEW : 05-08-2020:17:17:12
- 22 5/8/2020 - F135 - Adj Motion to Dismiss by DEFT
No additional text exists for this entry.
- 23 5/11/2020 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 7871138 - Approved By: NOREVIEW : 05-11-2020:15:03:26
- 24 5/11/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7871143 - Approved By: NOREVIEW : 05-11-2020:15:04:23
- 25 6/9/2020 - 1310 - Case Appeal Statement
Additional Text: PLAINTIFF'S CASE APPEAL STATEMENT - Transaction 7916714 - Approved By: YVILORIA : 06-09-2020:15:24:18
- 26 6/9/2020 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: NOTICE OF APPEAL - Transaction 7916714 - Approved By: YVILORIA : 06-09-2020:15:24:18

- 27 6/9/2020 - SAB - **Supreme Court Appeal Bond
Additional Text: SOPHIA MONTANEZ - Transaction 7916721 - Approved By: YVILORIA : 06-09-2020:15:27:33
- 28 6/9/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$24.00 was made on receipt DCDC659659.
- 29 6/9/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7916794 - Approved By: NOREVIEW : 06-09-2020:15:26:35
- 30 6/9/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$500.00 was made on receipt DCDC659660.
- 31 6/9/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7916799 - Approved By: NOREVIEW : 06-09-2020:15:28:36
- 32 6/9/2020 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7917097 - Approved By:
NOREVIEW : 06-09-2020:16:30:10
- 33 6/9/2020 - 4113 - District Ct Deficiency Notice
Additional Text: NOTICE OF APPEAL DEFICIENCY - SUPREME COURT FILING FEES - Transaction 7917097 - Approved By:
NOREVIEW : 06-09-2020:16:30:10

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 SOPHIA MONTANEZ,

Plaintiff

10 vs.

11 SPARKS FAMILY HOSPITAL, INC., a Delaware
12 Corporation doing business as NORTHERN
NEVADA MEDICAL CENTER and DOES 1-15,

13 Defendants.
14

CASE NO.: CV19-01977

DEPT. NO.: 4

15 **ORDER GRANTING SPARKS FAMILY HOSPITAL, INC.'S MOTION TO DISMISS**
16

17 On October 10, 2019, Plaintiff SOPHIA MONTANEZ (hereinafter, "MONTANEZ"), by
18 and through her attorney, Bradley Paul Elley, Esq., filed a *Complaint* against Defendant, SPARKS
19 FAMILY HOSPITAL, INC., a Delaware corporation doing business as NORTHERN NEVADA
20 MEDICAL CENTER (hereinafter, "NNMC").

21 On January 17, 2020, NNMC, by and through its counsel, John C. Cotton, Esq. and Adam
22 Schneider, Esq., filed *Defendant's Motion to Dismiss*. On February 24, 2020, MONTANEZ filed
23 her *Opposition to Defendant's Motion to Dismiss*. On March 9, 2020, NNMC filed *Defendant's*
24 *Reply Re: Motion to Dismiss*. The same day, NNMC submitted the matter for the Court's
25 consideration.

26 This case arises out of an October 2018 surgical procedure, that MONTANEZ alleges
27 resulted in her being infected with pseudomonas aeruginosa, and as a result is now permanently
28 and irreversibly blind in her right eye. MONTANEZ underwent the surgical procedure in a portion
of the NNMC that was newly constructed and/or re-designed. MONTANEZ alleges that during

1 or about the same week as her procedure, three other persons developed infections immediately
2 following procedures in the same newly constructed and/or designed portion of the NNMC.

3 NNMC's motion seeks dismissal of both claims for relief asserted in MONTANEZ's
4 Complaint, (1) medical malpractice under NRS 41A.100(1)(a) based upon the "foreign substance"
5 exception, and (2) premises liability.

6 Pursuant to NRCP 12(b)(5), a claim may be dismissed for failure to state a claim upon
7 which relief can be granted. "A complaint will not be dismissed for failure to state a claim 'unless
8 it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the
9 trier of fact, would entitle him to relief.'" Breliant v. Preferred Equities Corp., 109 Nev. 842, 858
10 (1993) (citations omitted). Factual "[a]llegations in the complaint must be accepted as true." See
11 Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228 (2008); Capital Mortgage Holding v.
12 Hahn, 101 Nev. 314, 315 (1985). In deciding a Motion to Dismiss pursuant to NRCP 12(b)(5),
13 the Court "must construe the pleading liberally and draw every fair intendment in favor of the
14 [non-moving party]." Vacation Village, Inc. v. Hitachi America, Ltd., 110 Nev. 481,484 (1994)
15 (citations omitted). A pleading party "must set forth sufficient facts to establish all necessary
16 elements of a claim" against the opposing party. Hay v. Hay, 100 Nev. 196, 198 (1984) (citing
17 Johnson v. Travelers Ins. Co., 89 Nev. 467, 472 (1973)). "The test to determine whether the
18 allegations of a cause of action are sufficient to assert a claim for relief is whether the allegations
19 give fair notice of the nature and basis of the claim and the relief requested." Ravera v. City of
20 Reno, 100 Nev. 68, 70 (1984).

21 First, the Court will consider MONTANEZ's first claim for relief, medical malpractice
22 under NRS 41A.100(1)(a): The "foreign substance" exception. NNMC argues that the Court
23 should dismiss MONTANEZ first claim for relief because the Complaint does not attach or
24 reference any expert affidavit pursuant to NRS 41A.071. "If an action for professional negligence
25 is filed . . . , the district court shall dismiss the action, without prejudice, if the action is filed without
26 an affidavit that . . . [s]upports the allegations contained in the action." *NRS 41A.071*. Under NRS
27 41A.071, "a medical malpractice complaint filed without a supporting medical expert affidavit is
28 void ab initio." Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. County

1 of Washoe, 122 Nev. 1298, 1300 (2006). The purpose of NRS 41A.071 “is to lower costs, reduce
2 frivolous lawsuits, and ensure that medical malpractice actions are filed in good faith based upon
3 competent expert medical opinion.” Id. at 1304. “[T]he general rule [is] that expert testimony
4 must be used to establish medical malpractice, unless the propriety of the treatment, or the lack of
5 it, is a matter of common knowledge of laymen.” Fernandez v. Admirand, 108 Nev. 963, 969
6 (1992).

7 MONTANEZ argues that the statute’s plain language should govern. “[W]hen the
8 language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is
9 no room for construction, and the courts are not permitted to search for its meaning beyond the
10 statute itself.” Sarfo v. Bd. of Med. Examiners, 134 Nev. 709, 714 (2018) (quoting Dykema v. Del
11 Webb Communities, Inc., 132 Nev. 823, 826 (2016). In “reading the statute as a whole, NRS
12 41A.100 clearly states that an affidavit is not required in any one or more of the following
13 circumstances..., and those enumerated res ipsa loquitur exceptions are listed in subsections (1)(a)-
14 (e), one of which being that an object was left in the body following surgery.” Peck v. Zipf, 133
15 Nev. 890, 894 (2017) (internal quotes omitted).

16 Here, MONTANEZ argues that no affidavit is required because her case falls under the
17 foreign substance exception of NRS 41A.100(1)(a). “A foreign substance [is one] other than
18 medication or a prosthetic device [that] was unintentionally left within the body of a patient
19 following surgery.” *NRS 41A.100(1)(a)*. MONTANEZ argues that during her surgery, a foreign
20 substance was unintentionally left in her body, specifically a bacterium known as pseudomonas
21 aeruginosa. MONTANEZ argues that since the statute explicitly lists only two types of foreign
22 substances that are not included in its scope, neither of which applies here, the foreign substance
23 exception should apply.

24 NNMC argues that bacteria, as an organism, are not the kind of foreign substances which
25 allow for avoiding the NRS 41A.071 expert affidavit requirement. NNMC claims that the
26 Legislature intended the phrase “unintentionally left within the body” to refer not to bacterium,
27 but to substances health care providers would have used during surgery, such as needles, surgical
28 sponges, or a scalpel, and therefore, if unintentionally left within the body following surgery, it

1 would be malpractice which would not require expert testimony to prove. While Nevada case law
2 has not specifically excluded bacteria or other microscopic organisms from being deemed a foreign
3 substance, other jurisdictions have. The Court finds the statute is ambiguous as to what qualifies
4 as a foreign substance, even though there are two exceptions enumerated in NRS 41A.100(1)(a).

5 NNMC argues that since this is an alleged professional negligence action, it requires an
6 expert affidavit. NNMC argues the infection could have come from other sources outside of the
7 health provider's control, and therefore requires expert testimony to show that NNMC is at fault.
8 Furthermore, NNMC argues that this is not a factual scenario where the expert affidavit
9 requirement can be avoided. The Court agrees. The circumstances surrounding this case will
10 require expert testimony, as a layperson could not be expected to find malpractice in this case the
11 same way they would in a case where a sponge or scalpel was unintentionally left behind.

12 Under NRS 41A.071, "a medical malpractice complaint filed without a supporting medical
13 expert affidavit is void ab initio." Washoe Med. Ctr., 122 Nev. at 1300. "[V]oid ab initio mean[s]
14 that the complaint has no force and effect, does not legally exist, and thus it cannot be amended."
15 Id. at 1304. "Therefore, NRCP 15(a)'s amendment provisions, whether allowing amendment as a
16 matter of course or leave to amend, are inapplicable. A complaint that does not comply with NRS
17 41A.071 is void and must be dismissed; no amendment is permitted." Id. at 1304. Therefore, the
18 Court grants NNMC's motion to dismiss MONTANEZ's first claim for relief, without prejudice.

19 Second, the Court will consider MONTANEZ's second claim for relief, premises liability.
20 To establish a negligence claim resting on premises liability, the following elements are required:
21 (1) an owner or occupant of lands or buildings, (2) knew, or in the exercise of reasonable care
22 should have known, (3) of a dangerous and unsafe condition and (4) who invites others to enter
23 upon the property, (5) but failed to warn them of the danger, where the peril is hidden, latent, or
24 concealed or the invitees are without knowledge thereof. Twardowski v. Westward Ho Motels,
25 Inc., 86 Nev. 784, 787 (1970). "A landowner or possessor must exercise ordinary care and
26 prudence to render the premises reasonably safe for the visit of a person invited on his premises
27 for business purposes." Id. at 787 (internal quotations omitted).

28 MONTANEZ also argues that res ipsa loquitur applies to her second claim. Res ipsa

loquitur applies when (1) it is an event which ordinarily does not occur in the absence of someone's negligence, (2) is caused by an agency or instrumentality within the exclusive control of the defendant, and (3) is not due to any voluntary action or contribution on the part of the plaintiff. Woosley v. State Farm Ins. Co., 117 Nev. 182, 187 (2001). To invoke this doctrine in Nevada, the plaintiff must also show that "the defendant [had] superior knowledge of or be in a better position to explain the accident." Id. at 189.

MONTANEZ claims that NNMC owed her a duty to maintain its premises in a safe and careful manner that would not result in infection and blindness. MONTANEZ claims that NNMC and its personnel acting in the scope and course of their employment, acted unreasonably, carelessly, recklessly, and negligently, when it breached such duty. MONTANEZ argues NNMC breached its duty in one or more of the following respects: (a) it either knew or by the exercise of reasonable care should have known of the dangerous condition of the premises; (b) failing to take reasonable steps and care to alleviate and to prevent foreign substances, including bacteria from being left in MONTANEZ's body; and/or (3) failing to warn MONTANEZ as an invitee of the premises of the dangerous condition of the premises. MONTANEZ claims as a direct and proximate result of NNMC's conduct and breach of duty, MONTANEZ was infected and left permanently and irreversibly blind in her right eye. In addition, MONTANEZ claims she has incurred damages in excess of \$15,000, for pain, discomfort, blindness, expenses, lost employment, mental and emotional harm, and loss of enjoyment of life.

NNMC argues that MONTANEZ's premises liability claim must be dismissed because the gravamen of the Complaint sounds in professional negligence, rather than generic premises liability. "When the duty owing to the plaintiff by the defendant arises from the physician-patient relationship or is substantially related to medical [judgement, diagnosis, or] treatment, the breach thereof gives rise to an action sounding in medical malpractice as opposed to simple negligence." Szymborski v. Spring Mountain Treatment Ctr., 133 Nev. 638, 642 (2017) (citation omitted). "The distinction between medical malpractice and negligence may be subtle in some cases, and parties may incorrectly invoke language that designates a claim as either medical malpractice or ordinary negligence, when the opposite is in fact true." Id. at 642. Where plaintiffs have attempted to

1 characterize a medical malpractice tort as something else, Nevada courts have consistently looked
2 to “the nature of the grievance to determine the character of the action, not the form of the
3 pleadings.” Egan v. Chambers, 129 Nev. 239, 241, fn. 2 (2013). “[M]edical malpractice claims
4 that fail to comply with NRS 41A.071 must be severed and dismissed, while allowing the claims
5 for ordinary negligence to proceed.” Szyborski, 133 Nev. at 643. The question before the Court
6 is not the validity, sufficiency, or merit of MONTANEZ’s claims. Instead, the issue is whether
7 the claims are for medical malpractice, requiring dismissal under NRS 41A.071, or for ordinary
8 negligence or another tort.

9 Professional negligence is “the failure of a provider of health care, in rendering services,
10 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by
11 similarly trained and experienced providers of health care.” *NRS 41A.015* (internal quotes
12 omitted). A provider of health care includes “a physician licensed pursuant to chapter 630 or 633
13 of NRS, . . . a licensed hospital, clinic, surgery center . . . and its employees.” *NRS 41A.017*. “A
14 claim is grounded in medical malpractice and must adhere to NRS 41A.071 where the facts
15 underlying the claim involve medical diagnosis, treatment, or judgment and the standards of care
16 pertaining to the medical issue require explanation to the jury from a medical expert at trial.”
17 Szyborski v. Spring Mountain Treatment Ctr., 133 Nev. 638, 648 (2017). By extension, if the
18 jury can only evaluate the plaintiff’s claims after presentation of the standards of care by a medical
19 expert, then it is a medical malpractice claim. *Id.* at 642.

20 MONTANEZ argues that although it is possible for four different people to be injured in
21 the same way during the same week due to malpractice, MONTANEZ contends her injury may
22 well have been caused, in full or in part, by nothing particularly medical in nature. MONTANEZ
23 argues its possible her injury was caused simply by the failure of a business owner to have a clean
24 building. If the premises were unsanitary, MONTANEZ claims a more appropriate expert to
25 testify would be a janitor, rather than a physician. MONTANEZ claims there is no such expert,
26 while NNMC argues an infectious disease physician would have been an appropriate expert.

27 NNMC argues the standard of care for operating room sterilization and infection
28 prevention is different from that required for generic premises liability of a parking lot or grocery

1 store aisle. NNMC argues that maintenance of its operating rooms require persons with special
2 training and knowledge beyond that of a common layperson, as is codified in NRS 439.865, which
3 requires healthcare facilities to develop an infection control program to prevent and control
4 infections, and NRS 439.873, which governs healthcare facilities in requiring designation of and
5 requisite qualifications for an infection control officer. NNMC contends that the only operative
6 factual allegation in the Complaint is that Defendant failed to keep a safe and sterile premise to
7 avoid a post-operative infection. NNMC argues that this supposed failure constitutes an
8 “omission” squarely within the purview of NRS 41A, requiring an expert affidavit, as sterilization
9 of operating rooms is a medical function, not merely janitorial. *NRS 41A.100*. Injury incurred by
10 a person “from error or omission in practice by the provider of healthcare,” resulting in lawsuits
11 for professional negligence must be filed within the statute of limitations. *NRS 41A.097(2)(c)*.

12 The Court must deny a motion to dismiss, unless it appears beyond a doubt that the plaintiff
13 could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief. While
14 the allegations give fair notice of the nature and basis of the claim and the relief requested, the
15 legal theory of premises liability is misplaced. The Court finds that the gravamen of the claim is
16 medical malpractice, not premises liability. Complaints may not be artfully plead for the purpose
17 of evading the limitations and restrictions placed on medical malpractice cases. Therefore, the
18 Court finds MONTANEZ’s second claim for relief must be dismissed as it is improvidently
19 pleaded.

20 Based upon the foregoing and good cause appearing,

21 IT IS HEREBY ORDERED that Sparks Family Hospital, Inc.’s Motion to Dismiss is
22 GRANTED.

23 DATED this 8 day of May, 2020.

24 
25 DISTRICT JUDGE
26
27
28

CERTIFICATE OF SERVICE

CASE NO. CV19-01977

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 8 day of MAY, 2020, I filed the **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

XX **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

BRADLEY PAUL ELLEY, ESQ. for SOPHIA MONTANEZ

JOHN H. COTTON, ESQ. for SPARKS FAMILY HOSPITAL INC., dba NORTHERN NEVADA MEDICAL CENTER

ADAM SCHNEIDER, ESQ. for SPARKS FAMILY HOSPITAL INC., dba NORTHERN NEVADA MEDICAL CENTER

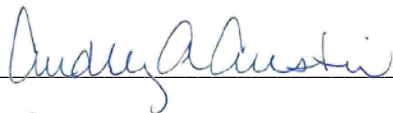
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 8 day of MAY , 2020.



1 **NEO**
2 JOHN H. COTTON, Esq.
3 Nevada Bar Number 5268
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13 *Attorneys for Defendant*
14 *Sparks Family Hospital Inc., dba*
15 *Northern Nevada Medical Center*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
17 **IN AND FOR THE COUNTY OF WASHOE**

18 SOPHIA MONTANEZ,

19 Plaintiff,

20 vs.

21 SPARKS FAMILY HOSPITAL, INC., a Delaware
22 Corporation doing business as NORTHERN
23 NEVADA MEDICAL CENTER and DOES 1-15,

24 Defendants.

CASE NO.: CV19-01977

DEPT NO.: 4

NOTICE OF ENTRY OF ORDER

25 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

26 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Granting
27 Sparks Family Hospital, Inc.'s Motion to Dismiss was entered in the above entitled matter on the
28 8TH day of May, 2020, a copy of which is attached hereto.

PURSUANT TO NRS 239B.030, THE UNDERSIGNED DOES HEREBY AFFIRM
THAT THE PRECEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY
NUMBER OF ANY PERSON.

1 Dated this 11TH day of May 2020.

2 JOHN H. COTTON & ASSOCIATES, LTD.

3 By: /s/ Adam Schneider

4 John H. Cotton, Esq.

5 Nevada Bar Number 5268

6 Adam A. Schneider, Esq.

7 Nevada Bar Number 10216

8 7900 W. Sahara Avenue, Suite 200

9 Las Vegas, Nevada 89117

10 *Attorneys for Defendant*

11 *Sparks Family Hospital Inc., dba*

12 *Northern Nevada Medical Center*

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 11TH day of May 2020, I served the foregoing **NOTICE OF**
15 **ENTRY OF ORDER** by electronic service through the Clerk of the Court using the Wiznet
16 Electronic Service system upon all parties with an email address on record as follows:

17 BRADLEY PAUL ELLEY, ESQ.
18 120 Country Club Lane, Suite 5
19 Incline Village, NV 89451
20 *Attorneys for Plaintiff*

21 /s/ Gemini Yii

22 Employee of John H. Cotton & Associates
23
24
25
26
27
28

1
2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 SOPHIA MONTANEZ,

9 Plaintiff

10 vs.

11 SPARKS FAMILY HOSPITAL, INC., a Delaware
12 Corporation doing business as NORTHERN
NEVADA MEDICAL CENTER and DOES 1-15,

13 Defendants.
14

CASE NO.: CV19-01977

DEPT. NO.: 4

15 **ORDER GRANTING SPARKS FAMILY HOSPITAL, INC.'S MOTION TO DISMISS**

16 On October 10, 2019, Plaintiff SOPHIA MONTANEZ (hereinafter, "MONTANEZ"), by
17 and through her attorney, Bradley Paul Elley, Esq., filed a *Complaint* against Defendant, SPARKS
18 FAMILY HOSPITAL, INC., a Delaware corporation doing business as NORTHERN NEVADA
19 MEDICAL CENTER (hereinafter, "NNMC").

20 On January 17, 2020, NNMC, by and through its counsel, John C. Cotton, Esq. and Adam
21 Schneider, Esq., filed *Defendant's Motion to Dismiss*. On February 24, 2020, MONTANEZ filed
22 her *Opposition to Defendant's Motion to Dismiss*. On March 9, 2020, NNMC filed *Defendant's*
23 *Reply Re: Motion to Dismiss*. The same day, NNMC submitted the matter for the Court's
24 consideration.

25 This case arises out of an October 2018 surgical procedure, that MONTANEZ alleges
26 resulted in her being infected with pseudomonas aeruginosa, and as a result is now permanently
27 and irreversibly blind in her right eye. MONTANEZ underwent the surgical procedure in a portion
28 of the NNMC that was newly constructed and/or re-designed. MONTANEZ alleges that during

1 or about the same week as her procedure, three other persons developed infections immediately
2 following procedures in the same newly constructed and/or designed portion of the NNMC.

3 NNMC's motion seeks dismissal of both claims for relief asserted in MONTANEZ's
4 Complaint, (1) medical malpractice under NRS 41A.100(1)(a) based upon the "foreign substance"
5 exception, and (2) premises liability.

6 Pursuant to NRCP 12(b)(5), a claim may be dismissed for failure to state a claim upon
7 which relief can be granted. "A complaint will not be dismissed for failure to state a claim 'unless
8 it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the
9 trier of fact, would entitle him to relief.'" Brelant v. Preferred Equities Corp., 109 Nev. 842, 858
10 (1993) (citations omitted). Factual "[a]llegations in the complaint must be accepted as true." See
11 Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228 (2008); Capital Mortgage Holding v.
12 Hahn, 101 Nev. 314, 315 (1985). In deciding a Motion to Dismiss pursuant to NRCP 12(b)(5),
13 the Court "must construe the pleading liberally and draw every fair intendment in favor of the
14 [non-moving party]." Vacation Village, Inc. v. Hitachi America, Ltd., 110 Nev. 481, 484 (1994)
15 (citations omitted). A pleading party "must set forth sufficient facts to establish all necessary
16 elements of a claim" against the opposing party. Hay v. Hay, 100 Nev. 196, 198 (1984) (citing
17 Johnson v. Travelers Ins. Co., 89 Nev. 467, 472 (1973)). "The test to determine whether the
18 allegations of a cause of action are sufficient to assert a claim for relief is whether the allegations
19 give fair notice of the nature and basis of the claim and the relief requested." Ravera v. City of
20 Reno, 100 Nev. 68, 70 (1984).

21 First, the Court will consider MONTANEZ's first claim for relief, medical malpractice
22 under NRS 41A.100(1)(a): The "foreign substance" exception. NNMC argues that the Court
23 should dismiss MONTANEZ first claim for relief because the Complaint does not attach or
24 reference any expert affidavit pursuant to NRS 41A.071. "If an action for professional negligence
25 is filed . . . , the district court shall dismiss the action, without prejudice, if the action is filed without
26 an affidavit that . . . [s]upports the allegations contained in the action." *NRS 41A.071*. Under NRS
27 41A.071, "a medical malpractice complaint filed without a supporting medical expert affidavit is
28 void ab initio." Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. County

1 of Washoe, 122 Nev. 1298, 1300 (2006). The purpose of NRS 41A.071 “is to lower costs, reduce
2 frivolous lawsuits, and ensure that medical malpractice actions are filed in good faith based upon
3 competent expert medical opinion.” Id. at 1304. “[T]he general rule [is] that expert testimony
4 must be used to establish medical malpractice, unless the propriety of the treatment, or the lack of
5 it, is a matter of common knowledge of laymen.” Fernandez v. Admirand, 108 Nev. 963, 969
6 (1992).

7 MONTANEZ argues that the statute’s plain language should govern. “[W]hen the
8 language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is
9 no room for construction, and the courts are not permitted to search for its meaning beyond the
10 statute itself.” Sarfo v. Bd. of Med. Examiners, 134 Nev. 709, 714 (2018) (quoting Dykema v. Del
11 Webb Communities, Inc., 132 Nev. 823, 826 (2016). In “reading the statute as a whole, NRS
12 41A.100 clearly states that an affidavit is not required in any one or more of the following
13 circumstances..., and those enumerated res ipsa loquitur exceptions are listed in subsections (1)(a)-
14 (e), one of which being that an object was left in the body following surgery.” Peck v. Zipf, 133
15 Nev. 890, 894 (2017) (internal quotes omitted).

16 Here, MONTANEZ argues that no affidavit is required because her case falls under the
17 foreign substance exception of NRS 41A.100(1)(a). “A foreign substance [is one] other than
18 medication or a prosthetic device [that] was unintentionally left within the body of a patient
19 following surgery.” *NRS 41A.100(1)(a)*. MONTANEZ argues that during her surgery, a foreign
20 substance was unintentionally left in her body, specifically a bacterium known as pseudomonas
21 aeruginosa. MONTANEZ argues that since the statute explicitly lists only two types of foreign
22 substances that are not included in its scope, neither of which applies here, the foreign substance
23 exception should apply.

24 NNMC argues that bacteria, as an organism, are not the kind of foreign substances which
25 allow for avoiding the NRS 41A.071 expert affidavit requirement. NNMC claims that the
26 Legislature intended the phrase “unintentionally left within the body” to refer not to bacterium,
27 but to substances health care providers would have used during surgery, such as needles, surgical
28 sponges, or a scalpel, and therefore, if unintentionally left within the body following surgery, it

1 would be malpractice which would not require expert testimony to prove. While Nevada case law
2 has not specifically excluded bacteria or other microscopic organisms from being deemed a foreign
3 substance, other jurisdictions have. The Court finds the statute is ambiguous as to what qualifies
4 as a foreign substance, even though there are two exceptions enumerated in NRS 41A.100(1)(a).

5 NNMC argues that since this is an alleged professional negligence action, it requires an
6 expert affidavit. NNMC argues the infection could have come from other sources outside of the
7 health provider's control, and therefore requires expert testimony to show that NNMC is at fault.
8 Furthermore, NNMC argues that this is not a factual scenario where the expert affidavit
9 requirement can be avoided. The Court agrees. The circumstances surrounding this case will
10 require expert testimony, as a layperson could not be expected to find malpractice in this case the
11 same way they would in a case where a sponge or scalpel was unintentionally left behind.

12 Under NRS 41A.071, "a medical malpractice complaint filed without a supporting medical
13 expert affidavit is void ab initio." Washoe Med. Ctr., 122 Nev. at 1300. "[V]oid ab initio mean[s]
14 that the complaint has no force and effect, does not legally exist, and thus it cannot be amended."
15 Id. at 1304. "Therefore, NRCP 15(a)'s amendment provisions, whether allowing amendment as a
16 matter of course or leave to amend, are inapplicable. A complaint that does not comply with NRS
17 41A.071 is void and must be dismissed; no amendment is permitted." Id. at 1304. Therefore, the
18 Court grants NNMC's motion to dismiss MONTANEZ's first claim for relief, without prejudice.

19 Second, the Court will consider MONTANEZ's second claim for relief, premises liability.
20 To establish a negligence claim resting on premises liability, the following elements are required:
21 (1) an owner or occupant of lands or buildings, (2) knew, or in the exercise of reasonable care
22 should have known, (3) of a dangerous and unsafe condition and (4) who invites others to enter
23 upon the property, (5) but failed to warn them of the danger, where the peril is hidden, latent, or
24 concealed or the invitees are without knowledge thereof. Twardowski v. Westward Ho Motels,
25 Inc., 86 Nev. 784, 787 (1970). "A landowner or possessor must exercise ordinary care and
26 prudence to render the premises reasonably safe for the visit of a person invited on his premises
27 for business purposes." Id. at 787 (internal quotations omitted).

28 MONTANEZ also argues that res ipsa loquitur applies to her second claim. Res ipsa

1 loquitur applies when (1) it is an event which ordinarily does not occur in the absence of someone's
2 negligence, (2) is caused by an agency or instrumentality within the exclusive control of the
3 defendant, and (3) is not due to any voluntary action or contribution on the part of the plaintiff.
4 Woosley v. State Farm Ins. Co., 117 Nev. 182, 187 (2001). To invoke this doctrine in Nevada, the
5 plaintiff must also show that "the defendant [had] superior knowledge of or be in a better position
6 to explain the accident." Id. at 189.

7 MONTANEZ claims that NNMC owed her a duty to maintain its premises in a safe and
8 careful manner that would not result in infection and blindness. MONTANEZ claims that NNMC
9 and its personnel acting in the scope and course of their employment, acted unreasonably,
10 carelessly, recklessly, and negligently, when it breached such duty. MONTANEZ argues NNMC
11 breached its duty in one or more of the following respects: (a) it either knew or by the exercise of
12 reasonable care should have known of the dangerous condition of the premises; (b) failing to take
13 reasonable steps and care to alleviate and to prevent foreign substances, including bacteria from
14 being left in MONTANEZ's body; and/or (3) failing to warn MONTANEZ as an invitee of the
15 premises of the dangerous condition of the premises. MONTANEZ claims as a direct and
16 proximate result of NNMC's conduct and breach of duty, MONTANEZ was infected and left
17 permanently and irreversibly blind in her right eye. In addition, MONTANEZ claims she has
18 incurred damages in excess of \$15,000, for pain, discomfort, blindness, expenses, lost
19 employment, mental and emotional harm, and loss of enjoyment of life.

20 NNMC argues that MONTANEZ's premises liability claim must be dismissed because the
21 gravamen of the Complaint sounds in professional negligence, rather than generic premises
22 liability. "When the duty owing to the plaintiff by the defendant arises from the physician-patient
23 relationship or is substantially related to medical [judgement, diagnosis, or] treatment, the breach
24 thereof gives rise to an action sounding in medical malpractice as opposed to simple negligence."
25 Szyborski v. Spring Mountain Treatment Ctr., 133 Nev. 638, 642 (2017) (citation omitted). "The
26 distinction between medical malpractice and negligence may be subtle in some cases, and parties
27 may incorrectly invoke language that designates a claim as either medical malpractice or ordinary
28 negligence, when the opposite is in fact true." Id. at 642. Where plaintiffs have attempted to

1 characterize a medical malpractice tort as something else, Nevada courts have consistently looked
2 to “the nature of the grievance to determine the character of the action, not the form of the
3 pleadings.” Egan v. Chambers, 129 Nev. 239, 241, fn. 2 (2013). “[M]edical malpractice claims
4 that fail to comply with NRS 41A.071 must be severed and dismissed, while allowing the claims
5 for ordinary negligence to proceed.” Szymborski, 133 Nev. at 643. The question before the Court
6 is not the validity, sufficiency, or merit of MONTANEZ’s claims. Instead, the issue is whether
7 the claims are for medical malpractice, requiring dismissal under NRS 41A.071, or for ordinary
8 negligence or another tort.

9 Professional negligence is “the failure of a provider of health care, in rendering services,
10 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by
11 similarly trained and experienced providers of health care.” *NRS 41A.015* (internal quotes
12 omitted). A provider of health care includes “a physician licensed pursuant to chapter 630 or 633
13 of NRS, . . . a licensed hospital, clinic, surgery center . . . and its employees.” *NRS 41A.017*. “A
14 claim is grounded in medical malpractice and must adhere to NRS 41A.071 where the facts
15 underlying the claim involve medical diagnosis, treatment, or judgment and the standards of care
16 pertaining to the medical issue require explanation to the jury from a medical expert at trial.”
17 Szymborski v. Spring Mountain Treatment Ctr., 133 Nev. 638, 648 (2017). By extension, if the
18 jury can only evaluate the plaintiff’s claims after presentation of the standards of care by a medical
19 expert, then it is a medical malpractice claim. *Id.* at 642.

20 MONTANEZ argues that although it is possible for four different people to be injured in
21 the same way during the same week due to malpractice, MONTANEZ contends her injury may
22 well have been caused, in full or in part, by nothing particularly medical in nature. MONTANEZ
23 argues its possible her injury was caused simply by the failure of a business owner to have a clean
24 building. If the premises were unsanitary, MONTANEZ claims a more appropriate expert to
25 testify would be a janitor, rather than a physician. MONTANEZ claims there is no such expert,
26 while NNMC argues an infectious disease physician would have been an appropriate expert.

27 NNMC argues the standard of care for operating room sterilization and infection
28 prevention is different from that required for generic premises liability of a parking lot or grocery

1 store aisle. NNMC argues that maintenance of its operating rooms require persons with special
2 training and knowledge beyond that of a common layperson, as is codified in NRS 439.865, which
3 requires healthcare facilities to develop an infection control program to prevent and control
4 infections, and NRS 439.873, which governs healthcare facilities in requiring designation of and
5 requisite qualifications for an infection control officer. NNMC contends that the only operative
6 factual allegation in the Complaint is that Defendant failed to keep a safe and sterile premise to
7 avoid a post-operative infection. NNMC argues that this supposed failure constitutes an
8 “omission” squarely within the purview of NRS 41A, requiring an expert affidavit, as sterilization
9 of operating rooms is a medical function, not merely janitorial. *NRS 41A.100*. Injury incurred by
10 a person “from error or omission in practice by the provider of healthcare,” resulting in lawsuits
11 for professional negligence must be filed within the statute of limitations. *NRS 41A.097(2)(c)*.

12 The Court must deny a motion to dismiss, unless it appears beyond a doubt that the plaintiff
13 could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief. While
14 the allegations give fair notice of the nature and basis of the claim and the relief requested, the
15 legal theory of premises liability is misplaced. The Court finds that the gravamen of the claim is
16 medical malpractice, not premises liability. Complaints may not be artfully plead for the purpose
17 of evading the limitations and restrictions placed on medical malpractice cases. Therefore, the
18 Court finds MONTANEZ’s second claim for relief must be dismissed as it is improvidently
19 pleaded.

20 Based upon the foregoing and good cause appearing,

21 IT IS HEREBY ORDERED that Sparks Family Hospital, Inc.’s Motion to Dismiss is
22 GRANTED.

23 DATED this 8 day of May, 2020.

24
25 Connie J. Steinheimer
DISTRICT JUDGE
26
27
28

CERTIFICATE OF SERVICE

CASE NO. CV19-01977

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 8 day of MAY, 2020, I filed the **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

XX **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

BRADLEY PAUL ELLEY, ESQ. for SOPHIA MONTANEZ

JOHN H. COTTON, ESQ. for SPARKS FAMILY HOSPITAL INC., dba NORTHERN NEVADA MEDICAL CENTER

ADAM SCHNEIDER, ESQ. for SPARKS FAMILY HOSPITAL INC., dba NORTHERN NEVADA MEDICAL CENTER

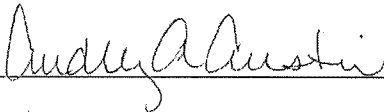
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – **[NONE]**

 Federal Express or other overnight delivery service **[NONE]**

DATED this 8 day of MAY, 2020.



Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOPHIA MONTANEZ,

Case No. CV19-01977

Plaintiff,

Dept. No. 4

vs.

SPARKS FAMILY HOSPITAL, INC, a Delaware
Corporation doing business as NORTHERN
NEVADA MEDICAL CENTER and DOES 1-15,

Defendants.

NOTICE OF APPEAL DEFICIENCY

TO: Clerk of the Court, Nevada Supreme Court,
and All Parties or their Respective Counsel Of Record:

On June 9th, 2020, Attorney Bradley Paul Elley, Esq., for Sophia Montanez, filed a Notice of Appeal with the Court. Attorney Bradley Elley, Esq. was unable to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee due to the public closure of the Second Judicial District Court Administrative Order 2020-02 and 2020-05.

Pursuant to NRAP 3(a)(3), on June 9th, 2020, the Notice of Appeal was filed with the Nevada Supreme Court. By copy of this notice. Attorney Bradley Elley, Esq. will be notified by electronic filing of the deficiency.

Dated this 9th day of June, 2020.

Jacqueline Bryant
Clerk of the Court
By: /s/YViloria
YViloria
Deputy Clerk

CERTIFICATE OF SERVICE

CASE NO. CV19-01977

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 9th day of June, 2020, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN COTTON, ESQ. for SPARKS FAMILY HOSPITAL DBA NORTHERN NEVADA MEDICAL CENTER

BRADLEY ELLEY, ESQ. for SOPHIA MONTANEZ

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

/s/YViloria
YViloria
Deputy Clerk

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SOPHIA MONTANEZ,

Case No. CV19-01977

Plaintiff,

Dept. No. 4

vs.

SPARKS FAMILY HOSPITAL, INC, a Delaware
Corporation doing business as NORTHERN
NEVADA MEDICAL CENTER and DOES 1-15,

Defendants.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
County of Washoe; that on the 9th day of June, 2020, I electronically filed the Notice of Appeal in
the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings
on file with the Second Judicial District Court.

Dated this 9th day of June, 2020.

Jacqueline Bryant
Clerk of the Court
By /s/YViloria
YViloria
Deputy Clerk