

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARELL L. MOORE; AND CHARLENE)
A. MOORE, INDIVIDUALLY AND AS)
HUSBAND AND WIFE,)
Appellants,)
vs.)
JASON LASRY, M.D. INDIVIDUAL;)
AND TERRY BARTIMUS, RN, APRN,)
Respondents.)

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Clerk of Supreme Court

Supreme Court No. 81659

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable Kathleen E. Delaney, District Judge
District Court Case No.: A-17-766426-C

APPELLANT'S APPENDIX VOLUME VI

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of the law firm and that on this 21st day of July, 2021, I served a true and correct copy of the foregoing **APPELLANT'S APPENDIX VOLUME VI** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be sent via facsimile (as a courtesy only); and/or
- ☐ to be hand-delivered to the attorneys at the address listed below:
- ☒ to be submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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By: /s/ E. Breen Arntz
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DISTRICT COURT

CLARK COUNTY, NEVADA

DARELL L. MOORE and CHARLENE A.
MOORE, individually and as husband and
wife;

Plaintiffs,

v.

JASON LASRY, M.D., individually;
FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD.; TERRY BARTMUS,
RN, APRN; and DOES I through X, inclusive;
and ROE CORPORATIONS I through V,
inclusive;

Defendants.

CASE NO.: A-17-766426-C

DEPT. NO.: Dept. 25

PLAINTIFFS' REPLY TO DEFENDANTS'
OPPOSITION TO PLAINTIFFS DARELL
L. MOORE AND CHARLENE A.
MOORE'S MOTION FOR NEW TRIAL

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1 **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS DARELL L.**
2 **MOORE AND CHARLENE A. MOORE'S MOTION FOR NEW TRIAL**

3 COME NOW, Plaintiffs, DARELL L. MOORE and CHARLENE A. MOORE, individually
4 and as husband and wife, by and through their attorneys of record, MATTHEW W. HOFFMANN,
5 ESQ., of the law firm of ATKINSON WATKINS & HOFFMANN, LLP, AND E. BREEN
6 ARNTZ, CHTD., and hereby submit their Reply to Defendants' Opposition to their Motion for
7 New Trial.

8 **I. ARGUMENT**

9 **A. PLAINTIFFS' COUNSEL'S OBJECTION TO MR. WEAVER'S CROSS**
10 **EXAMINATION OF DR. MARMUREANU SUFFICIENTLY SUPPORTS THEIR**
11 **MOTION FOR A NEW TRIAL**

12 During defense counsel Mr. Weaver's cross examination of Dr. Marmureanu, Plaintiffs'
13 counsel objected as to foundation when Mr. Weaver introduced the 2017 article at issue.
14 (*Reporter's Transcript of Proceedings, P.M. Session, 1/31/20, 31:14-15, 20-21, attached hereto*
15 *as Exhibit 1*). Defendants claim that this was not a sufficient objection to preserve the issue.
16 (Bartmus brief, p. 1). They argue that because of this alleged shortcoming, Plaintiffs' counsel
17 must not have deemed such conduct "serious enough" to prejudice Plaintiffs' case. *Id.* This is
18 incorrect. Plaintiffs' counsel timely and specifically objected. That he did not object "further" or
19 request a jury admonishment or move for a mistrial is of no consequence with respect to issue
20 preservation. (Bartmus brief, pp. 5-6). Mr. Arntz fulfilled his duty to appropriately object in order
21 to preserve the issue. He was under no obligation to object in the manner now suggested by
22 Defendants, who have taken this position simply to undermine Plaintiffs' choice.

23 Where a substantial right of party has been affected with respect to a ruling admitting
24 evidence, NRS 47.040 states that "a timely objection or motion to strike appears of record, stating
25 the specific ground of objection" is all that is required. NRS 47.040(1)(a). The rule also states
26 that "[t]his section does not preclude taking notice of plain errors affecting substantial rights
27 although they were not brought to the attention of the judge." NRS 47.040(2). Thus, even if Mr.
28 Arntz' objection was insufficient – which it was not – the Court has the authority to rectify plain
errors which affect substantial rights in the absence of a specific objection, or any objection at all.
Clearly this was improper subject matter that the Court could have excluded *sua sponte* had
Plaintiffs' counsel not objected.

1 The Nevada Supreme Court has agreed that courts may review unobjected-to attorney
2 misconduct for plain error on appeal relating to a motion for new trial. See, *Lioce v. Cohen*, 124
3 Nev. 1, 19, 174 P.3d 970, 981-82 (2008); *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227,
4 228 (1986) (“The ability of this court to consider relevant issues *sua sponte* in order to prevent
5 plain error is well established.”). Thus, even if Plaintiffs’ counsel had not objected at all, the Court
6 would be within its authority to review the evidentiary ruling regarding the article for plain error.

7 The rule’s specificity requirement pertains to not only to the grounds for an objection, but
8 also to the identification of the particular part of the evidence at issue. *Quiana M.D. v. State*
9 *Department of Family Services (In re Parental Rights D.N.)*, 128 Nev. Adv. Op. 44, 283 P.3d 842,
10 846 (2012), citing 1 George E. Dix et al., *McCormick on Evidence* § 52 (Kenneth S. Broun ed., 6th
11 ed. 2006) (finding objection to an entire file without identifying what portions or documents of the
12 file were allegedly inadmissible was insufficient to preserve the issue). Here, the objected-to
13 evidence – the 2017 article and the report upon which it was based - was clearly identified and a
14 specific objection was made.

15 Defendants wrongfully argue that Mr. Arntz’s objection was invalid because he did not
16 specifically refer to Rule 16.1 or NRS 50.085, claiming that “silence gives consent” and that
17 Plaintiffs’ had “waived any argument that questioning Dr. Marmureanu was improper under either
18 the Nevada rules of civil procedure or rules of evidence”. (Bartmus brief, p. 8). This is incorrect
19 on its face. The record reflects an appropriate, specific objection during the cross examination,
20 not silence or waiver.

21 Moreover, the record also reflects that the Court understood that the objection rested upon
22 violations of NRCp 16.1 and NRS 50.085. **In the unrecorded bench discussion, Plaintiffs’**
23 **counsel restated his objection, reminding the Court that Defendants had not disclosed the**
24 **article during discovery, had not provided a copy of the article to Plaintiffs’ counsel or the**
25 **witness at trial, either before or during the doctor’s cross examination and that the article**
26 **was inadmissible character evidence. (see declaration of counsel attached hereto as Exhibit**
27 **2)** In its recap of the bench discussion on the record, the Court stated that “[T]he argument was
28 that Mr. Weaver was not actually confronting the witness with these reports, that he would be
required to do so, and that it would not be appropriate; it was not an appropriate line of
questioning.” (*Ex. 1, 65:9-14*). This shows that the Court understood that a Rule 16.1 objection
was made and that the that topic was inappropriate for cross examination. The issue regarding
disclosure was central to Plaintiffs’ counsel’s objection **and appropriately preserved the**

1 **objection for appellate review.** This Court’s response that counsel does not have to disclose
2 impeachment and that all counsel must do is act in good faith, not that he had to disclose it or even
3 must disclose it before the witness is questioned about it, find no support in the law.

4 The Court also acknowledged that the issue of Rule 50.085 extrinsic evidence and
5 credibility was encompassed by the objection: “The Court disagreed, respectfully, with that
6 assessment, that when there was testimony obviously by the doctor regarding his qualifications
7 and this information called into question that testimony, that the proper impeachment is to ask
8 certain things...certainly Mr. Weaver was able to do so without actually requiring confrontation
9 with documentation, to this Court’s opinion, would be akin to impeachment with extrinsic
10 evidence; and that is something that is not allowed, other than in certain circumstances, really
11 more things that go towards credibility of testimony, that’s not what this would have been.” (*Ex.*
12 *1, 65:15-66:5*). Defendants’ contention that Plaintiffs’ counsel’s objection was not sufficiently
13 specific to preserve the issue for review is unsupported by the record.

14 **Alternatively, the Court erred by failing to make an appropriate record of the**
15 **unrecorded bench discussion by not identifying Plaintiffs’ counsel’s objections with respect**
16 **to non-disclosure, witness confrontation and inadmissibility with sufficient specificity. A**
17 **district court’s failure to make a record of an unrecorded sidebar warrants reversal where**
18 **an appellant shows that the record’s missing portions are “so significant that their absence**
19 **precludes [a reviewing court] from conducting a meaningful review of the alleged errors that**
20 **the appellant identified and the prejudicial effect of any error. *Preciado v. State*, 130 Nev.**
21 **Adv. Op. 6, 318 P.3d 176, 178 (2014), citing *Daniel v. State*, 119 Nev. 498, 508, 78 P.3d 890,**
22 **897 (2003) (discussing unrecorded conferences and appellate review in the context of capital**
23 **murder cases).**

24 Nevada courts have long recognized that a hyper-technical application of the rules
25 pertaining to objections is not desirable. See, i.e. *Otterbeck v. Lamb*, 85 Nev. 456, 456 P.2d 855,
26 858-59 (1969) (finding that counsel’s objection which was devoid of citation to rules or case law
27 was specific enough to preserved the jury instruction issue for appellate consideration and satisfied
28 the requirement of NRCP 51 which requires an objecting party to state “distinctly the matter to
which he objects and the grounds of his objection”) (“Counsel, in the heat of a trial, cannot be
expected to respond with all the legal niceties and nuances of a brief writer.”); *Cook v. Sunrise*
Hospital & Medical Center, 124 Nev. 997, 194 P.3d 1214, 1217 (2008) (finding defendant’s
argument that plaintiff’s objection to a jury instruction was not adequately preserved because they

1 were required to specifically state the exact language that should have been added unpersuasive;
2 the objection needed only to focus the court's attention on the alleged error, which it did).

3 Defendants' reliance on *State v. Kallio*, 92 Nev. 665, 668, 557 P.2d 705, 707 (1976) to
4 argue to the contrary is misplaced. Unlike in the present case, in *Kallio*, counsel made no specific
5 objection to a line of questioning at trial, but merely stated, "Object for the record, your Honor".
6 Clearly, this did not fulfill the mandate that specific grounds for an objection must be stated at the
7 time the objection is made and the *Kallio* Court agreed. *Id.* In *Beccard v. Nevada National Bank*,
8 99 Nev. 63, 65-66, 657 P.2d 1154, 1156 (1983), Defendants' other cited case, counsel made no
9 objection either at the time of argument or any time before a motion for a new trial was made
10 fifteen days after the verdict was filed. The Court correctly found that: (1) the failure to object to
11 the alleged misconduct at trial, and (2) raising the allegation for the first time in a motion for a new
12 trial would not support the moving party's position. *Id.* Neither of these factors are present in the
13 case at bar.

14 Contrary to Defendants' contention, Mr. Weaver did not lay appropriate foundation for
15 using the 2017 article and the report upon which it was based prior to using them for Dr.
16 Marmureanu's cross examination. Defendants provide no cite to the record to support this
17 contention because there is none. (Bartmus brief, p. 3). They further claim that Mr. Weaver also
18 laid foundation for the article and report during the cross examination itself. Again, this is
19 inaccurate and unsupported by any cite to the record. *Id.*, at p. 4. The Court acknowledged during
20 discussion with counsel that it had given Mr. Weaver "the benefit of the doubt" during the cross
21 examination, which - based upon the rank misrepresentation of the article propounded by Mr.
22 Weaver during questioning - was inappropriate and constitutes reversible error. (***Reporter's***
23 ***Transcript of Proceedings, 2/3/20, 59:24-60:16***) ("...I gave Mr. Weaver the benefit of the doubt
24 at the time of the questioning, but counsel has an obligation not to pose a question for which he
25 doesn't have a good faith basis to do so."). The Court should not have left the issue up to Mr.
26 Weaver's definition of "good faith", but instead should have upheld Mr. Arntz's objection.

27 Remarkably, Defendants criticize Plaintiffs' counsel for not moving to introduce the article
28 into evidence, ignoring the fact that the article represented an entirely collateral matter
inappropriate for the jury's consideration. (Bartmus brief, p. 15). Defendants admit that their
request for judicial notice regarding the article and report was incorrect in its identification of the
documents themselves and that the request was withdrawn, although they attempt to frame the
withdrawal on a baseless and ridiculous assumption that "plaintiffs no longer contested the

1 appropriateness of Attorney Weavers' conduct". (Bartmus brief, p. 15, 15 n.4). There is simply
2 no evidence for this baseless and self-serving conclusion.

3 Defendants also mistakenly claim that Mr. Weaver's line of questioning – despite not
4 confronting Dr. Marmureanu with the article and report or providing notice or copies to Plaintiffs'
5 counsel - was appropriate because there had already been testimony regarding the doctor's
6 qualifications and that said article and report called into question such qualifications. (Bartmus
7 brief, pp. 4-5). However, this belies the fact that the article was extrinsic evidence regarding a
8 collateral matter. A witness may certainly be cross examined regarding his or her qualifications,
9 but not through use of inadmissible evidence or questions. Defendants further incorrectly stated
10 that Dr. Marmureanu's truthfulness was at issue because he testified that Defendant Bartmus'
11 testimony that she detected a pulse when she examined Plaintiff Darell was "absolutely
12 impossible" and not true. (Bartmus brief, pp. 11-12). On the contrary, such testimony called
13 Defendant Bartmus' truthfulness into question, not that of Dr. Marmureanu.

14 Finally, Defendants' naked allegation that "Plaintiffs' counsel's other misconduct during
15 the trial would have also supported a new trial for defendants" is unsupported by any citation to
16 the record and is nothing more than a partisan and transparent attempt to downplay their own
17 counsel's demonstrable misconduct which is the subject of this motion. (Bartmus brief, p. 15 n.3)
18 (emphasis omitted).

19 **B. USE OF ARTICLE CONSTITUTED UNFAIR SURPRISE WARRANTING A**
20 **NEW TRIAL**

21 Defendants admit that the 2017 article was not produced to Plaintiffs' counsel until *after*
22 they had used it to cross examine Dr. Marmureanu on the stand. (Bartmus brief, p. 15). This
23 certainly qualifies as "unfair surprise" under the rules. The article itself was extrinsic evidence
24 regarding a collateral matter and defense counsel mischaracterized its contents in order to carry
25 out an improper attack on the credibility of Plaintiffs' only expert witness.

26 Defendants inappropriately characterize Dr. Marmureanu's testimony regarding his
27 background as "bragging" and claim that this was what formed the basis for their decision to
28 question the doctor about the article. (Bartmus brief, p. 9). However, Defendants' belief that the
doctor was "bragging" does not justify their decision to withhold the article, either before Dr.
Marmureanu was cross examined or during the cross examination itself.

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1 Defendants illogically argue that Plaintiffs' counsel could have discovered the article on
2 the Internet and as such, there was no unfair surprise. (Bartmus brief, p. 16). It should go without
3 saying that it was not Plaintiffs' duty to search for and discover any and all information on the
4 Internet which Defendants may have seen fit to introduce in support of their case. It was
5 Defendants' duty to disclose such documents that it intended to use. They did not do so. They
6 then attempt to blame Dr. Marmureanu's "theatrics and self-aggrandizement" for their failure,
7 allege that Plaintiffs' counsel "permitted" the so-called theatrics, and use the combination of these
8 factors to excuse its dereliction of duty with respect to discovery disclosures. *Id.* This must not
be allowed.

9 **C. TRIAL COURT'S EXCLUSION OF DR. WIENCEK FROM TESTIFYING AT**
10 **TRIAL CONSTITUTED REVERSIBLE ERROR**

11 Dr. Wiencek, Plaintiff Darell's treating physician, whose testimony was erroneously
12 excluded by the Court, was no stranger to the litigation. He was named in every one of Plaintiffs'
13 discovery disclosure, along with a full description of his testimony. In the first supplement to 16.1,
Plaintiffs disclosed Dr. Wiencek as a witness and described his testimony as follows:

14 22. Custodian of Records and/or Person Most
15 Knowledgeable Robert Wiencek, M.D., St. Rose Sienna, 7190 S.
16 Cimarron Road, Las Vegas, NV 89113.
17 . . . The individual physicians disclosed will testify in their capacity
18 as a treating physician, including their expert opinions as to
causation, care, and reasonableness of medical
expenses. **(EXHIBIT 3).**

19 He was named on pre-trial disclosures as a witness in every supplement from that point
20 forward. The Court itself acknowledged Dr. Wiencek's importance as a witness. (*Reporter's*
21 *Transcript of Proceedings, 2/10/20, 20:24-21:9*) ("At the end of the day, it was absolutely obvious
22 to this Court from the get go that Dr. Wiencek could, potentially should, have been a witness in this
23 case."). Although the full description of his testimony was not repeated in the pre-trial disclosures,
24 no prejudice resulted because he had been previously named, identified and even discussed in the
25 introduction to the jury as a witness who might testify by Defendant Lasry's counsel, Robert
26 McBride. Defendants cannot genuinely claim that they were unprepared for Dr. Wiencek's
27 testimony.

28 It was clearly unfounded and prejudicial for the Court to exclude Dr. Wiencek on what
amounts to a technicality. Dr. Wiencek had the most information about Plaintiff Darell's pulses
and whether they were palpable, a key issue in this medical malpractice case. Tellingly, the jury

1 would have benefitted from hearing Dr. Wiencek, and, with all the discussion regarding his records
2 during the trial and dispute over what those records actually contained in regards to palpable
3 pulses, there was no prejudice to defendants and it was a clear abuse of discretion by this court to
4 exclude him as a witness.

5 Defendants simply cannot claim unfair surprise that Plaintiff Darell's primary treating
6 physician who was the subject of "ample testimony from both sides" as acknowledged by the
7 Court, would be called as a witness in this case. (Bartmus brief, Ex. E, 23:3-19). Dr. Wiencek
8 was not called by Plaintiffs' counsel as a witness earlier in the proceedings because the doctor was
9 suffering from physical limitations, which cast his availability into doubt. Once Mr. Arntz was
10 able to ascertain that Dr. Wiencek would, in fact, be available, he immediately notified defense
11 counsel.

12 Clearly, Plaintiffs were prejudice by this Court's ruling because the jury ultimately needed
13 to hear from Dr. Wiencek and the Defendants demonstrated no prejudice if he had been able to
14 testify. See, i.e. *United States v. Wixom*, 529 F.2d 217, 220 (8th Cir. 1976) (defendant claimed
15 unfair surprise at trial where government did not disclose to defense counsel its intention to call a
16 particular witness until after the start of trial; conviction affirmed when "the government did
17 advise defense counsel in this regard shortly after government counsel became aware that the
18 witness could testify."). Even where witness disclosures are genuinely untimely, the Court may
19 allow testimony in the absence of unfair surprise. *Wynn Las Vegas, LLC v. O'Connell*, (district
20 court did not abuse its discretion by admitting testimony of treating physicians despite late
21 discovery disclosures where opposing party's rights were not materially affected).

22 Defendants cite to *Figuerado v. Crawford*, 2016 Nev. Dist. Lexis 1464, *2 as support for
23 their position, as the district court in that case held that the disclosure of three physicians as non-
24 retained experts was insufficient under NRCP 16.3(a)(2)(B) because the Plaintiffs did not disclose
25 a summary of their opinions or facts relied upon. However, this decision was reversed and
26 remanded by the Nevada Court of Appeals, which found that the appellant's disclosure of his
27 treating physicians and his statement that the treating physicians would rely on their review of the
28 appellant's medical records and testify regarding causation, along with the disclosure of their
medical records, was sufficient under NRCP 16.1.

...

...

...

1 One of the purposes of NRC 16.1 is to ensure basic fairness by preventing trial by ambush
2 or unfair surprise. *FCH, LLC v. Rodriguez*, 130 Nev. Adv. Op. 46, 335 P.3d 83, 190 (2014). By
3 comparison to counsel's inappropriate cross examination of Dr. Marmureanu which was never
4 disclosed prior to or during the cross examination, the identity and substance of testimony by Dr.
5 Wiencek was never concealed from the parties by Plaintiffs. There is no evidence that Plaintiffs'
6 counsel intentionally withheld information or documents from Defendants that were pertinent to
7 Dr. Wiencek's testimony or that Plaintiffs' counsel sought to gain an unfair advantage through the
8 timing of calling Dr. Wiencek as a witness. Plaintiffs' counsel provided the appropriate
9 information to Defendants through the discovery process and defense counsel suffered no unfair
surprise. Dr. Wiencek should have been allowed to testify.

10 **II. CONCLUSION**

11 WHEREFORE, Plaintiffs respectfully request that a new trial be ordered due to the
12 aforementioned violations of NRC 16.1 and NRS 50.085 **and due to the Court's prejudice**
13 **against Plaintiffs' counsel.** The requirements of NRC 59 have been met.

14 DATED this 4th day of May, 2020.

15 ATKINSON WATKINS & HOFFMANN, LLP

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of ATKINSON WATKINS & HOFFMANN, LLP
3 and that on the 4th day of May, 2020, I caused to be served via Odyssey, the Court's mandatory
4 efilings/efiling system, a true and correct copy of the document described herein.

5 **Document Served:** **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO**
6 **PLAINTIFFS DARELL L. MOORE AND CHARLENE A.**
7 **MOORE'S MOTION FOR NEW TRIAL**

8 **Person(s) Served:**

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26 /s/ Erika Jimenez

27 An Employee of Atkinson Watkins & Hoffmann, LLP

EXHIBIT 1

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DARELL L. MOORE and CHARLENE A.)
MOORE, individually and as)
husband and wife,)

Plaintiffs,)

vs.)

CASE NO.

JASON LASRY, M.D.,)
individually; FREMONT EMERGENCY)
SERVICES (MANDAVIA), LTD.;)
TERRY BARTMUS, RN, APRN; and)
DOES I through X, inclusive;)
and ROE CORPORATIONS I)
through V, inclusive,)

A-17-766426-C

DEPT. NO. 25

Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS OF JURY TRIAL
P.M. SESSION TESTIMONY OF ALEXANDER MARMUREANU, M.D.

BEFORE THE HONORABLE KATHLEEN E. DELANEY

FRIDAY, JANUARY 31, 2020

APPEARANCES:

For the Plaintiffs:

E. BREEN ARNTZ, ESQ.
HANK HYMANSON, ESQ.
PHILIP M. HYMANSON, ESQ.

For the Defendants:

ROBERT C. MCBRIDE, ESQ.
KEITH A. WEAVER, ESQ.
ALISSA BESTICK, ESQ.

REPORTED BY: DANA J. TAVAGLIONE, RPR, CCR No. 841

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1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 31, 2020

2 1:57 P.M.

3 * * * * *

4 Thereupon --

5 ALEXANDER MARMUREANU, M.D.,
6 having been previously sworn to testify to the
7 truth, was examined and testified as follows:

8
9 CROSS-EXAMINATION

10 BY MR. WEAVER:

11 Q. Good afternoon, Doctor.

12 A. Good afternoon, Mr. Weaver.

13 Q. Welcome to Las Vegas.

14 A. Thank you, sir. Much appreciated.

15 Q. I want to start off with a little bit of
16 apology in response to counsel earlier this morning.
17 You had mentioned that you were coming out of the
18 bathroom, I was going in. We shook hands. But I
19 didn't stop and chitchat. I did not mean it as any
20 slight. It's not my style, when I'm in trial, to
21 talk with the other side's expert. Fair enough?

22 A. Apology accepted.

23 Q. Thank you. Also, just to clarify something,
24 I'm sure would have got clarified later, but I can
25 just do it quick and easily.

1 When we were leaving off, before the lunch
2 break, I think you misspoke on the record, and I just
3 wanted to potentially clear it up so that the jury
4 might not get the wrong impression.

5 You mentioned that, at your deposition,
6 which was taken in my firm's downtown Los Angeles
7 office; correct?

8 A. I believe so. Yes, you're correct.

9 Q. And there was an attorney from Mr. McBride's
10 office there, Chelsea Hueth. Do you remember that?

11 A. That's correct.

12 Q. And do you remember what Ms. Hueth actually
13 said, which was not --

14 MR. ARNTZ: Well, hold on. Before you
15 start to ask this question, we need to approach the
16 bench.

17 THE COURT: Okay.

18 (Bench conference.)

19 THE COURT: You didn't get too comfortable,
20 did you, folks? In all seriousness, once a bench
21 conference goes a little bit longer and we're really
22 trying to flesh some things out, it's just much
23 easier to do it without you all present. So if
24 you'll indulge us. You know your admonishment.
25 we'll note it on the record. I'm not going to read

1 it again. If you could just step outside for a few
2 minutes, we'll have you right back in. Okay?

3 THE MARSHAL: All rise for the jury.

4 (Jury exits the courtroom.)

5 THE COURT: Doctor, can I ask you to please
6 step back to --

7 THE WITNESS: Of course. Go outside?

8 THE COURT: Into the alcove. There's a
9 little waiting room.

10 THE WITNESS: Thank you.

11 THE COURT: Okay. As is my practice, just
12 indulge me. I would like to, you know, summarize
13 the bench conference.

14 So what Mr. Arntz' concern expressed, when
15 he asked to approach, was that he believed that
16 Mr. Weaver was going to get into details, but also
17 just identification of potentially that what had
18 come out in the deposition was that Dr. Marmureanu
19 had been represented by Mr. McBride's law firm, not
20 that Mr. McBride's law firm had used him as an
21 expert, and that Mr. Weaver indicated that that
22 clarity was necessary because Dr. Marmureanu had
23 testified that it had come out in the deposition
24 that he had been used as an expert by Mr. McBride's
25 law firm.

1 I distinctly, from my personal
2 recollection, recall Dr. Marmureanu testifying and
3 going out of his way, in all candor, to testify to
4 your firm and "you've used me" and clearly leaving
5 this jury with the impression that Mr. McBride's law
6 firm had used him as an expert at least once, if not
7 more, in the past.

8 So my indication at the bench initially, as
9 we were talking but before the conversation got more
10 detailed and concerns expressed about the level in
11 which Mr. Weaver might inquire on this subject,
12 that's when I excused the jury so we could have a
13 better discussion. But Mr. Weaver's response was,
14 you know, the clarity is necessary and that he was
15 not going to inquire into details of the
16 representation, but that he should be able to
17 clarify that there was representation.

18 Obviously, that's a very fine line to walk
19 if these jurors are connecting to, and I don't know
20 why they wouldn't be, that these attorneys represent
21 doctors in medical malpractice cases and then cast
22 aspersions indirectly that way on this witness.

23 So we are going to have to figure out how
24 we're going to address this, but my inclination is
25 still, at this moment, to indicate that there must

1 be some clarity because the doctor did volunteer
2 that information. I don't think it was responsive
3 to an inquiry of Mr. McBride, and he did appear to
4 leave the jury with the impression that his firm had
5 hired him as an expert, and if that's not the case,
6 we need to figure out how to get some clarification.
7 But, Mr. Arntz, let me let you flesh out your
8 argument, and then I'll hear from Mr. Weaver.

9 MR. ARNTZ: Look, I wasn't -- in fact, at
10 lunch, I cautioned him not to get cute volunteering
11 statements like that. But his statement was not in
12 the context of what was discussed in the deposition.
13 His statement was just a gratuitous, "Oh, and by the
14 way, you guys have hired me too." And this was
15 being discussed when he was talking about how much
16 things cost and so forth.

17 I don't have any recollection of it being
18 in the context of that being discussed in the
19 deposition. I agree that the only thing that was
20 discussed in the deposition was a disclosure by
21 Ms. Hueth that her firm had represented him before.
22 And she wanted to make sure it wasn't going to be a
23 conflict. But that statement that he made was just
24 a gratuitous statement of "Oh, and by the way, your
25 firm has hired me too."

1 THE COURT: Right. Gratuitous.
2 Problematic in that way.

3 MR. ARNTZ: I don't disagree that some
4 clarity brought on by saying "But you represent
5 plaintiffs and/or you testified for plaintiffs, and
6 you've testified for defendants and so forth." I
7 don't see it opening the door to something that
8 happened at deposition where a disclosure was made
9 just so he would be comfortable having one of his
10 attorneys there.

11 THE COURT: Let's role play here a second.
12 So if I were to limit Mr. Weaver's followup to
13 something along the lines of, you know, "Doctor, you
14 testified earlier that you believed or remembered
15 that Mr. McBride's law firm had hired you as an
16 expert, if I were to indicate to you that there does
17 not appear to be any record of that being the case,
18 would" --

19 MR. ARNTZ: I don't know if that's true. I
20 don't think that's true.

21 THE COURT: Have you hired him as an
22 expert?

23 MR. MCBRIDE: Our firm?

24 THE COURT: I know you said you hadn't met
25 him. Has your firm? I mean, I know your firm is

1 pretty big.

2 MR. MCBRIDE: I honestly don't know because
3 we have our firm --

4 THE COURT: But it never came out in the
5 depo, so.

6 MR. MCBRIDE: It never came out in the
7 depo, yeah.

8 MR. ARNTZ: The only thing that came out in
9 the depo was a disclosure.

10 THE COURT: Mr. Arntz, okay, but I wasn't
11 finished. But, okay, fair enough. I'm trying to
12 figure out a way, because this clarity will occur,
13 how we do it. So I was trying to throw out an
14 option so you can shoot it down, if you want, but
15 then what's your alternative?

16 MR. ARNTZ: Well, if I had asked
17 Dr. Marmureanu, "Have you ever worked for any of the
18 defense firms" and he said yes, would that require
19 clarity? Because all he did was volunteer a
20 statement that wasn't responsive to a question that
21 still is true.

22 THE COURT: In Dr. Marmureanu's
23 testimony, I think it's more problematic because it
24 was gratuitous, volunteered, and it appeared to be
25 designed for exactly the effect that counsel is now

1 concerned about and wants clarity on.

2 Had you asked, would they be able to
3 clarify? You know, again, I mean, as we sit here
4 today, we can't be certain that he hasn't been used
5 by them as an expert. But, again, it never came up.
6 I would think that we would have that information,
7 if he had, but I guess we can't rule it out. But at
8 this point, you know, what he was talking about
9 appeared to be in the context -- because he said it
10 himself, "In the deposition, it came out."

11 He's very prone to want to say what he
12 thinks is in there, that he thinks is being kept
13 from the jury. I tried to admonish him, but he's
14 still doing it. And he made it clear that, in the
15 deposition, this is what it says. So maybe that's
16 how we clarify that, you know, "If I were to tell
17 you that there's no statement in the deposition that
18 this firm hired you as an expert, would you have
19 reason to question that at this time?"

20 MR. ARNTZ: How about striking that from
21 the record and just telling the jury --

22 THE COURT: They heard it. You can't
23 unring the bell. There needs to be clarity.

24 MR. ARNTZ: But my point is let's assume
25 for a minute that it's true that he's been hired by

1 Mr. McBride's firm to act as an expert. How does
2 the fact that, during the deposition, a disclosure
3 was made by Ms. Hueth that her firm had represented
4 him in the past clarify that? It doesn't clarify
5 that. If it's true that he has been retained by
6 them, talking about the fact that he's been
7 represented by that firm doesn't clarify that point.

8 THE COURT: I don't perceive that to be the
9 issue. I perceive the issue to be that there's no
10 evidence, from what they're telling me, from his
11 deposition which, by all accounts, was lengthy and
12 his C.V. and anything else to indicate that they had
13 hired him as an expert; although, again, we can't
14 completely rule it out, all that came up in the depo
15 was this other issue. He's referring to the depo.

16 So in the end of the day, you know, he's
17 talking about something that was in the depo that
18 wasn't there. Why is that clarity not appropriate?

19 MR. ARNTZ: Okay. I don't remember it that
20 way.

21 THE COURT: You remember which part?

22 MR. ARNTZ: I don't remember his gratuitous
23 comment being made in the context of this coming up
24 in the depo.

25 THE COURT: I heard it.

1 MR. ARNTZ: Okay. I don't remember it that
2 way, but I still don't see how --

3 THE COURT: Respectfully, I remember it.
4 You don't. We agree to disagree.

5 MR. ARNTZ: Yeah, no, that's fine. That's
6 not really relevant to the other point, which is I
7 don't see how him asking questions about having been
8 represented by that firm, just because that's what
9 came up in the depo sheds clarity on the statement
10 he made. If he asks that question and then I
11 follow-up by saying, "well, Dr. Marmureanu, have you
12 been retained by Mr. McBride's firm?" Because then
13 that would clarify even further.

14 THE COURT: Maybe the better way to do it,
15 go about this, Mr. Arntz, and we need to get to
16 this, but I'm assuming your angst over this is
17 because you don't want it coming out these attorneys
18 who represent doctors in medical malpractices might
19 have represented him.

20 MR. ARNTZ: Right. So I'm giving you an
21 alternative where I'm limiting Mr. Weaver to just
22 asking the witness -- at least for now, we'll see
23 what his answer is -- but just asking the witness,
24 "You testified earlier that you believed it came out
25 in the deposition that Mr. McBride's firm had hired

1 you as an expert. If I were to tell you that we
2 reviewed this over the break and there doesn't
3 appear to be any indication in the deposition that
4 that is the case or that the dialogue in the
5 deposition was related to not that, you know, would
6 you have any reason to doubt that? Do you have any
7 better recollection of that at this time?"

8 something so that it doesn't come up that
9 he was represented, but it comes up that there's
10 nothing in evidence that he was retained by them as
11 an expert. Because he clearly gave testimony to the
12 jury that sounded like he had been retained by them
13 as an expert.

14 MR. ARNTZ: Right. So I guess maybe the
15 reason I focus on what I have is because that seems
16 to be the focal point, has he been retained by this
17 firm, not whether it came up in the depo. But your
18 solution is fine with me, so long as they don't get
19 into representations.

20 THE COURT: I think there's a way.

21 Mr. Weaver, can you tell us, do you think
22 there's a way that you can inquire without --

23 MR. WEAVER: I think, well, two things. I
24 think that there is a way I can inquire as long as
25 it's clear that it's not just whether he has been

1 retained as an expert by Mr. McBride's firm, that he
2 has not, but the context of what he said in the
3 deposition is he had it wrong, No. 1.

4 But, No. 2, the Motion in Limine with
5 regard to lawsuits only applies to defendants. So
6 if I ask him, I'm not intending to ask him questions
7 about Mr. McBride's representation any more than
8 Mr. McBride was obviously, at the end, going to get
9 into his firm's representation. I could get into
10 questions about lawsuits that he's had, and there
11 have been plenty. But I certainly was not intending
12 to get into questions about Mr. McBride's firm
13 representation.

14 The only thing that I can't live with is he
15 gratuitously offered, implying that it was brought
16 up that he is an expert of Mr. McBride's firm when
17 the only thing that was brought up was not that, but
18 representation.

19 THE COURT: All right. So, you know, my
20 thought is that we do need to clarify his testimony.
21 The same, whether or not the Motion in Limine was
22 brought by a particular party on behalf of
23 particular parties, it's still the same concept
24 which is, you know, is it relevant and does it, is
25 it substantially outweighed by prejudice -- I

1 suppose, to some degree -- analysis, and I don't
2 think it should be revealed here that he was
3 represented by Mr. McBride's firm.

4 But the issue, I think by the way I'm
5 suggesting it be done, I think is resolved because
6 if you say and very clear, you know, "We reviewed
7 this over the break, and we see no indication of
8 that testimony being had or no indication of any,
9 you know, evidence in the deposition of them having,
10 you know, retained you as an expert. So, you know,
11 what you were testifying about does not appear to be
12 accurate in that regard, you know, would you agree
13 with that, or would you have some reason to doubt
14 that?"

15 Now, the issue is if he says something like
16 "well, it may have been something different" or "I
17 may have been mistaken" or whatever, we can move on.
18 If he doubles down on it, then where do we go?

19 MR. ARNTZ: I'll tell him to just take his
20 medicine and we move on.

21 MR. MCBRIDE: And, Your Honor, just for
22 clarification too, you asked the question if I knew
23 if our firm has retained him, again, I don't know
24 specifically. At least from the deposition list
25 that he provided and trial testimony, I went through

1 that just now, that he attached from 2009 up to
2 2019, I don't see any reference to our firm as
3 being, representing him in those depositions or him
4 acting on behalf of our firm or any of the trials or
5 mediations that he's worked on. So just for that --

6 THE COURT: Right. I mean, it doesn't
7 drive the train.

8 MR. MCBRIDE: Right.

9 THE COURT: The whole thing boils down to
10 me, and I understand Mr. Arntz and I remember this
11 differently, and maybe the other counsel do as
12 well -- you know, various people in the setting can
13 hear things differently -- is the whole conversation
14 was what was in the depo and what came out in the
15 depo. And I think if we limit it to what's in the
16 depo, we can solve this problem.

17 I think actually makes it worse, Mr. Arntz,
18 if it's not the case that it was him talking about
19 what's in the depo because then it's a little bit
20 more broad-based about how we can inquire. But I
21 think it can be corrected.

22 I think it can be corrected by "There's
23 nothing in the depo that would support your
24 recollection of you having a discussion about being
25 retained by Mr. McBride's firm." So, you know, "or

1 you being retained as an expert by Mr. McBride's
2 firm. so if we indicate that to you, you know,
3 would you stand corrected on that point, or could
4 you have possibly misremembered?" or something along
5 those lines. And, again, if he agrees, yes. If he
6 says "I don't remember" or "maybe I misremembered,"
7 then we can move on. But like I said if he doubles
8 down and says "No, I'm quite certain I testified
9 that they represent," then we might have to allow
10 some clarification.

11 MR. ARNTZ: Like I said, I don't think that
12 the prejudice that Mr. Weaver is talking about is
13 that it came up in the depo. He's talking about
14 whether or not he's been hired by a defense firm,
15 and so I don't know -- I don't know how I see the
16 relevance of the depo. But I'm perfectly happy with
17 your solution, and I will tell him to --

18 THE COURT: No.

19 MR. ARNTZ: Because I don't think it's in
20 the depo either. So I'm happy --

21 THE COURT: We're not going to have that
22 issue again where we've had a dialogue about his
23 testimony. We're, you know, just going to have to
24 live with the answer and go from there.

25 But, Mr. Weaver, do you think you can make

1 that line of inquiry?

2 MR. WEAVER: Sure. I think that's the
3 perfect solution.

4 THE COURT: I hope. We'll see. Let's get
5 Dr. Marmureanu up in, Dr. "Marmureanu" here first.
6 I don't want to do an outside-the-presence voir dire
7 with him because it's just going to make it worse.

8 MR. P. HYMANSON: Your Honor, before we go,
9 if I could, Phil Hymanson. Very quickly, Your
10 Honor. So the representation from Mr. McBride's
11 firm is he can't say specifically whether they have
12 or have not, they're just -- at this point, they
13 don't know? Is that the understanding?

14 THE COURT: I mean, I think that's true.

15 MR. MCBRIDE: Yeah, I think that's true,
16 and I'm just going off also the top of that, what he
17 had listed.

18 MR. P. HYMANSON: When asking questions,
19 we'll hopefully move through it and move on, but if
20 we don't, then there's Step 2.

21 THE COURT: I mean, I think we've said that
22 a couple of times, but I appreciate you clarifying,
23 Mr. Hymanson, that we can't be certain, as we sit
24 here today, that he hasn't been retained by his firm
25 as an expert. We know he hasn't been retained by

1 Mr. McBride as an expert. But by his firm, no.

2 But what we can also be certain of is that
3 it does not appear to be what was discussed in the
4 depo; and when he testified, from his recollection,
5 that what was in the depo was that fact, that's what
6 we need to clarify.

7 MR. P. HYMANSON: Thank you.

8 MR. WEAVER: I'll limit it to that.

9 Thank you.

10 THE COURT: Ask to approach if it goes
11 south.

12 (Jury enters the courtroom.)

13 THE COURT: All right. Thank you, ladies
14 and gentlemen. Have a seat. I'll invite everybody
15 else to have a seat as well. We have resolved the
16 bench conference issue, and everybody in the jury
17 appears to be ready to proceed.

18 Dr. Marmureanu, could you please also,
19 again, acknowledge you understand you're still under
20 oath.

21 THE WITNESS: Yes, I do.

22 THE COURT: Thank you. And, Mr. Weaver,
23 whenever you're ready to resume.

24 MR. WEAVER: Thank you, Your Honor.

25 / / /

1 BY MR. WEAVER:

2 Q. Dr. Marmureanu, I think I just want to cut
3 through the chase on something. Over the break, I
4 reviewed the deposition that you and I attended and
5 have refreshed my recollection that I don't believe
6 there's anything in your deposition that indicated
7 Mr. McBride's office has retained you as an expert,
8 which I think you said just before we went on the
9 lunch break.

10 would it be fair to say that you just
11 misspoke when you said that and that it didn't come
12 up in the deposition, that that was the case?

13 A. It is unfair, sir. May I explain?

14 Q. So let me just stop you there for a minute.

15 So your recollection of the deposition is
16 there was a discussion about Mr. McBride's firm
17 retaining you as an expert? That's your recollection
18 of the deposition?

19 A. I don't have much of a recollection of the
20 issue that you brought up. That's not what I
21 referred to when I --

22 Q. well, I'm just asking you because the
23 testimony that you volunteered to Mr. McBride was
24 that, in the deposition, it came up that there was
25 something that related to comments on the record

1 about you being retained by Mr. McBride's firm as an
2 expert. Is it your recollection that that
3 conversation took place or not in the deposition?

4 A. I don't remember about talking about this
5 during the deposition. May I explain what I was
6 referring to?

7 MR. WEAVER: No. May we approach.

8 THE COURT: Yes.

9 (Bench conference.)

10 THE COURT: All right. Thank you,
11 Mr. Weaver. You can move on to another line of
12 questioning.

13 MR. WEAVER: Thank you, Your Honor.

14 THE COURT: I think we have that clear.

15 BY MR. WEAVER:

16 Q. Dr. Marmureanu, I forget whether you said
17 you reviewed the deposition of your co-expert in this
18 case, Dr. Jacobs. Have you or not?

19 A. I did review it, sir. Yes.

20 Q. Do you recall seeing in his deposition where
21 he said the exact opposite of you this morning when
22 you said: "The standard of care doesn't require the
23 Five Ps; nobody does that anymore, that the standard
24 of care requires a CT angiogram," and he said the
25 exact opposite?

1 Do you recall him saying nobody would have
2 done a CT angiogram in this case?

3 A. I do not recall that, sir. No absolutely
4 not.

5 Q. would it shock you?

6 A. wouldn't shock me. I just said I don't
7 remember.

8 Q. why wouldn't -- if that is his testimony,
9 why wouldn't it shock you that your co-expert in this
10 case says the exact opposite that you do, given that
11 in response to Mr. Arntz' questioning, you said
12 there's one standard of care when it comes to the
13 emergency medicine in this case?

14 A. Because I truly believe you take it out of
15 context, and I would like you to show us exactly
16 what we're talking about before we make those
17 statements.

18 Q. well, it's a statement that you made.

19 You testified this morning that you're
20 qualified to offer opinions in emergency medicine,
21 even though you haven't been trained in emergency
22 medicine, because there's one standard of care.

23 So if there's one standard of care for you,
24 if there's one standard of care for Dr. Jacobs, if
25 there's one standard of care for Nurse Practitioner

1 Bartmus, if there's one standard of care for
2 Dr. Lasry, everybody should be on the same page, or
3 at least you and Dr. Jacobs should be on the same
4 page; correct?

5 MR. ARNTZ: Your Honor, I have an objection
6 as to this line of questioning regarding Dr. Jacobs'
7 deposition. It's hearsay, and we've had a motion on
8 this before trial started.

9 THE COURT: Mr. Weaver, do you want to
10 respond?

11 MR. WEAVER: Yes. What I respond to that
12 is he said he's reviewed that experts are able to
13 rely on anything of a serious matter, and I think
14 that given that the testimony that there's already
15 been, I think it's fair game.

16 MR. ARNTZ: Okay. He hasn't testified
17 here, and his deposition hasn't been read into the
18 record here.

19 THE COURT: Maybe you all get to have your
20 exercise. So come on up to the bench.

21 (Bench conference.)

22 THE COURT: All right. Thank you. We got
23 right up on that moment of having to start fresh.

24 But go ahead. Mr. Weaver, I think we have
25 an understanding of how to proceed with this line of

1 questioning.

2 MR. WEAVER: Thank you, Your Honor.

3 BY MR. WEAVER:

4 Q. Dr. Marmureanu, you said that you reviewed
5 Dr. Jacobs' deposition. When did you last review it?

6 A. Probably last week.

7 Q. All right. And you reviewed it obviously in
8 preparation for being here today; correct?

9 A. That's correct.

10 Q. And you reviewed it because it was material
11 sent to you by plaintiffs' counsel's office for you
12 to prepare for your deposition -- I'm sorry -- for
13 you to prepare for your trial testimony today;
14 correct?

15 A. No. Not correct. That was sent to me way
16 before the trial. So I review it because I felt I
17 need to review it.

18 Q. Why did you feel it would be helpful to
19 review it in preparation for your testimony today?

20 A. That's who I am. I need to review every
21 piece of document that I can in order to formulate
22 what I believe is the right opinion.

23 Q. Okay. So you wanted to review all the
24 materials that were provided to you in order to
25 support the opinions for which you're prepared to

1 testify to today, and that included Dr. Fish's (sic)
2 deposition; correct?

3 MR. ARNTZ: Not Dr. Fish. Dr. Jacobs.

4 BY MR. WEAVER:

5 Q. I'm sorry. Dr. Jacobs' deposition?

6 A. No, not really. I didn't review it in
7 order to help me support my opinions. I review it
8 in order to basically understand what was his
9 thought on the whole process. So then I decide
10 where it goes from there, but I don't review
11 documents -- I don't know ahead of time what's going
12 to happen with that review. Make sense?

13 Q. Do you agree with me that Dr. Jacobs'
14 opinions with regard to the violations of the
15 standard of care in this case are different from
16 yours?

17 A. No. I disagree with you.

18 Q. Okay. Is it your opinion, based on your
19 review of Dr. Jacobs' deposition, that your opinions
20 fit those of Dr. Jacobs?

21 A. By and large, yes, that's my opinion.

22 Q. In what ways don't they, other than that he
23 testified that there did not need to be a CT
24 angiogram? What additional ways don't they match, or
25 would we need to go through them all?

1 A. We will probably need to go through. If I
2 may explain, I do not believe that he said that
3 there is no need for a CT angiogram. I think you're
4 taking it out of context. What I believe he said,
5 he would follow-up with an arterial duplex
6 immediately after venous duplex, and he will decide
7 from there other ways of discovering if this graft
8 is open or not. In other words, by no means, when
9 we talk about Five Ps, that's historical medicine.
10 That address to physical exam, which is part of the
11 standard of care, but by itself, doesn't represent
12 the standard of care.

13 Standard of care, it's part of the
14 compilation. It's the physical exam, which you
15 could put the Five Ps in there. There are the
16 studies, and there is the management.

17 Q. Right. But Dr. Jacobs testified that no
18 reasonable practitioner in the emergency department
19 on December 25th, 2016, would have done a CT
20 angiogram. That's the exact opposite of what you're
21 saying; correct?

22 A. I do not believe you're truthful, sir. I
23 would like to see that.

24 Q. Okay. So you don't just think I'm wrong.
25 You think I'm not telling the truth --

1 A. Either way.

2 Q. -- about Dr. Jacobs?

3 A. Yeah, I would like to see that.

4 Q. So but you don't really need to see it
5 because you're sure I'm just not telling the truth
6 about what he testified to; right?

7 A. Well, to the best of my recollection, I
8 remember you and him talking about it. I truly
9 believe that he said that perhaps, to the best of my
10 recollection, as an initial step, he wouldn't have
11 ordered it. He would have perhaps ordered it after.
12 It's not about CT angiogram. It's any sort of
13 angiogram. I would like to see that, if possible.

14 Q. Right. But that's my point. Dr. Jacobs
15 said that in the emergency department, nobody had a
16 duty to order a CT angiogram. This morning, what you
17 testified to to the jury is that: The standard of
18 care isn't to do Five Ps; nobody does that anymore;
19 the standard of care was to do a CT angiogram.

20 A. Correct. I'm saying the same thing.
21 That's, standard of care, it's Five Ps, forward
22 slash, physical exam and angiograms. MR angiograms,
23 CT angiograms, or real angiogram. And I think, if I
24 recall correct, that's what the E.R. doctor said. I
25 would like --

1 THE REPORTER: Was that "real" angiogram?

2 THE WITNESS: Or "regular" angiogram.

3 BY MR. WEAVER:

4 Q. Dr. Marmureanu, do you have an opinion of
5 how many cardiovascular surgeons there are in
6 California, roughly?

7 A. No, sir.

8 Q. A few hundred?

9 A. Probably. Could be.

10 Q. Your understanding?

11 Okay. And you testified this morning that
12 anytime you're doing heart surgery, it includes
13 vascular. So if you're doing heart surgery, the
14 cardiac part, it also includes vascular. So that
15 it's cardiovascular; correct?

16 A. That's right. It's -- yes, sir.

17 Q. And, Dr. Marmureanu, have you heard the term
18 "Pot calling the kettle black"?

19 A. I'm sorry. What did you say?

20 Q. Do you know what the term "Pot calling the
21 kettle black" means?

22 A. No, sir.

23 Q. How about the term "People who live in glass
24 houses shouldn't throw stones"? Ever heard of that?

25 A. No, sir.

1 Q. In 2017, the State of California declared
2 that you are one of the seven worst cardiovascular
3 surgeons in the entire state out of hundreds;
4 correct?

5 A. Incorrect, sir. I would like to see that.

6 Q. So is it your testimony, Dr. Marmureanu,
7 that the office of -- the California Office of
8 Statewide Health Planning and Development didn't
9 issue a report that listed you in the top 3 percent
10 of the worst cardiovascular surgeons in California?

11 A. You're untruthful and incorrect, again,
12 sir.

13 Q. Okay. So what would you need to be
14 convinced that that report exists?

15 A. Show it.

16 Q. Okay. We'll come back to that.

17 A. Go ahead.

18 Q. Let me do what's called "lay a little
19 foundation." So do you know what the "California
20 Society of Thoracic Surgeons" is?

21 A. Very well.

22 Q. Okay. And you don't believe that the
23 president of the California Society of Thoracic
24 surgeons supported a report that identified you as
25 one of the top seven worst cardiovascular surgeons in

1 California; correct?

2 A. Not only do I don't believe, I'm saying
3 you're wrong.

4 Q. And I would also be wrong if you told a
5 reporter for Kaiser News that, in effect, hospital
6 patients don't care if they're, in your case, nine
7 times more likely to die under your care?

8 A. That's not what I said. You're not telling
9 the truth again.

10 Q. Did you say something to that effect, that
11 hospital patients don't care about that report; the
12 only people who care about the data are the
13 journalists?

14 A. That could be.

15 Q. But it's in the context of the report that,
16 out of 271 cardiovascular surgeon in California,
17 found you one of the worst seven?

18 A. It's absolutely not true. And, I mean, I
19 don't want to judge upset, but I think it's
20 despicable what you're saying.

21 Q. And would it also be despicable if Hollywood
22 Presbyterian Hospitals got one of the worst rankings
23 as a hospital because of your ranking by the State of
24 California's Office of Statewide Health Planning and
25 Development?

1 A. That's not true again, sir. You will have
2 to show me.

3 Q. Okay. We'll come back to that.

4 Sir, you're saying no such report exists;
5 right?

6 A. Well, not what you said. What you said
7 doesn't exist. You are wrong about the year; you
8 are wrong about the report; you are wrong what the
9 report says, and I'm not sure if you're doing it on
10 purpose or just you don't know enough about it.

11 Q. Well, I read the report. What does it say?
12 well, you're familiar --

13 A. Allow me to explain. I can explain.

14 MR. ARNTZ: Your Honor, he's not laying the
15 proper foundation.

16 THE COURT: Hold on. There's an objection
17 posed, and I'm going to have counsel back at the
18 bench so we can try to resolve it more quickly.

19 (Bench conference.)

20 THE COURT: The objection is overruled.
21 You may proceed, Mr. Weaver.

22 BY MR. WEAVER:

23 Q. Dr. Marmureanu, you were quoted, weren't
24 you, after the report came out, by a reporter from
25 Kaiser Health News where you were identified in a

1 news report based on the California Office of
2 Statewide Health Planning and Development where you
3 were asked questions about your ranking in that
4 report; correct?

5 A. Can you repeat the question.

6 Q. Sure. Tell me what your understanding is of
7 the report that came out in 2017, from the California
8 Office of Statewide Health Planning and Development,
9 that identified you in the "worst" category.

10 There were 265 cardiovascular surgeons in
11 one category, and you and six others were in a
12 category that was labeled "worst." A California
13 state document. Are you denying that?

14 A. Can you, when you say "worst," what are you
15 referring to?

16 Q. The state put you in a category that they
17 labeled you as "worst." Do you admit that or deny
18 that?

19 A. I'm asking you when you say "worst,"
20 "worst" in which? what kind of "worst"? what
21 category of "worst"?

22 Q. "worst" in the context of you having nine
23 times the state average of deaths following CABGs.
24 Tell the jury what a "CABG" is.

25 A. All right. May I explain, sir?

1 Q. Sure. Tell the jury what a "CABG" is.

2 A. So first of all, I truly believe you're
3 totally incorrect, or I'm not sure. Maybe you don't
4 even know what you're saying. We have to look at
5 the report. But here is what he's trying to say.
6 "CABG" means "coronary artery bypass grafting."
7 Most of the people -- people have heart attacks.
8 Instead of having a clotted graft, they have a
9 clotted artery. They get rushed to the hospital.
10 We talk this called "STEMI" --

11 (Reporter request.)

12 THE WITNESS: It's called a "STEMI,"
13 S-T-E-M-I.

14 THE REPORTER: Please begin the sentence
15 again, and speak more slowly. I apologize.

16 THE WITNESS: Sure. S-T-E-M-I. I don't
17 remember. It's about STEMI.

18 So people whose heart attacks come to the
19 hospital, they're being brought by the ambulance to
20 the hospital; and at that point, we talked about the
21 committees that address the fact that this is an
22 emergency. We have to operate on those patients or
23 do some sort of percutaneous intervention on them
24 within 30 to 90 minutes. The operation that they
25 usually get is called "coronary artery bypass

1 grafting." Sounds "CABG." It's not a fancy, but
2 that side the way it is.

3 So the report is from 2013 and not 2017.
4 I've actually had zero mortalities the last seven
5 years. That's a zero. In that year, in 2013,
6 because I cover nine hospital, and most of the busy
7 doctors and the best doctors in town tend to address
8 and to operate on the sickest patients. We don't
9 pick and choose, but we are the first and the last
10 line of defense. We are the one operating on people
11 with chest pain, with the heart being almost dead,
12 with the vessels be blocked with the balloon pumps
13 in them.

14 The family is there. The cardiologist said
15 "It's nothing that you can do." The easiest thing
16 to do is to deny the case and go and play golf, or
17 you do the case, you spend 18 hours there, and you
18 try to save his life. So in 2013, they decide to
19 look at 30 days mortality. 30 days mortality is, by
20 California, S-T-S, means any patient that died
21 within 30 days for any cause.

22 I've had a patient that was hit by a bus.
23 I had a patient that had a stroke post update 25
24 because of anticoagulation. I had a few patients
25 that died before dissection. The whole heart

1 exploded. The whole aorta exploded, torn apart. So
2 during that procedure, because every I have to
3 reconstruct, I actually put a graft from the aorta
4 to the heart, and suddenly went into this category
5 of CABG. So my mortality that year was in 30 days.
6 No patient ever died on the O.R. table. They were
7 always in 15 days to 30 days.

8 we had an issue with California Society of
9 Cardiothoracic Surgery, it's plain stupid to blame a
10 surgeon -- and nobody blamed the surgeon. The data
11 is not blaming surgeon. It's that surgeon, in that
12 year, had a higher mortality than his colleagues
13 with they not taking call the way I do in three very
14 busy hospitals. And there was all those sick
15 patients.

16 So that happens. I gave them an interview.
17 Some of the best cardiac surgeons in Los Angeles,
18 the busiest guy are part of this group, and we're
19 happy because we don't turn patient down. We know
20 they will die if we don't do them. If we do them,
21 they had a chance. Nobody died on the O.R. table,
22 died weeks after. And currently there is a big
23 issue with covering this kind of data because the
24 public has to be informed.

25 This is not a blame on the surgeons,

1 otherwise nobody would operate, because misinformed
2 people will take those tables that they don't know
3 what "worst" is about. So it's about, in 2013, I
4 had a few more mortalities, 20 to 30 days postop.
5 Those are patients that are home. One of them got
6 hit by a bus in Vegas, and those death within
7 30 days. So no, I don't think I'm a bad surgeon,
8 no.

9 BY MR. WEAVER:

10 Q. Dr. Marmureanu, the study was not in 2013.

11 A. 2013.

12 Q. No, it wasn't. The surgeries were in 2014
13 and 2015, and the report was in 2017.

14 A. May I see it?

15 Q. I don't have it with me. I have the
16 reports. You know why I don't have it with me
17 because it's all online, and it's all online for the
18 world to see, and it's never had to be corrected
19 because this is the first time you've ever claimed
20 that one of your patients is included in that
21 mortality rate by being hit by a bus.

22 That's not true, is it?

23 A. It's -- no, it's been -- I actually claimed
24 this before, even during the interview.

25 Q. You claimed somebody got hit buy a car. Now

1 you're claiming they got hit by a bus in Las Vegas?

2 A. It's the same thing. It's car or a bus,
3 yes.

4 Q. Okay. So the people who compile -- the
5 state employees whose job it is, at the Office of
6 Statewide Health Planning and Development, you agree,
7 don't you, that they didn't just calculate all the
8 deaths from patients by surgeons like you who do the
9 coronary artery bypass surgery. You know that they
10 risk stratified them so that it's apples for apples;
11 correct.

12 A. More or less, but you can't really
13 re-stratify a death. A death is a death.

14 Q. Right. But my point is when you're trying
15 to tell the jury that you're actually one of the best
16 cardiovascular surgeons in Los Angeles, but the
17 reason you got tagged as being one of the worst seven
18 in the entire state out of hundreds is because you
19 take harder cases.

20 The report risk-stratified the cases so that
21 it took into account these extra sick patients that
22 you're talking about you're getting labeled as being
23 in the worst category for.

24 A. Absolutely incorrect, sir.

25 Q. Okay. What's incorrect about the report

1 risk-stratifying and risk-adjusting so it's apples to
2 apples and not just your claim you had more
3 mortalities because of people who got hit by a bus or
4 who were sicker to start?

5 A. Well, it was restratified, but you cannot
6 restratify mortality. Those are not my mortalities.
7 Those are hospital patients that came in very sick
8 that I've operated on them and within two, three,
9 four weeks, they died from -- not from surgical
10 issues. They have nothing to do with me.

11 Q. Okay.

12 A. Nothing. And that's what the report says.
13 Unfortunately, you interpret the wrong way.

14 Q. Wait. The report does not say it has
15 nothing to do with you. It says the opposite. It
16 says it's all about you.

17 A. No, you're incorrect again. Absolutely
18 not. The report deals with 30 days mortality after
19 surgery, and it turns that some -- I had more
20 patients than the average. I do 3 to 500 cases
21 per year, sir. So I do more complicated cases than
22 the average surgeon.

23 So that's three weeks mortality, somebody
24 dies from a stroke or falls down in the bathroom.
25 This is not attributed to the surgeon. It deals

1 with the mortality after surgery, and some of those
2 are my patients. But it doesn't say I'm the worst
3 surgeon than the guy who did only three cases and
4 nobody died.

5 Q. It does.

6 A. No, it doesn't.

7 Q. Because it takes the -- it says, out of
8 100 patients who get surgery, 100 patients who get
9 surgery, you have nine times the rate of patients who
10 die.

11 A. I will need to see that. But, again, those
12 are not my patients. Sir, those are hospital
13 patients, yes, that I operate on; and then they go
14 back to other facilities, and for whatever reason,
15 they aspirate, they get pulmonary embolus; they get
16 a stroke, or they get hit by a car. I said car or a
17 bus. I think it was a bus actually. So I did say
18 before that. So this has nothing to do with the
19 surgical skill.

20 MR. WEAVER: Okay. I don't have any
21 additional questions. Thank you, sir.

22 THE COURT: Thank you. Mr. Arntz.

23 MR. ARNTZ: Thank you, Your Honor.

24 What exhibit is that? Is that 104? I
25 don't think it's in. I'd like to move for the

1 admission of Exhibit 104.

2 THE COURT: Joint Exhibit 104 is being
3 moved for admission. Any objection?

4 MR. WEAVER: One moment, Your Honor,
5 please.

6 THE COURT: That's fine. Can you identify
7 generally what it is, Mr. Arntz.

8 MR. ARNTZ: I'm only going to use one
9 letter from it.

10 THE COURT: Whose records they are, what it
11 is so that they can get --

12 MR. WEAVER: It's Dr. Irwin.

13 MR. ARNTZ: Dr. Irwin.

14 THE COURT: Thank you. Any objection?

15 MR. MCBRIDE: No objection.

16 MR. WEAVER: No objection, Your Honor.

17 THE COURT: Exhibit, Joint Exhibit 104 is
18 admitted. You may inquire.

19 (Whereupon Joint Exhibit No. 104 was
20 admitted into evidence.)

21

22 REDIRECT EXAMINATION

23 BY MR. ARNTZ:

24 Q. Dr. Marmureanu, I'm going to put up a letter
25 here. Have you seen this letter?

1 A. Yes, sir. I think it's from Dr. Wienczek,
2 yeah.

3 Q. Okay. And I'll refresh your memory that in
4 December of 2014, Mr. Moore was hospitalized for a
5 blood clot, and so this is probably three or four
6 weeks after that hospitalization, maybe a month.
7 And I'd like to draw your attention specifically
8 to -- it seems as though I was wrong about the DVT,
9 the emphasis I put on that.

10 But let me ask you something: First of all,
11 what is the importance of the fact that the DVT was
12 the primary differential diagnosis?

13 A. Well, like I said, DVT should have been
14 part of differential diagnosis, but it should have
15 never been the first thing. A DVT, or a deep vein
16 thrombosis, below the knee, more likely than not
17 will not kill a patient or make him lose a leg.
18 Arterial insufficiency, ischemia, it will do that.

19 In other words, there is a differential
20 diagnosis. There are things that you have in your
21 mind when you work out a patient. The standard of
22 care in this patient, because of his prior arterial
23 insufficiency history, should have been, the No. 1
24 should have been leg ischemia. Not only wasn't
25 No. 1, not only wasn't No. 2, wasn't 3, wasn't on

1 the list.

2 So even though I don't believe there was a
3 problem ruling out -- actually, I think it's good to
4 rule out the deep vein thrombosis, my issue is that
5 there was nothing done.

6 Q. And once the ultrasound came back with a
7 blocked arterial graft, what does the standard of
8 care indicate that they should have done at that
9 point?

10 A. At that point, they need to continue the
11 workup. It's not the Five Ps. It's not the
12 physical exam only. It's something needs to be
13 done. All his symptoms, all his complaints lead
14 toward an arterial problem, not the venous problem.
15 And at that point, you know that basically, again,
16 it's impossible to have normal pulses.

17 He never had pulses before the bypass. And
18 the bypass is done, according to that ultrasound, he
19 definitely didn't have pulses by Doppler, definitely
20 not palpable. So at that point, you will need to do
21 some sort of an imaging study. You can't -- would
22 be fair to say, you have a venous duplex for the
23 veins. You want to get an arterial duplex for the
24 arteries, which will show it's blocked.

25 And at that point, you need to get an

1 angiogram, which will basically be as a roadmap,
2 clearly will show you where the blockage is, what's
3 blocked, how deep, et cetera. And then obviously
4 you have to treat it, start medical management,
5 medication, Heparin. That stops the more clot from
6 being formed versus TPA, which is a clot buster.
7 Call intervention radiology to start those. Call
8 vascular to hopefully try the percutaneous open or
9 do any sort of procedures.

10 Q. You saw other letters from Dr. Wiencek where
11 he talks about good pulses.

12 what was significant by what you read in
13 those records about those pulses?

14 A. It's very interesting because his own
15 surgeon who knows him the best -- he evaluated him,
16 he done the bypasses -- never used the word
17 "palpable." Never. Because the pulses were never
18 palpable. He used "very good pulses," which we're
19 happy to have them, by Doppler. You put it. You
20 find it where you do it, and then you hear (witness
21 makes sound). They're palpable -- well, they're
22 Dopplerable pulses.

23 So his surgeon is saying that, before the
24 bypass, there were no pulses, Doppler or palpable.
25 After the bypass, we've looked at the report, there

1 was Dopplerable in one area. And I think in this
2 letter, if I recall correct, he's saying that
3 they're good pulses by Doppler while the graft is
4 open. While the graft is closed -- it's right
5 here -- he had excellent pulses in the foot, current
6 by Doppler. In other words, they're not palpable.
7 Nobody uses the machine if you can feel them.

8 So it's very difficult for me to understand
9 or actually it's impossible to say that even after
10 the bypass, there were only pulses by Doppler, and
11 before the bypass, there were no pulses at all.
12 Once a bypass is down, and we know from the venous
13 duplex that the bypass is closed, there are no
14 pulses. They can't be.

15 The blood -- there's no way that you can
16 get blood in that area to have pulses, even by
17 Doppler. So go a step further to have palpable
18 pulses, this patient never had palpable pulses.
19 Obviously it's wrong. It's impossible.

20 Q. All right. Anything discussed during your
21 cross-examination change any of your opinions?

22 A. Other than his statements are wrong in
23 regards to study. The study doesn't say that my
24 mortalities is nine times more. That's incorrect.
25 It's not truthful, and everything else, I disagree

1 with all his statement. I don't have anything else.

2 Q. In regards to your opinions, have your
3 opinions changed in any way?

4 A. Absolutely not.

5 MR. ARNTZ: Okay. That's all I have.

6 MR. MCBRIDE: No questions.

7 MR. WEAVER: No questions.

8 THE COURT: May I see, by a show of hands,
9 if there are any jurors who have questions for this
10 witness. I believe that there was a reference made
11 on the lunch break that there might be a question
12 for this witness. Then we'd ask the marshal to make
13 sure that you write it down and have it ready.

14 If there are questions, please prepare
15 them. I'm just going to remind you to make sure
16 your name and badge number, for the current seat you
17 are in, is on the question and that you use the
18 entire piece of paper.

19 Can I just see a show of hands right now
20 how many questions we have. Two. Looks like two
21 people have questions. Okay. Finish them up, and
22 whenever you're ready to hand them in, you'll give
23 them to the marshal. She'll bring them forward.

24 I don't know if you notice, our marshal
25 shrunk a little bit.

1 MR. MCBRIDE: She's probably just as strong
2 though.

3 THE COURT: Oh, my money is on her.
4 Did you get the one that --

5 THE MARSHAL: Yeah, she's still writing.

6 THE COURT: She's still writing.

7 You getting close there, Juror No. 8?

8 Thank you. All right. May I have counsel at the
9 bench to read the questions.

10 (Bench conference.)

11 THE COURT: All right. Doctor, we do have
12 some questions from the jurors. There are multiple
13 questions on the sheet, and I think that they're
14 sort of standalone. So here's how this process is
15 going to work, if you're not familiar:

16 I'm going to read the question exactly as
17 written. I'm not at liberty, nor are the jurors, to
18 respond and have a dialogue like the counsel would
19 have. What you do is you answer the question, to
20 the best of your ability, and then the counsel will
21 have an opportunity to follow-up and flesh out those
22 answers, if need be.

23 Okay. First question: "Are there
24 instances when an occlusion in a graft dissolves or
25 otherwise goes away without medicine or surgery?"

1 THE WITNESS: Never.

2 THE COURT: "Will or can blood flow from
3 collaterals demonstrate a pulse in the foot?"

4 THE WITNESS: No. Not in this case, no.

5 THE COURT: "In your opinion, does the
6 standard of care mandate the administration of
7 medicine, like Heparin, if a graft appears occluded
8 or possibly has an occlusion?"

9 THE WITNESS: 100 percent, yes. Very good
10 question. Immediately. There is no downside. It's
11 better safe than sorry.

12 THE COURT: "Can you clarify what you meant
13 when you stated that it is impossible for PT pulses
14 to have been detected on 12/25/16, due to the 2012
15 fem-pop."

16 THE WITNESS: Repeat the question.

17 THE COURT: Yes. "Can you clarify what you
18 meant when you stated that it is impossible for
19 PT pulses to have been detected on 12/25/16, due to
20 the 2012 fem-pop."

21 THE WITNESS: I'm sorry I'm having
22 repeating it. 12? Which one was the last date?
23 12/26? 12/25? 12/28?

24 THE COURT: I'll read it again, as it's
25 written, and I'll state the date in not number

1 terms. Okay? "Can you clarify what you meant when
2 you stated that it is impossible for PT pulses to
3 have been detected on December 25th, 2016, due to
4 the 2012 fem-pop."

5 THE WITNESS: Yes. May I show?

6 THE COURT: You may.

7 THE WITNESS: Very good question. Let's
8 look at the facts.

9 (Reporter request.)

10 THE WITNESS: Okay. Very good question.
11 Let's look at the facts.

12 THE COURT: So let me first interrupt,
13 Doctor. You can't illustrate this answer from the
14 sheet that you already have.

15 THE WITNESS: I cannot do new ones?

16 THE COURT: Okay. I would like you to
17 return to your seat. I would like you to answer the
18 question, to the best of your ability, if you may;
19 and then, as I mentioned, counsel will have an
20 opportunity to follow-up, and they can determine how
21 they wish to proceed in that regard.

22 THE WITNESS: Thank you.

23 The medical documents show that, before the
24 bypass in 2012, there are no pulses. That's what
25 the surgeon said. We looked at it. After the

1 bypass, he documented he was happy that, by Doppler,
2 he was able to obtain a PT pulse, and he also
3 document in that note that that pulse wasn't present
4 before the bypass. So the bypass that he clearly
5 said he had very good flow brought, allowed him to
6 detect a Doppler, a PT pulse, a foot pulse, with the
7 Doppler, not palpable.

8 The reason I said it's impossible to have
9 the same PT pulse, on 12/25, is that the bypass is
10 gone. There is no more bypass. It's simple.
11 Before the bypass, he said there was no PT pulse.
12 He did a bypass, and he got a PT pulse.

13 That bypass in December 25 is gone. And
14 the reason we know it's gone, No. 1, the study show
15 that it's occluded, and we also know he lost his leg
16 three days after. So if the bypass is gone, it's
17 very simple that there was no pulse because only the
18 bypass allows him to bring the flow in there to
19 create the same PT.

20 So no PT pulse or no foot pulse before the
21 bypass in 2012. If, after the bypass, there is a
22 foot pulse, if you take the bypass away, there is --
23 you're not going to get that pulse in there, and
24 that's the way it is. 100 percent, you're not going
25 to have a palpable pulse. Impossible because he

1 never had a palpable pulse. Nowhere in any medical
2 record it says that there is a palpable pulse.

3 I will actually guarantee you, which we can
4 look in the records, the surgeon says before the
5 bypass, he had no pulses at all. But even in 2012,
6 he had no pulses, mean no palpable pulses, no pulses
7 by Doppler. After a bypass, only by Doppler, for
8 some time. And when the graft goes bad, that
9 Doppler pulse is gone because only the --

10 If I can show -- can I show the old
11 picture?

12 THE COURT: That's fine. Just remember the
13 reporter needs to hear you.

14 THE WITNESS: I'm sorry? I didn't hear you.

15 THE COURT: Just remember the reporter
16 needs to hear you.

17 THE WITNESS: This bypass is what brings
18 the blood down to the foot pulses where the PT is.
19 Surgeon says, before he did this, there was nothing
20 here. After he did this, he said he had a PT pulse
21 by Doppler. All what you need to do, if you take
22 this away, this is gone, (indicating). There is no
23 pulse in here by Doppler, and that's what I mean.
24 That's why it was impossible.

25 THE COURT: Okay. One additional question:

1 "On February 8, 2016, Dr. Wiencek state the showed
2 good pulses on both lower extremities. Was this
3 only by Doppler?"

4 If that's what you were just talking about,
5 or can you clarify?

6 THE WITNESS: Very good question, and I
7 actually looked in the records.

8 THE COURT: There's a reference, by the
9 way, to Exhibit 109, page 36.

10 THE WITNESS: I've looked at this. Can we
11 put back the letter?

12 Surgeons are happy to say "Very good
13 pulses. By Doppler, we can see there are still good
14 pulses, better than no pulses. In his notes --
15 actually, the two notes that he's talking, he just
16 said "very good pulses." He didn't say "palpable,"
17 but he didn't say "by Doppler" either.

18 In the letter -- first of all, in the O.R.,
19 he's describing Doppler. In the letter, he's
20 describing "very good pulses by Doppler." Nowhere
21 he's saying "palpable pulses." The word "palpable"
22 is not being used.

23 So now what I look at, more likely than
24 not, when the bypass, I know that he never said
25 "palpable." Usually, it's not enough load to create

1 bounding pulses the way you take your pulse here.
2 That's palpable. He's talking about --

3 That was good before. Bring it back.

4 MR. ARNTZ: Oh, you want that letter?

5 THE WITNESS: Yeah.

6 MR. ARNTZ: Oh, I'm sorry. I thought you
7 wanted the February letter.

8 THE WITNESS: No.

9 "He has excellent pulses in the foot
10 currently by Doppler." In the note, he said, "very
11 good pulses." He didn't say "Doppler"; he didn't
12 say "palpable." So, to me, seems that more likely
13 than not, more often than not, he's talking about
14 pulses, and he adds the word "Doppler."

15 I can tell you that there were no palpable
16 pulses based on the fact that there was no blood
17 coming on the 25th. This was gone. This is gone.
18 There is no, nothing here. Three days after, he
19 losses his leg. People who has palpable pulses
20 don't lose leg three days. It just doesn't happen.
21 They don't go home and lose their legs.

22 THE COURT: I'll start with Mr. Arntz.

23 Do you have any followup questions to the
24 jurors' questions?

25 / / /

1 FURTHER REDIRECT EXAMINATION

2 BY MR. ARNTZ:

3 Q. why do you keep grabbing a pen whenever
4 you're talking about a Doppler?5 A. That's how a Doppler probe looks, just like
6 this. There's a transducer in here, and it's got a
7 wire, and it goes to a speaker. And when you do an
8 arterial duplex study, you actually have a screen.
9 You see the flow. It's red and blue, coming towards
10 you and going away from you, and you look.11 when the basic one, it just says (witness
12 makes sound). So you actually going to move it
13 around until you find where the flow is, if there is
14 a flow. And when you hear only (witness makes
15 different sound), those are not good pulses by
16 Doppler. Systole and diastole, that's a good pulse
17 by Doppler.18 Q. In a person who has a blocked graft, like
19 Mr. Moore, but has collateral source of blood, will
20 that person have a detectable pulse, by any means,
21 Doppler or otherwise?22 A. Definitely impossible to have a palpable
23 pulse. The collateral will not give you that.
24 Highly unlikely, because the collaterals are very
25 low here. The collaterals can be here (indicating).

1 highly unlikely that you will have a Doppler pulse
2 because the main source is shut down.

3 Remember, before surgery, there was no
4 pulse here. They did say that. After they put the
5 graft, they found the pulse. They could be some
6 collaterals, and they were collaterals because he
7 lasted three days. So whatever collaterals he had,
8 they were okay. They start clotting right away.
9 But it took a few days for this leg to basically
10 die.

11 Q. In counsel for Nurse Practitioner Bartmus's
12 opening, he made an analogy --

13 MR. MCBRIDE: Well, again, this goes beyond
14 the question, Your Honor.

15 MR. ARNTZ: No, it doesn't.

16 MR. MCBRIDE: It does. We're talking
17 about --

18 THE COURT: Can you make a proffer what
19 you're tying it into, which of the questions,
20 Mr. Arntz, before you ask the --

21 MR. ARNTZ: The discussion about
22 collaterals.

23 MR. MCBRIDE: That wasn't the question that
24 was read.

25 THE COURT: There was a question with

1 regard to collaterals. I'll allow it.

2 BY MR. ARNTZ:

3 Q. He made an analogy to being on a freeway and
4 the freeway coming to a stop and having to get off
5 the freeway and you go around to get to where you're
6 going. Is that a good analogy for collaterals, that
7 it's just merely bypassing and finding another route
8 to the foot? Tell the jury how collaterals work.

9 A. When you have blockages and stenosis, so
10 total blockage and stenosis, just like traffic, the
11 cars tend to go different areas to get down. A lot
12 of time, you're unsuccessful. Like you drive, and
13 there is a cul-de-sac or there are blockages or you
14 can't get that street or it's a one way. That's
15 exactly what happened here.

16 THE COURT: And, Doctor, I don't mean to
17 interrupt you, but I do want to make sure you put
18 this follow-up question in the context of the
19 question you were asked. The question you were
20 asked was: "will or can blood flow from collaterals
21 demonstrate a pulse in the foot?"

22 I believe your answer was no.

23 THE WITNESS: No. Not in Mr. Moore case.

24 THE COURT: So can you answer this question
25 in relation to that question. I know the question

1 from counsel was very broad. But I don't know that
2 we need that broad of a response.

3 BY MR. ARNTZ:

4 Q. Yeah, let me narrow it a little bit.

5 Mainly, what I want to do is I want to take
6 this opportunity, since the question has to do with
7 collaterals, to educate the jury on exactly what it
8 means to have a collateral source of blood flow so
9 they can understand the context of that question.

10 A. If you have a good source of blood up here
11 (indicating) and it goes here, from the groin, where
12 the femoral artery goes to your foot, which is here,
13 and you have a blockage right in here, the blood
14 tends to avoid this area and then create what's
15 called "collaterals." You see them on the
16 angiogram. Goes around, and then it's called
17 "reconstitutes," and go down here.

18 That's not the case. He never had a source
19 of blood because the graft was gone, and nothing was
20 coming from above. So you don't have enough
21 collaterals to create enough blood flow and the
22 pulse, definitely not a palpable pulse. The leg
23 died. There was not enough blood in there because
24 there is nothing to create what's called an
25 "inflow." "Inflow and outflow."

1 There was no inflow in this patient. The
2 graft is gone. Nothing is coming. The iddy-biddy
3 tiny collaterals that I actually explained earlier
4 with my pen here, they're not enough to carry the
5 foot, and that's why this leg died on the 28th.

6 MR. ARNTZ: Nothing else.

7 THE COURT: Mr. McBride.

8 MR. MCBRIDE: Sure. Thank you, Your Honor.

9
10 CROSS-EXAMINATION

11 BY MR. MCBRIDE:

12 Q. Doctor, just a couple of follow-up
13 questions. So you looked at that note that was just
14 up on the screen, Dr. Simon's records, for the first
15 time this afternoon while at the lunch break with
16 counsel; right?

17 A. I don't think so. I remembered it. I
18 remember seeing it at some point.

19 Q. Okay. And, again, I'm happy to go back
20 through your list of documents that you reviewed that
21 you told me about. You still have that in front of
22 you; right?

23 A. Well, I have -- the answer is I have a list
24 of documents that I reviewed before the depo, and
25 then I got further records after the depo, just the

1 way -- so it could have been one of those. I
2 remember the letter actually.

3 Q. Okay. Doctor, you would agree with me, it's
4 not listed there; right?

5 A. It's not listed? well, actually, I'm not
6 sure.

7 Q. Go ahead and look for it, yeah.

8 A. I have like 50 things listed.

9 Q. Sure. Just take a minute to look through
10 it. See if you have Dr. Simon's records there.

11 A. well, I didn't write Dr. Simon's records.
12 I mean, I have a lot of records here. I'm not sure
13 if it's listed or not here.

14 Q. Exactly. I didn't see it, and I can
15 represent to you that in the materials we've been
16 provided from your office that you did review, it's
17 not listed. And neither are the records from
18 Nevada Pain Center. Remember I had asked you about
19 those, where he went to, Mr. Moore went on
20 12/21/2016, four days before this hospitalization
21 we're talking about? You hadn't seen those records
22 either; right?

23 A. I think I did. I told you I don't
24 remember. I received two links to medical records
25 in the last few weeks, thousand and thousands of

1 pages.

2 Q. You weren't familiar with -- when I asked
3 you those question, Doctor, you weren't familiar with
4 any of that information from that, is it true?

5 A. I said I don't remember.

6 MR. MCBRIDE: Okay. And that's all the
7 questions I have. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Weaver.

10

11 FURTHER CROSS-EXAMINATION

12 BY MR. WEAVER:

13 Q. Dr. Marmureanu, I'm just going to ask you a
14 question to see if you agree with this.

15 A. Sure.

16 Q. Do you agree that this morning, in response
17 to questions from Mr. Arntz, you said, no fewer than
18 five times, that it is impossible that there were
19 pulses in Mr. Moore's foot after 2012. And then
20 after Mr. McBride showed you over and over and over
21 and over in instances of the records, including
22 wiencek's, where pulses are documented, then after
23 the lunch break, you came back and said, "well, what
24 I really meant is, okay, there are pulses, they're
25 just not palpable."

1 Do you agree with that?

2 A. We're both saying the same thing. I can
3 tell what I referred to, most of it, and the most
4 important part, there were no palpable pulses.
5 Impossible to have palpable pulses on 12/25. In
6 other words, when the patient show up to the E.R.,
7 it's absolutely impossible to have palpable pulses.

8 Q. What I'm talking about is you do agree,
9 don't you -- I'm not talking about 12/25/2016, which
10 is where you keep going to, you told this jury --
11 over and over and over and over and over, at least my
12 notes say five times -- that after 2012, it was
13 impossible for Mr. Moore to have pulses in his foot.
14 You said that to this jury, didn't you?

15 A. I did say that, yes.

16 MR. WEAVER: Thank you.

17 THE COURT: Anything further? Mr. Weaver?
18 That's it?

19 MR. WEAVER: Sorry, Your Honor. No more.

20 THE COURT: Okay. Dr. Marmureanu, you are
21 excused at this time.

22 THE WITNESS: Thank you very much.

23 THE COURT: Take your paperwork, if you
24 would.

25 THE WITNESS: Sure. Thank you very much.

1 THE COURT: We're going to take a 15
2 minute -- we're going to take a 15 minute recess,
3 return at 3:30, please.

4 During this 15 minute recess, you're
5 admonished not to talk or converse among yourselves
6 or with anyone else on any subject connected with
7 this trial or read, watch, or listen to any report
8 of or commentary on the trial or any person
9 connected with the trial by any medium of
10 information including, without limitation,
11 newspapers, television, radio, or Internet. Please
12 don't not attempt to undertake any independent
13 investigations. No independent research, no
14 Internet searches of any kind. Please do not engage
15 in any social media communications, and please do
16 not form or express any opinion on any subject
17 connected with the trial until the case is finally
18 submitted to you. See you back at 3:30.

19 THE MARSHAL: All rise for the jury.

20 (Out of the presence of the jury.)

21 THE COURT: All right. I have a couple of
22 records to make with regards to bench conferences,
23 trying to do this quickly so we can get a little
24 comfort break too.

25 Bench conference, first, it has not been

1 yet recorded. In this later part of the testimony
2 was when Mr. Weaver began inquiring of
3 Dr. Marmureanu about having reviewed the Deposition
4 of Dr. Jacobs, Mr. Arntz objected, and then we had a
5 bench conference that ensued that because the bench
6 conference -- I'm sorry -- because the deposition
7 was not in evidence, that there ultimately should
8 not be able to be any inquiry about this, that it
9 was a hearsay concern as well as, again, just that
10 evidence not being in the record.

11 The response was that, of course, the flow
12 of things with Dr. Jacobs was a later revelation
13 closer to trial that he was not appearing, then a
14 determination or request to perhaps use deposition,
15 and then ultimately because of the stated objection,
16 we already have much record of this in the case
17 already based on the discussion about whether or not
18 opening statements could include references to
19 Dr. Jacobs' deposition.

20 This is sort of a continuance of that
21 discussion that ultimately it was determined by the
22 Court regarding opening statements, and it was
23 determined again by the Court this time that, yes,
24 the information by Dr. Jacobs or from Dr. Jacobs, to
25 the extent that it was in fact relied on by

1 Dr. Marmureanu, that that could be inquired about by
2 counsel without otherwise being in evidence.

3 At the bench conference, Mr. McBride
4 mentioned in references a "Baxter vs. Eighth
5 Judicial District Court" case, I sent a note out to
6 my law clerk to find it, and it turns out actually
7 it's not the "Baxter" case. It's the "Bhatia" case,
8 B-H-A-T-I-A, that was in front of Judge Jones. It
9 is unpublished decision, but it is within the time
10 frame to be able to be cited and considered. And
11 the reference that I believe you made there is
12 what's cited in the case, which is there had been no
13 experts who opined on certain information at the
14 time of trial.

15 The quote was: "The courts repeatedly
16 observe that once a party has given testimony
17 through deposition or expert reports, those opinions
18 do not belong to one party or another but rather are
19 available for all parties to use at the time of
20 trial." And that was the reference you were making.

21 The Court ultimately did rule that further
22 inquiry regarding -- and that we asked Mr. Weaver to
23 make sure he laid a foundation -- but that further
24 inquiry of the doctor of his review of Dr. Jacobs'
25 reports and whether he agreed or disagreed with

1 those opinions could be had, and there was.

2 Mr. Arntz, anything further you want to
3 state as far as this bench conference record?

4 MR. ARNTZ: No. Although I will state, for
5 the record, that I am having to reconsider whether I
6 read Dr. Jacobs' deposition because it's been
7 referenced so much, I might as well get the context
8 of it all in.

9 THE COURT: And that's still an option, and
10 the Court indicated earlier and certainly respects
11 your decision, one way or the other, whether or not
12 you wish to do that; and whether or not it's the
13 whole depo or whether or not you have experts, as
14 long as the parties communicate about that and
15 whether they can agree or not on what to read, if
16 there's some dispute, the Court has a reasonable
17 opportunity to resolve that dispute, that's still
18 your choice.

19 But anything further to that bench
20 conference, Mr. McBride?

21 MR. MCBRIDE: No, Your Honor.

22 THE COURT: Mr. Weaver.

23 MR. WEAVER: No, Your Honor.

24 THE COURT: Okay. The second bench
25 conference arose when Mr. Weaver was inquiring of

1 Dr. Marmureanu about reports that would indicate or
2 question his abilities as a surgeon or his rankings
3 related to his practice. I'll sort of, for just
4 purposes of discussion, give it the title of, you
5 know, "bad press," so to speak.

6 And he was denying these things, and
7 Mr. Weaver was referencing them. Then Mr. Arntz
8 objected at some point during that inquiry, and when
9 we came to the bench conference, the argument was
10 that Mr. Weaver was not actually confronting the
11 witness with these reports, that he would be
12 required to do so, and that it would not be
13 appropriate; it was not an appropriate line of
14 questioning.

15 The Court disagreed, respectfully, with
16 that assessment, that when there was testimony
17 obviously by the doctor regarding his qualifications
18 and this information called into question that
19 testimony, that the proper impeachment is to ask
20 certain things -- obviously, you have to have your
21 ethical obligations fulfilled that you have a good
22 faith belief to ask the question and that ultimately
23 there was no reason to believe otherwise --
24 certainly Mr. Weaver was able to do so without
25 actually requiring confrontation with documentation,

1 to this Court's opinion, would be akin to impeachment
2 with extrinsic evidence; and that is something that
3 is not allowed, other than in certain circumstances,
4 really more things that go towards credibility of
5 testimony, that's not what this would have been.

6 So the Court indicated that, although the
7 plaintiffs' counsel may wish to challenge if
8 Mr. Weaver was misrepresenting any such reports and
9 could potentially do so on redirect, that it was not
10 required of Mr. Weaver to confront the witness with
11 actual reports. Although, I do think it was fair
12 for Mr. Arntz to ask to be given a reference to or
13 copy of or citation to what reports he was referring
14 to; and I believe Mr. Weaver agreed, when he left
15 the bench, to do so. He indicated it was all online
16 and there was a website that could be given. So,
17 again, that inquiry continued.

18 Mr. Arntz, do you have anything you want to
19 add to this bench conference?

20 MR. ARNTZ: No, Your Honor.

21 THE COURT: Mr. McBride?

22 MR. MCBRIDE: Nothing, Your Honor.

23 THE COURT: Mr. Weaver, this was more your
24 inquiry.

25 MR. WEAVER: No, Your Honor.

1 THE COURT: No. All right. Thank you. We
2 get a little more time. Just whenever you all are
3 ready, come on back, but I'd like to aim for 3:30.
4 I guess I should ask scheduling question now too
5 while we're at it. Who's the second witness
6 tonight, today?

7 MR. ARNTZ: Dr. Fish.

8

9 (The proceedings concluded at 3:23 p.m.)

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C E R T I F I C A T E

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Dana J. Tavaglione, RPR, CCR 841, do
hereby certify that I reported the foregoing
proceedings; that the same is true and correct as
reflected by my original machine shorthand notes
taken at said time and place, and prepared in daily
copy, before the Hon. Kathleen E. Delaney,
District Court Judge, presiding.

Dated at Las Vegas, Nevada, this 27th day
of February 2020.

/S/Dana J. Tavaglione

Dana J. Tavaglione, RPR, CCR NO. 841
Certified Court Reporter
Las Vegas, Nevada

EXHIBIT 2

1 **DECLARATION OF E. BREEN ARNTZ, ESQ. IN SUPPORT OF PLAINTIFFS' REPLY**
2 **TO DEFENDANTS' OPPOSITION TO PLAINTIFFS DARELL L. MOORE AND**
3 **CHARLENE A. MOORE'S MOTION FOR NEW TRIAL**

4 I, E. BREEN ARNTZ, pursuant to NRS 53.045, declare under penalty of perjury, that the
5 following assertions are true of her own personal knowledge:

6 1. I am an attorney licensed to practice law in the State of Nevada, County of Clark,
7 was lead counsel in the trial that took place in the above captioned matter and have personal
8 knowledge of the facts contained herein.

9 2. On Friday January 31, 2020, I called an expert to testify by the name of Alexander
10 Marmureanu, a cardiovascular surgeon from Los Angeles, California. In the direct testimony of
11 Dr. Marmureanu I did no more than a customary and appropriate examination to establish his
12 qualifications to testify in the present case.

13 3. During cross examination of Dr. Marmureanu, Mr. Weaver, counsel for Nurse
14 Practitioner Bartmus, entered into a discussion with Dr. Marmureanu regarding an article that had
15 never been produced during the discovery in the case as required by NRCP 16.1, which was
16 introduced for the purpose of impeaching the reputation of Dr. Marmureanu in violation of NRS
17 Section 50.085 prohibiting the admission of reputation evidence. NRS Section 50.0875(2) states:
18 Evidence of the reputation of a witness for truthfulness or untruthfulness is inadmissible.

19 4. A conference at the bench was requested by this court at which time I made four
20 objections. First, I objected that this is impeachment evidence that was not produced during
21 discovery. This court indicated that counsel was not required to produce impeachment evidence,
22 even though NRCP 16.1 specifically requires production of impeachment evidence. Second, I
23 objected to foundation of for the impeachment evidence. The article, which discusses a study
24 regarding the death rate of patients within the first thirty (30) days following cardiac bypass surgery
25 could not be scrutinized for foundation because it had never been produced. It couldn't vetted or
26 prepared for redirect because it wasn't produced until after the witness had left to go back to Los
27 Angeles. Third, I objected that it was not the type of evidence that is appropriate for impeachment
28 because it was evidence designed to impeach his reputation. Although I did not specifically

1 cite to NRS 50.085 prohibiting the admission of reputation evidence for any purpose, I did object
2 based on it not being the type of evidence that was appropriate for impeachment. Lastly, I objected
3 based on relevance.

4 5. All of these objections are appropriate given the nature of the evidence and this court
5 should have sustained my objections. The article had not been produced during the course of
6 discovery, counsel did fail to establish foundation for the article as relevant to the case and it clearly
7 wasn't the type of evidence that is appropriate for impeachment and was therefore irrelevant.

8 6. Following the conference at the bench the court's ruling was that he could question
9 him about the article and imposed an obligation to act in good, fairly represent⁹ing the content of
10 the article. Mr. Weaver did not act in good faith, intentionally misrepresenting the content of
11 article. Having refused to produce a copy of the article at the time of examination, it was not
12 discovered until after the fact that Mr. Weaver misrepresented the content of the article.

13 FURTHER DECLARANT SAYETH NAUGHT.

14
15 
16 _____
E. BREEN ARNTZ, ESQ.

EXHIBIT 3

SUPP

MATTHEW W. HOFFMANN, ESQ.
Nevada Bar No. 9061
ATKINSON WATKINS & HOFFMANN, LLP
10789 W. Twain Ave., Suite 100
Las Vegas, NV 89135
Telephone: 702-562-6000
Facsimile: 702-562-6066
Email: mhoffmann@awhlawyers.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DARELL L. MOORE and CHARLENE A.
MOORE, individually and as husband and
wife;

Plaintiffs,

v.

DIGNITY HEALTH d/b/a ST. ROSE
DOMINICAN HOSPITAL – SAN MARTIN
CAMPUS; JASON LASRY, M.D.,
individually; FREMONT EMERGENCY
SERVICES (MANDAVIA), LTD.; TERRY
BARTMUS, RN, APRN; and DOES I through
X, inclusive; and ROE CORPORATIONS I
through V, inclusive;

Defendants.

CASE NO.: A-17-766426-C

DEPT. NO.: Dept. 26

PLAINTIFFS' FIRST SUPPLEMENTAL INITIAL DISCLOSURES
PURSUANT TO NRCP 16.1

COMES NOW, Plaintiffs DARELL L. MOORE and CHARLENE A. MOORE (hereinafter referred to as "Plaintiffs"), by and through their attorneys of record, MATTHEW W. HOFFMANN, ESQ. of the law firm of ATKINSON WATKINS & HOFFMANN, LLP, and hereby submits their following first supplemental list of witnesses and documents pursuant to NRCP 16.1. (**new information in bold**)

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I.

LIST OF WITNESSES

1. Darell L. Moore
c/o Matthew W. Hoffmann, Esq.
Atkinson Watkins & Hoffmann, LLP
10789 W. Twain Avenue, Suite 100
Las Vegas, NV 89135

Mr. Moore is expected to testify as to the facts and circumstances giving rise to the allegations contained in the Complaint.

2. Charlene A. Moore
c/o Matthew W. Hoffmann, Esq.
Atkinson Watkins & Hoffmann, LLP
10789 W. Twain Avenue, Suite 100
Las Vegas, NV 89135

Mrs. Moore is expected to testify as to the facts and circumstances giving rise to the allegations contained in the Complaint.

3. **Christopher Owen Moore**
c/o Matthew W. Hoffmann, Esq.
Atkinson Watkins & Hoffmann, LLP
10789 W. Twain Avenue, Suite 100
Las Vegas, NV 89135

Mr. Moore is expected to testify as to the facts and circumstances giving rise to the allegations contained in the Complaint.

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1 4. Dignity Health dba St. Rose Dominican Hospital
2 San Martin Campus
3 c/o Sarah S. Silverman, Esq.
4 Hall Prangle & Schoonveld, LLC
5 1160 North Town Center Drive, Suite 200
6 Las Vegas, NV 89144

7 Person(s) Most Knowledgeable for Dignity Health dba St. Rose Dominican Hospital – San
8 Martin Capus is expected to testify as to the facts and circumstances giving rise to the allegations
9 contained in the Complaint.

10 5. Fremont Emergency Services, Ltd. (Mandavia)
11 c/o Keith A. Weaver, Esq.
12 Lewis Brisbois Bisgaard & Smith LLP
13 6385 S. Rainbow Blvd., Suite 600
14 Las Vegas, NV 89118

15 Person(s) Most Knowledgeable for Fremont Emergency Services, Ltd. (Mandavia) is
16 expected to testify as to the facts and circumstances giving rise to the allegations contained in the
17 Complaint.

18 6. Terry Bartmus, A.P.R.N.
19 c/o Keith A. Weaver, Esq.
20 Lewis Brisbois Bisgaard & Smith LLP
21 6385 S. Rainbow Blvd., Suite 600
22 Las Vegas, NV 89118

23 Ms. Bartmus is expected to testify as to the facts and circumstances giving rise to the
24 allegations contained in the Complaint.

25 7. Jason Lasry, M.D.
26 c/o Robert C. McBride, Esq.
27 Chelsea R. Hueth, Esq.
28 Carroll, Kelly, Trotter, Franzen,
 McBride & Peabody
 8329 W. Sunset Road, Suite 260
 Las Vegas, NV 89113

 Mr. Lasry is expected to testify as to the facts and circumstances giving rise to the
allegations contained in the Complaint.

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1 8. Custodian of Records and/or
2 Person Most Knowledgeable
3 St. Rose Dominican Hospital – San Martin Campus
4 Stan T. Liu, M.D.
 8280 West Warm Springs Road
 Las Vegas, NV 89113

5 These witnesses are expected to testify regarding Plaintiff's medical treatment from
6 St. Rose Dominican Hospital – San Martin Campus and are expected to testify as to the facts and
7 circumstances surrounding the medical care, treatment, and/or billing for said care and treatment
8 provided to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
9 physician, including their expert opinions as to causation, care, and reasonableness of medical
10 expenses.

11 9. Custodian of Records and/or
12 Person Most Knowledgeable
13 Fremont Emergency Services
14 Jason Lasry, M.D.
15 Logan Cole Sondrup, M.D.
 P.O. Box 638972
 Cincinnati, OH 45263

16 These witnesses are expected to testify regarding Plaintiff's medical treatment at Fremont
17 Emergency Services and are expected to testify as to the facts and circumstances surrounding the
18 medical care, treatment, and/or billing for said care and treatment provided to Plaintiff. The
19 individual physicians disclosed will testify in their capacity as a treating physician, including their
20 expert opinions as to causation, care, and reasonableness of medical expenses.

21 10. Custodian of Records and/or
22 Person Most Knowledgeable
23 Radiology Associates of Nevada
24 P.O. Box 30077
25 Dept. 305
 Salt Lake City, UT 84130

26 These witnesses are expected to testify regarding Plaintiff's medical treatment from
27 Radiology Associates of Nevada and are expected to testify as to the facts and circumstances
28 surrounding the medical care, treatment, and/or billing for said care and treatment provided to

1 Plaintiff. The individual physicians disclosed will testify in their capacity as a treating physician,
2 including their expert opinions as to causation, care, and reasonableness of medical expenses.

3 11. Custodian of Records and/or
4 Person Most Knowledgeable
5 Desert Radiologists
6 Ashok Gupta, M.D.
7 Charles Hales, M.D.
P.O. Box 3057
Indianapolis, IN 46206

8 These witnesses are expected to testify regarding Plaintiff's medical treatment at Desert
9 Radiologists and are expected to testify as to the facts and circumstances surrounding the medical
10 care, treatment, and/or billing for said care and treatment provided to Plaintiff. The individual
11 physicians disclosed will testify in their capacity as a treating physician, including their expert
12 opinions as to causation, care, and reasonableness of medical expenses.

13 12. Custodian of Records and/or
14 Person Most Knowledgeable
15 Shadow Emergency Physicians, PLLC
16 Oscar Rago, M.D.
P.O. Box 13917
Philadelphia, PA 19101

17 These witnesses are expected to testify regarding Plaintiff's medical treatment at Shadow
18 Emergency Physicians, PLLC and are expected to testify as to the facts and circumstances
19 surrounding the medical care, treatment, and/or billing for said care and treatment provided to
20 Plaintiff. The individual physicians disclosed will testify in their capacity as a treating physician,
21 including their expert opinions as to causation, care, and reasonableness of medical expenses.

22 13. Custodian of Records and/or
23 Person Most Knowledgeable
24 Advanced Prosthetics and Orthotics
25 Holman Chan, M.D.
1505 Wigwam Parkway, Suite 340
Henderson, NV 89074

26 These witnesses are expected to testify regarding Plaintiff's medical treatment from
27 Advanced Prosthetics and Orthotics and are expected to testify as to the facts and circumstances
28

1 surrounding the medical care, treatment, and/or billing for said care and treatment provided to
2 Plaintiff. The individual physicians disclosed will testify in their capacity as a treating physician,
3 including their expert opinions as to causation, care, and reasonableness of medical expenses.

4 14. Custodian of Records and/or
5 Person Most Knowledgeable
6 Spring Valley Hospital
7 **Irfana Razzaq, M.D.**
8 5400 S. Rainbow Blvd.
9 Las Vegas, NV 89118

10 These witnesses are expected to testify regarding Plaintiff's medical treatment from
11 Advanced Prosthetics and Orthotics and are expected to testify as to the facts and circumstances
12 surrounding the medical care, treatment, and/or billing for said care and treatment provided to
13 Plaintiff. The individual physicians disclosed will testify in their capacity as a treating physician,
14 including their expert opinions as to causation, care, and reasonableness of medical expenses.

15 15. Custodian of Records and/or
16 Person Most Knowledgeable
17 **R. Scott Jacobs, M.D. FAAEM**
18 c/o Atkinson Watkins & Hoffmann, LLP
19 1669 Torrance Street
20 San Diego, CA 92103

21 These witnesses are expected to testify regarding Plaintiff's medical treatment from
22 **Scott Greaves, M.D.** and are expected to testify as to the facts and circumstances surrounding
23 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
24 The individual physicians disclosed will testify in their capacity as a treating physician,
25 including their expert opinions as to causation, care, and reasonableness of medical expenses.

26 16. Custodian of Records and/or
27 Person Most Knowledgeable
28 **Scott Greaves, M.D.**
2120 Golden Hill Road, Suite 102
Paso Robles, CA 93446

These witnesses are expected to testify regarding Plaintiff's medical treatment from
Scott Greaves, M.D. and are expected to testify as to the facts and circumstances surrounding
the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.

1 The individual physicians disclosed will testify in their capacity as a treating physician,
2 including their expert opinions as to causation, care, and reasonableness of medical expenses.

3 17. Custodian of Records and/or
4 Person Most Knowledgeable
5 Johnathan Riegler, M.D.
6 1255 Las Tablas Road, Suite 201
7 Templeton, CA 93465

8 These witnesses are expected to testify regarding Plaintiff's medical treatment from
9 Johnathan Riegler, M.D. and are expected to testify as to the facts and circumstances
10 surrounding the medical care, treatment, and/or billing for said care and treatment provided
11 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
12 physician, including their expert opinions as to causation, care, and reasonableness of medical
13 expenses.

14 18. Custodian of Records and/or
15 Person Most Knowledgeable
16 James Hayes, M.D.
17 St. Rose Hospital San Martin
18 8280 W. Warm Springs Road
19 Las Vegas, NV 89113

20 These witnesses are expected to testify regarding Plaintiff's medical treatment from
21 James Hayes, M.D. and are expected to testify as to the facts and circumstances surrounding
22 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
23 The individual physicians disclosed will testify in their capacity as a treating physician,
24 including their expert opinions as to causation, care, and reasonableness of medical expenses.

25 19. Custodian of Records and/or
26 Person Most Knowledgeable
27 Irwin B. Simon, M.D.
28 2150 W. Horizon Ridge Pkwy, Ste. 100
Henderson, NV 89052

These witnesses are expected to testify regarding Plaintiff's medical treatment from
Irwin B. Simon, M.D. and are expected to testify as to the facts and circumstances

1 surrounding the medical care, treatment, and/or billing for said care and treatment provided
2 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
3 physician, including their expert opinions as to causation, care, and reasonableness of medical
4 expenses.

5
6 20. Custodian of Records and/or
7 Person Most Knowledgeable
8 John F. Pinto, M.D.
1701 N. Green Valley Parkway
Henderson, NV 89074

9 These witnesses are expected to testify regarding Plaintiff's medical treatment from
10 John F. Pinto, M.D. and are expected to testify as to the facts and circumstances surrounding
11 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
12 The individual physicians disclosed will testify in their capacity as a treating physician,
13 including their expert opinions as to causation, care, and reasonableness of medical expenses.

14 21. Custodian of Records and/or
15 Person Most Knowledgeable
16 Armour Christensen, Chtd.
2450 W. Horizon Ridge Parkway, Suite 100
17 Henderson, NV 89052

18 These witnesses are expected to testify regarding Plaintiff's medical treatment from
19 Armour Christensen, Chtd. and are expected to testify as to the facts and circumstances
20 surrounding the medical care, treatment, and/or billing for said care and treatment provided
21 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
22 physician, including their expert opinions as to causation, care, and reasonableness of medical
23 expenses.

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1 **22. Custodian of Records and/or**
2 **Person Most Knowledgeable**
3 **Robert Wiencek, M.D.**
4 **St. Rose Sienna**
 7190 S. Cimarron Road,
 Las Vegas, NV 89113

5 These witnesses are expected to testify regarding Plaintiff's medical treatment from
6 Robert Wiencek, M.D. and are expected to testify as to the facts and circumstances
7 surrounding the medical care, treatment, and/or billing for said care and treatment provided
8 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
9 physician, including their expert opinions as to causation, care, and reasonableness of medical
10 expenses.

11 **23. Custodian of Records and/or**
12 **Person Most Knowledgeable**
13 **Noel L. Shaw, D.C.**
14 **1101 North Wilmot Road, Suite 229**
 Tuscon, AZ 85712

15
16 These witnesses are expected to testify regarding Plaintiff's medical treatment from
17 Noel L. Shaw, D.C. and are expected to testify as to the facts and circumstances surrounding
18 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
19 The individual physicians disclosed will testify in their capacity as a treating physician,
20 including their expert opinions as to causation, care, and reasonableness of medical expenses.

21 **24. Custodian of Records and/or**
22 **Person Most Knowledgeable**
23 **Sang Tran, M.D.**
24 **Procure Medical Center**
 6870 S. Rainbow Blvd., Suite 106
 Las Vegas, NV 89118

25
26 These witnesses are expected to testify regarding Plaintiff's medical treatment from
27 Sang Tran, M.D. and are expected to testify as to the facts and circumstances surrounding
28 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.

1 The individual physicians disclosed will testify in their capacity as a treating physician,
2 including their expert opinions as to causation, care, and reasonableness of medical expenses.

3 25. Custodian of Records and/or
4 Person Most Knowledgeable
5 Patrick Frank, M.D.
6 St. Rose San Martin
7 8280 W. Warm Springs Road
8 Las Vegas, NV 89113

9 These witnesses are expected to testify regarding Plaintiff's medical treatment from
10 Patrick Frank, M.D. and are expected to testify as to the facts and circumstances surrounding
11 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
12 The individual physicians disclosed will testify in their capacity as a treating physician,
13 including their expert opinions as to causation, care, and reasonableness of medical expenses.

14 26. Custodian of Records and/or
15 Person Most Knowledgeable
16 Paul Wiesner and Associates
17 5495 S. Rainbow Blvd.
18 Las Vegas, NV 89118

19 These witnesses are expected to testify regarding Plaintiff's medical treatment from
20 Paul Wiesner and Associates and are expected to testify as to the facts and circumstances
21 surrounding the medical care, treatment, and/or billing for said care and treatment provided
22 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
23 physician, including their expert opinions as to causation, care, and reasonableness of medical
24 expenses.

25 27. Custodian of Records and/or
26 Person Most Knowledgeable
27 John Oh, M.D.
28 8551 W. Lake Mead Blvd.
Las Vegas, NV 89128

These witnesses are expected to testify regarding Plaintiff's medical treatment from
John Oh, M.D. and are expected to testify as to the facts and circumstances surrounding the
medical care, treatment, and/or billing for said care and treatment provided to Plaintiff. The

1 individual physicians disclosed will testify in their capacity as a treating physician, including
2 their expert opinions as to causation, care, and reasonableness of medical expenses.

3 28. Custodian of Records and/or
4 Person Most Knowledgeable
5 John Oh, M.D.
6 8551 W. Lake Mead Blvd.
7 Las Vegas, NV 89128

8 These witnesses are expected to testify regarding Plaintiff's medical treatment from
9 John Oh, M.D. and are expected to testify as to the facts and circumstances surrounding the
10 medical care, treatment, and/or billing for said care and treatment provided to Plaintiff. The
11 individual physicians disclosed will testify in their capacity as a treating physician, including
12 their expert opinions as to causation, care, and reasonableness of medical expenses.

13 29. Custodian of Records and/or
14 Person Most Knowledgeable
15 Stephen A. Gephardt, M.D.
16 7220 S. Cimarron Road, Suite 270
17 Las Vegas, NV 89113

18 These witnesses are expected to testify regarding Plaintiff's medical treatment from
19 Stephen A. Gephardt, M.D. and are expected to testify as to the facts and circumstances
20 surrounding the medical care, treatment, and/or billing for said care and treatment provided
21 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
22 physician, including their expert opinions as to causation, care, and reasonableness of medical
23 expenses.

24 30. Custodian of Records and/or
25 Person Most Knowledgeable
26 Antonio Flores Erazo, M.D.
27 9280 W. Sunset Road, Suite 306
28 Las Vegas, NV 89148

These witnesses are expected to testify regarding Plaintiff's medical treatment from
Antonio Flores Erazo, M.D. and are expected to testify as to the facts and circumstances

1 surrounding the medical care, treatment, and/or billing for said care and treatment provided
2 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
3 physician, including their expert opinions as to causation, care, and reasonableness of medical
4 expenses.

5
6 31. Custodian of Records and/or
7 Person Most Knowledgeable
8 Collin Rock, M.D.
9 Nevada Comprehensive Pain Center
10 1655 W. Horizon Ridge Parkway
11 Henderson, NV 89012

12 These witnesses are expected to testify regarding Plaintiff's medical treatment from
13 Collin Rock, M.D. and are expected to testify as to the facts and circumstances surrounding
14 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
15 The individual physicians disclosed will testify in their capacity as a treating physician,
16 including their expert opinions as to causation, care, and reasonableness of medical expenses.

17
18 32. Custodian of Records and/or
19 Person Most Knowledgeable
20 Desert Radiologists
21 2811 W. Horizon Ridge Parkway
22 Henderson, NV 89052

23 These witnesses are expected to testify regarding Plaintiff's medical treatment from
24 Desert Radiologists and are expected to testify as to the facts and circumstances surrounding
25 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
26 The individual physicians disclosed will testify in their capacity as a treating physician,
27 including their expert opinions as to causation, care, and reasonableness of medical expenses.

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2 **33. Custodian of Records and/or**
3 **Person Most Knowledgeable**
4 **John Henner, M.D.**
5 **St. Rose San Martin**
6 **8280 W. Warm Springs Road**
7 **Las Vegas, NV 89113**

8 These witnesses are expected to testify regarding Plaintiff's medical treatment from
9 John Henner, M.D. and are expected to testify as to the facts and circumstances surrounding
10 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
11 The individual physicians disclosed will testify in their capacity as a treating physician,
12 including their expert opinions as to causation, care, and reasonableness of medical expenses.

13 **34. Custodian of Records and/or**
14 **Person Most Knowledgeable**
15 **Charles McPherson, M.D.**
16 **St. Rose San Martin**
17 **8280 W. Warm Springs Road**
18 **Las Vegas, NV 89113**

19 These witnesses are expected to testify regarding Plaintiff's medical treatment from
20 Charles McPherson, M.D. and are expected to testify as to the facts and circumstances
21 surrounding the medical care, treatment, and/or billing for said care and treatment provided
22 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
23 physician, including their expert opinions as to causation, care, and reasonableness of medical
24 expenses.

25 **35. Custodian of Records and/or**
26 **Person Most Knowledgeable**
27 **Salvador Borromeo III, M.D.**
28 **St. Rose San Martin**
 8280 W. Warm Springs Road
 Las Vegas, NV 89113

 These witnesses are expected to testify regarding Plaintiff's medical treatment from
 Salvador Borromeo III, M.D. and are expected to testify as to the facts and circumstances

1 surrounding the medical care, treatment, and/or billing for said care and treatment provided
2 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
3 physician, including their expert opinions as to causation, care, and reasonableness of medical
4 expenses.

5 **36. Custodian of Records and/or**
6 **Person Most Knowledgeable**
7 **Shannon Berry, M.D.**
8 **295 Posada Lane, Suite D**
9 **Templeton, CA 93465**

10 These witnesses are expected to testify regarding Plaintiff's medical treatment from
11 Shannon Berry, M.D. and are expected to testify as to the facts and circumstances
12 surrounding the medical care, treatment, and/or billing for said care and treatment provided
13 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
14 physician, including their expert opinions as to causation, care, and reasonableness of medical
15 expenses.

16 **37. Custodian of Records and/or**
17 **Person Most Knowledgeable**
18 **Procure Medical Center**
19 **6870 S. Rainbow Blvd., Suite 107**
20 **Las Vegas, NV 89118**

21 These witnesses are expected to testify regarding Plaintiff's medical treatment from
22 Procure Medical Center and are expected to testify as to the facts and circumstances
23 surrounding the medical care, treatment, and/or billing for said care and treatment provided
24 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
25 physician, including their expert opinions as to causation, care, and reasonableness of medical
26 expenses.

27 ...

28 ...

1 **38. Custodian of Records and/or**
2 **Person Most Knowledgeable**
3 **Ida Washington, M.D.**
4 **1000 S. Rainbow Blvd.**
5 **Las Vegas, NV 89145**

6 These witnesses are expected to testify regarding Plaintiff's medical treatment from
7 Ida Washington, M.D. and are expected to testify as to the facts and circumstances
8 surrounding the medical care, treatment, and/or billing for said care and treatment provided
9 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
10 physician, including their expert opinions as to causation, care, and reasonableness of medical
11 expenses.

12 **39. Custodian of Records and/or**
13 **Person Most Knowledgeable**
14 **Nauman Tahir, M.D.**
15 **500 S. Rancho Drive, Suite 12**
16 **Las Vegas, NV 89106**

17 These witnesses are expected to testify regarding Plaintiff's medical treatment from
18 Nauman Tahir, M.D. and are expected to testify as to the facts and circumstances
19 surrounding the medical care, treatment, and/or billing for said care and treatment provided
20 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
21 physician, including their expert opinions as to causation, care, and reasonableness of medical
22 expenses.

23 **40. Custodian of Records and/or**
24 **Person Most Knowledgeable**
25 **Karyn Harries, M.D.**
26 **5320 S. Rainbow Blvd., Suite 150**
27 **Las Vegas, NV 89118**

28 These witnesses are expected to testify regarding Plaintiff's medical treatment from
Karyn Harries, M.D. and are expected to testify as to the facts and circumstances
surrounding the medical care, treatment, and/or billing for said care and treatment provided
to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating

1 physician, including their expert opinions as to causation, care, and reasonableness of medical
2 expenses.

3 41. Custodian of Records and/or
4 Person Most Knowledgeable
5 C. Edward Yee, M.D.
6 2980 S. Jones Blvd., Suite A
7 Las Vegas, NV 89146

8 These witnesses are expected to testify regarding Plaintiff's medical treatment from
9 C. Edward Yee, M.D. and are expected to testify as to the facts and circumstances
10 surrounding the medical care, treatment, and/or billing for said care and treatment provided
11 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
12 physician, including their expert opinions as to causation, care, and reasonableness of medical
13 expenses.

14 42. Custodian of Records and/or
15 Person Most Knowledgeable
16 Mark Barney, M.D.
17 2810 W. Charleston Blvd, Suite 47
18 Las Vegas, NV 89102

19 These witnesses are expected to testify regarding Plaintiff's medical treatment from
20 Mark Barney, M.D. and are expected to testify as to the facts and circumstances surrounding
21 the medical care, treatment, and/or billing for said care and treatment provided to Plaintiff.
22 The individual physicians disclosed will testify in their capacity as a treating physician,
23 including their expert opinions as to causation, care, and reasonableness of medical expenses.

24 43. Custodian of Records and/or
25 Person Most Knowledgeable
26 Charina Toste, APRN
27 OptumCare Cancer Care
28 6190 S. Fort Apache Road
Las Vegas, NV 89179

These witnesses are expected to testify regarding Plaintiff's medical treatment from
Charina Toste, APRN and are expected to testify as to the facts and circumstances
surrounding the medical care, treatment, and/or billing for said care and treatment provided

1 to Plaintiff. The individual physicians disclosed will testify in their capacity as a treating
2 physician, including their expert opinions as to causation, care, and reasonableness of medical
3 expenses.

4 1. Plaintiff reserves the right to call any other witness identified throughout the course
5 of litigation by any party and/or witness, whether by deposition testimony, discovery responses or
6 NRCP 16.1 and NRCP 26.

7 2. Plaintiff reserves the right to identify rebuttal and impeachment witnesses,
8 consistent with the Nevada Rules of Civil Procedure.

9 3. Plaintiff reserves the right to identify expert witnesses as deemed necessary.

10 4. Plaintiff reserves the right to supplement this witness list as discovery continues.

11 II.

12 PRODUCTION OF DOCUMENTS

13 1. St. Rose Dominican Hospital – San Martin Campus’ Billing and Medical Records
14 (PLF000001 – PLF001500);

15 2. Fremont Emergency Services Billing Records (PLF001501);

16 3. Radiology Associates of Nevada’s Billing (PLF001502 – PLF001511);

17 4. Desert Radiologists’ Billing Records (PLF001512);

18 5. Shadow Emergency Physicians, PLLC’s Billing Records (PLF001513);

19 6. Advanced Prosthetics and Orthotics’ Billing and Medical Records (PLF001514 –
20 PLF001531);

21 7. **Plaintiff DARELL L. MOORE’S** HIPAA Authorizations for Defendant Dignity
22 Health dba St. Rose Dominican Hospital – San Martin (HALL PRANGLE & SCHOONVELD,
23 LLC) (PLF001532 – PLF001545);

24 8. **Plaintiff DARELL L. MOORE’S** HIPAA Authorizations for Defendant Fremont
25 Emergency Services and Terry Bartmus, APRN (LEWIS BRISBOIS BISGAARD & SMITH LLP)
26 (PLF001546-PLF001559);

27 . . .

28 . . .

1 9. **Plaintiff DARELL L. MOORE’S HIPAA Authorizations for Defendant Jason**
2 **Lasry, M.D. (CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY)**
3 **(PLF001560-PLF001573).**

4 10. **Plaintiff’s Photographs (PLF001574-PLF001575);**

5 11. **Spring Valley Hospital Medical Records (PLF001576-PLF001833);**

6 12. **Plaintiff DARELL L. MOORE’S HIPAA Authorizations for Previous Medical**
7 **Providers to Defendant Dignity Health dba St. Rose Dominican Hospital – San Martin**
8 **(HALL PRANGLE & SCHOONVELD, LLC) (PLF001834-PLF001871);**

9 13. **Plaintiff DARELL L. MOORE’S HIPAA Authorizations for Previous Medical**
10 **Providers to Defendant Fremont Emergency Services and Terry Bartmus, APRN (LEWIS**
11 **BRISBOIS BISGAARD & SMITH LLP) (PLF001872-PLF001909);**

12 14. **Plaintiff DARELL L. MOORE’S HIPAA Authorizations for Previous Medical**
13 **Providers to Defendant Jason Lasry, M.D. (CARROLL, KELLY, TROTTER, FRANZEN,**
14 **McBRIDE & PEABODY) (PLF001910-PLF001947).**

15 15. **Plaintiff CHARLENE A. MOORE’S HIPAA Authorizations for Previous**
16 **Medical Providers to Defendant Dignity Health dba St. Rose Dominican Hospital – San**
17 **Martin (HALL PRANGLE & SCHOONVELD, LLC) (PLF001948-PLF001963);**

18 16. **Plaintiff CHARLENE A. MOORE’S HIPAA Authorizations for Previous**
19 **Medical Providers to Defendant Fremont Emergency Services and Terry Bartmus, APRN**
20 **(LEWIS BRISBOIS BISGAARD & SMITH LLP) (PLF001964-PLF001979); and**

21 17. **Plaintiff CHARLENE A. MOORE’S HIPAA Authorizations for Previous**
22 **Medical Providers to Defendant Jason Lasry, M.D. (CARROLL, KELLY, TROTTER,**
23 **FRANZEN, McBRIDE & PEABODY) (PLF001980-PLF001995).**

24 18. Plaintiff reserves the right to utilize any document disclosed throughout the course
25 of litigation by any party and/or witness, whether by deposition testimony, discovery responses or
26 NRCP 16.1 and NRCP 26.

27 ...

28 ...

19. Plaintiff reserves the right to supplement this document list as discovery continues.

III.

COMPUTATION OF DAMAGES

1. Medical Expenses to Date:

a.	St. Rose Dominican Hospital San Martin	\$ 162,928.04
b.	Fremont Emergency Services	\$ 2,442.00
c.	Desert Radiologists	\$ 517.00
d.	Shadow Emergency Physicians	\$ 1,877.00
e.	Advanced Prosthetics and Orthotics	\$ 15,068.62
f.	Spring Valley Hospital	\$ 41,159.00

TOTAL: \$223,991.66

2. Future Medical Expenses TBD

3. Past Loss of Household Services TBD

4. Future Loss of Household Services TBD

5. Pain and Suffering TBD

Plaintiff reserves all rights to seek other damages including, but not limited to, general and exemplary damages, in an amount to be proven at trial.

DATED this 16th day of May, 2018.

ATKINSON WATKINS & HOFFMANN, LLP

By: /s/ Matthew W. Hoffmann, Esq.
MATTHEW W. HOFFMANN, ESQ.
Nevada Bar No. 9061
10789 W. Twain Ave., Suite 100
Las Vegas, NV 89135
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Atkinson Watkins & Hoffmann, LLP and that on
3 the 16th day of May, 2018, I caused to be served via Wiznet, the Court's mandatory efileing/eservice
4 system, a true and correct copy of the document described herein.

5 **Document Served:** **PLAINTIFFS' FIRST SUPPLEMENTAL INITIAL**
6 **DISCLOSURES PURSUANT TO NRCP 16.1**

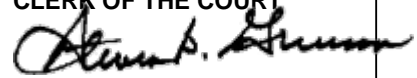
7 **Person(s) Served:**

8 Sarah S. Silverman, Esq.
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23 *Jason Lasry, M.D.*

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Services (Mandavia), Ltd. and
Terry Bartmus, A.P.R.N.

/s/ Jennifer Lopez
An Employee of Atkinson Watkins & Hoffmann LLP



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Attorneys for Terry Bartmus, R.N. A.P.R.N.

DISTRICT COURT

CLARK COUNTY, NEVADA

10 DARELL L. MOORE and CHARLENE A.
11 MOORE, individually and as husband and
wife; ,

12 Plaintiffs,

13 vs.

14 DIGNITY HEALTH d/b/a ST. ROSE
15 DOMINICAN HOSPITAL-SAN MARTIN
CAMPUS; JASON LASRY, M.D.,
16 individually; FREMONT EMERGENCY
SERVICES (MANDAVIA), LTD.; TERRY
17 BARTMUS, R.N., A.P.R.N.; and DOES I
through X, inclusive; and ROE
18 CORPORATIONS I through V, inclusive; ,

19 Defendants.

CASE NO. A-17-766426-C
Dept. No.: XXV

DEFENDANT TERRY BARTMUS,
A.P.R.N.'S SUPPLEMENTAL
OPPOSITION TO PLAINTIFFS' MOTION
FOR NEW TRIAL

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28 4817-9302-5471.1

DEFENDANT TERRY BARTMUS, A.P.R.N.'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION
FOR NEW TRIAL

AA00818

1 Pursuant to EDCR 5.508, Defendant Terry Bartmus, A.P.R.N. ("Defendant")
2 submits this supplemental opposition to Plaintiffs Darell L. Moore and Charlene A.
3 Moore's Motion for a New Trial. *Las Vegas Rental & Repair v. V.*, 2016 Nev. Dist. LEXIS
4 1401, *8 (supplemental opposition allowed where moving party raised new argument in
5 reply). This supplemental opposition is based on the attached Memorandum of Points
6 and Authorities, Plaintiffs' Reply in Support of Plaintiffs' Motion for New Trial, the
7 Declaration of Keith A. Weaver, Esq., the Declaration of Alissa N. Bestick, Esq. and all
8 pleadings, evidence and other matters that may be presented prior to or at the hearing.

9 DATED this 4th day of June, 2020

10
11 LEWIS BRISBOIS BISGAARD & SMITH LLP

12
13 By /s/ Alissa Bestick
14 KEITH A. WEAVER
15 Nevada Bar No. 10271
16 ALISSA N. BESTICK
17 Nevada Bar No. 14979C
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20 *Attorneys for Terry Bartmus, R.N. A.P.R.N.*
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1 DECLARATION OF KEITH WEAVER IN SUPPORT OF SUPPLEMENTAL OPPOSITION
2 TO PLAINTIFFS' MOTION FOR NEW TRIAL

3 I, KEITH WEAVER, declare and state:

4 1. I am over the age of eighteen, am competent to testify, and make this
5 declaration based on personal knowledge. I am a partner at LEWIS BRISBOIS
6 BISGAARD & SMITH LLP and am one of the attorneys representing Defendant Terry
7 Bartmus, in the instant case, *Moore v. Lasry, et al.*

8 2. I was present for the bench conference that took place on January 31, 2020
9 related to cross-examination of Plaintiffs' expert, Alexander Marmureanu, M.D.

10 3. My recollection of the bench conference is consistent with the Court's
11 summary of the bench conference.

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

13 DATED this 4th day of June, 2020.

14 /s/ Keith Weaver
15 KEITH WEAVER
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Neither new evidence nor new arguments are allowed on reply. Yet, Plaintiffs'
4 reply brief purposefully violates this fundamental rule by contending for the very first time
5 that the record of the bench conference discussion was incomplete and providing a
6 declaration by Plaintiffs' counsel purportedly describing that discussion. (Plaintiffs' Reply,
7 pp. 3-4.) However, there is no explanation or excuse as to why this evidence was not
8 included in support of Plaintiffs' moving papers. (Plaintiffs' Reply, Exh. 2, Declaration of
9 E. Breen Arntz.) Likewise, there is no explanation or excuse as to why Plaintiffs' counsel
10 did not inform the court *during trial* that the record of the bench conference was
11 incomplete. (Plaintiffs' Reply, Exh. 2.) This evidence is now too little too late to save
12 Plaintiffs from waiving their evidentiary objections and should not be considered by the
13 court as it is prejudices Defendants' ability to oppose the Motion for New Trial.

14 II. ARGUMENT

15 A. **The New Facts and Argument Impermissibly Raised for the First Time in**
16 **Reply Should be Disregarded.**

17 Shortly after the bench conference regarding Dr. Marmureanu's 'bad press'
18 occurred, the court memorialized the parties' discussion of Plaintiffs' evidentiary
19 objections. Following this recap on the record, the court specifically asked if Plaintiffs'
20 counsel had anything he wanted to add to the bench conference. His response was, "No,
21 your Honor." (Plaintiffs' Reply, Exh. 1 at 66:18-20.)

22 Plaintiffs' counsel now claims for the very first time that the record of the bench
23 conference is incomplete. (Plaintiffs' Reply, Exh. 2.) Despite having every opportunity to
24 supplement the record during trial to ensure Plaintiffs' objections were preserved,
25 Plaintiffs' counsel now submits a declaration with additional facts 5 months later and in
26 support of the reply, rather than moving papers. This new evidence violates the principles
27 of fundamental fairness and rules governing law and motion practice. Tenth District, Local

28 4817-9302-5471.1

1 Rule, 3.10(b); N.R.A.P. 28(c). It also strains credulity and does not warrant reversal of the
2 jury's verdict.

3 It is well established—and undisputed—that the moving party may not raise new
4 facts or arguments for the first time in reply. *San Diego Watercrafts, Inc. v. Wells Fargo*
5 *Bank*, 102 Cal. App. 4th 308, 312 (2002). Doing so prejudices the responsive party and
6 gives the moving party an impermissible 'second bite of the apple.' This principle holds
7 true at both the district court and appellate level. See Tenth District, Local Rule, 3.10(b);
8 N.R.A.P. 28(c); *Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, (2005)
9 (arguments raised for the first time in an appellant's reply brief need not be considered);
10 *Francis v. Wynn Las Vegas*, 127 Nev. 657, 671 n.7 (2011) (argument raised for the first
11 time in reply brief deprived respondent of fair opportunity to respond). Indeed, the Tenth
12 District has gone so far as to provide in its local rules that:

13 The purpose of a reply is to rebut facts, law, or argument raised in the
14 opposition. Parties will not file a reply that simply repeats facts, law or
15 argument contained in the motion, or to provide facts or law that should
have been but were not included in the motion. The court need not
consider arguments raised for the first time in the reply brief.

16 (Local Rule, 3.10(b) Content, emphasis added.) In *San Diego Watercrafts, Inc. v. Wells*
17 *Fargo Bank*, 102 Cal. App. 4th 308 (2002), the landlord submitted a supplemental
18 declaration with its reply papers in support of a motion for summary judgment. *Id.* at 312.
19 The supplemental declaration contained new facts to rebut the assignee's evidence filed
20 in opposition. Over the assignee's objection, the trial court considered the supplemental
21 declaration when ruling on the motion. On appeal, the court agreed with the assignee's
22 objection and held the trial court erred by considering the supplemental declaration. *Id.* at
23 313.

24 While *San Diego Watercrafts, Inc.* involves the summary judgment procedure, the
25 principles of fairness and due process that court considered are implicated here. The
26 court noted the supplemental declaration was not only omitted from the separate
27 statement, but it was not filed until *after* the assignee responded to the issues that were

1 raised in the separate statement and moving papers. *San Diego Watercrafts, Inc., supra*,
2 at 316. By considering this evidence, the trial court violated the assignee's due process
3 rights because the assignee was not informed of the issues it had to meet to oppose the
4 motion. *Id.* The court elaborated that "[w]here a remedy as drastic as summary judgment
5 is involved, due process requires a party be fully advised of the issues to be addressed
6 and be given adequate notice of what facts it must rebut in order to prevail." *Id.*

7 A new trial, after a jury has rendered its verdict following a 13 day trial, is an even
8 more drastic remedy. That Plaintiffs are now arguing a new trial is warranted based on
9 evidence first submitted in their reply stands to violate Defendants' due process rights.
10 Plaintiffs had every opportunity to contest the record of the bench conference at the time
11 it was made and supplement it accordingly. As addressed in Plaintiffs' authority, *Preciado*
12 *v. State*, 130 Nev. 40, 43 (2014), Plaintiffs also could have brought a motion to settle the
13 record and reconstruct any purportedly unrecorded conferences. Plaintiffs moving papers
14 cited the bench conference almost in its entirety, and attached a transcript of the
15 conference, yet failed to contest its completeness.

16 As the foregoing demonstrates, there was nothing preventing Plaintiffs from raising
17 this issue at a much earlier stage. Waiting until the eleventh hour, on reply, to contest the
18 accuracy of the record and substance of the objections made during the bench
19 conference constitutes pure gamesmanship. The Supplemental Declaration of Arntz, and
20 new arguments raised in reply, should not be considered—the record speaks for itself.

21 Further, the declaration of Plaintiffs' counsel Breen Arntz, Esq. is clearly self-
22 serving. While there is no Nevada authority addressing self-serving affidavits in support
23 of a Motion for New Trial, the Nevada Supreme Court has discouraged self-serving
24 affidavits in the summary judgment context. *See, Dennison v. Allen Group Leasing Corp.*,
25 110 Nev. 181, 185, 871 P.2d 288, 290 (1994) (*citing Clausen v. Lloyd*, 103 Nev. 432, 435,
26 743 P.2d 631, 633 (1987)).

27 ///

28 4817-9302-5471.1

1 **B. Even if Considered, the New Argument Raised in Reply Does Not Warrant a**
2 **New Trial.**

3 The district court did not err in its record of the bench conference and the jury's
4 verdict should not be overturned on this ground. Confronted with their failure to properly
5 object and preserve their objection for review, Plaintiffs attempt to blame the court for
6 omitting their objection and creating an incomplete record. If the record is incomplete,
7 which Defendant disputes, then Plaintiffs' failure to raise this issue during trial is nothing
8 more than invited error and a harmless one at that. *See also* N.R.C.P. 61 ("Unless justice
9 requires otherwise, no error in admitting or excluding evidence--or any other error by the
10 court or a party--is ground for granting a new trial, for setting aside a verdict, or for
11 vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the
12 proceeding, the court must disregard all errors and defects that do not affect any party's
13 substantial rights."). In *Pearson v. Pearson*, 110 Nev. 293, 297 (1994), the Supreme
14 Court considered the doctrine of invited error in the context of a custody dispute where
15 appellant's counsel "attempt[ed] to shift the blame for his own derelictions on to the trial
16 judge whose diligence and fairness in this matter is amply attested to in the record." The
17 record in *Pearson* demonstrated the complained of errors were caused by counsel's "acts
18 of commission and omission" as:

19 The doctrine of "invited error" embodies the principle that a party will not
20 be heard to complain on appeal of errors which he himself induced or
21 provoked the court or the opposite party to commit. It has been held that
22 for the doctrine of invited error to apply it is sufficient that the party who on
23 appeal complains of the error has contributed to it. In most cases
 application of the doctrine has been based on affirmative conduct inducing
 the action complained of, but occasionally a failure to act has been
 referred to.

24 *Id.* As already recounted, Plaintiffs' counsel had control over the record created at trial
25 and could have ensured it was complete *at that time*. Plaintiffs may not now complain of
26 errors that their counsel induced through the failure to act earlier and supplement the
27 record.

1 Further, Plaintiffs' reliance on *Preciado v. State*, 130 Nev. 40 (2014) is misplaced
2 as Plaintiffs' counsel's own inaction resulted in waiver of the objections. In *Precaido*, the
3 district court conducted numerous unrecorded bench and in-chambers conferences
4 during trial only some of which were memorialized. *Id.* at 43. The court also denied
5 Preciado's motion to settle the trial record and reconstruct the unrecorded conferences.
6 *Id.*

7 On appeal, Precaido contended the court's failure to make a record of these
8 conferences denied him his right to appeal. Although the Supreme Court agreed in part
9 that the district court erred by not making a record of the unrecorded conferences, the
10 court held this did not warrant reversal. *Precaido, supra*, at 43. Rather, the court's failure
11 to make a record of an unrecorded sidebar will warrant reversal only if the appellant
12 shows that the record's missing portions are so significant that their absence precludes
13 meaningful appellate review and the prejudicial effect of any error. *Id.* As the court further
14 noted, "[t]he district court record is sufficient to allow this court to adequately consider all
15 issues that Preciado preserved for appeal."

16 Here, a new trial is likewise unwarranted. First, Plaintiffs do not demonstrate
17 multiple bench conferences were unrecorded or, when asked, the court refused to settle
18 the record and reconstruct any unrecorded conferences. Second, Plaintiffs do not
19 demonstrate the purportedly missing portions of the record are so significant as to
20 preclude meaningful review of their arguments in support of a new trial. Plaintiffs' moving
21 papers made no mention of this issue and rested solely on the transcript as it currently
22 stands. If this issue was so prejudicial, it should have been raised in Plaintiffs' initial brief.
23 Third, Plaintiffs have not preserved this issue as a ground for new trial to begin with.
24 Integral to the *Precaido* court's analysis was the observation that Preciado was required
25 to "preserve" issues for appeal. The court cannot be criticized for not recording an
26 objection that may not have been properly made in the first place. Therefore, a new trial

1 should not be granted based on the record of the bench conference regarding Dr.
2 Marmureanu's bad press.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendant Terry Bartmus, A.P.R.N. respectfully
5 requests the district court either strike, or in the alternative not consider, the
6 Supplemental Declaration of Arntz and those new arguments raised in reply related to the
7 declaration.

8 Dated this 4th day of June, 2020

9
10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11 By /s/ Alissa Bestick
12 KEITH A. WEAVER
13 Nevada Bar No. 10271
14 ALISSA N. BESTICK
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17 Las Vegas, Nevada 89118
18 *Attorneys for Defendant Terry Bartmus,*
19 *A.P.R.N.*
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1 CERTIFICATE OF SERVICE

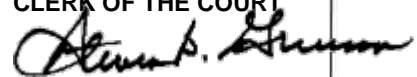
2 I hereby certify that on this 4th day of June, 2020, a true and correct copy
3 of DEFENDANT TERRY BARTMUS, A.P.R.N,'S SUPPLEMENTAL OPPOSITION TO
4 PLAINTIFFS' MOTION FOR NEW TRIAL was served electronically with the Clerk of the
5 Court using the Wiznet Electronic Service system and serving all parties with an email-
6 address on record, who have agreed to receive Electronic Service in this action.

7 Matthew W. Hoffman, Esq.
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20 By /s/ Emma L. Gonzales
21 An Employee of
22 LEWIS BRISBOIS BISGAARD & SMITH LLP
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Attorneys for Defendant Terry Bartmus,
7 *A.P.R.N.*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 DARELL L. MOORE and CHARLENE A.
12 MOORE, individually and as husband and
wife;

13 Plaintiffs,

14 vs.

15 JASON LASRY, M.D., individually;
16 FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD.; TERRY BARTMUS,
17 RN, APRN; and DOES I through X,
inclusive; and ROE CORPORATIONS I
18 through V, inclusive;

19 Defendants.

CASE NO. A-17-766426-C
Dept. No.: XXV

**ORDER ON PLAINTIFFS' MOTION FOR
NEW TRIAL**

20
21 Plaintiffs' Motion for New Trial came on for hearing before this Court on June 11,
22 2020. This Court issued its decision on June 16, 2020. Keith Weaver, Esq. appeared for
23 Defendant Terry Bartmus, A.P.R.N.; Chelsea Hueth, Esq. and Robert McBride, Esq.
24 appeared for Defendant Jason Lasry, M.D.; Breen Arntz, Esq. and Phil Hymanson, Esq.
25 appeared for Plaintiffs.

26 The Court, having reviewed the pleadings and paper filed by the parties and
27 hearing oral arguments relating thereto, and good cause appearing, finds as follows:

28 07/01/2020

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court did not err
2 in precluding Dr. Wiencek from testifying at trial. The Court finds that Dr. Wiencek's
3 testimony was unnecessary. The Court further finds that Plaintiffs did not provide
4 sufficient notice that Plaintiffs sought to call Dr. Wiencek to testify at trial. The Court
5 further finds that Plaintiffs were not substantially prejudiced by the Court's decision to
6 preclude Dr. Wiencek from testifying.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court finds that
8 it may have erred in allowing the impeachment of Dr. Marmureanu using the article titled
9 "CA Hits Nerve By Singling Out Cardiac Surgeon with Higher Patient Death Rates," and
10 corresponding State of California report upon which the article is based. However, the
11 Court finds that any potential error in allowing the impeachment of Dr. Marmureanu did
12 not substantially prejudice Plaintiffs in their right to a fair trial.

13
14 Plaintiffs' Motion for New Trial is hereby DENIED.

15
16 DATED this the 10th day of July, 2020.

17
18 
DISTRICT COURT JUDGE
JG

19 Respectfully Submitted by:

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 /s/ Alissa N. Bestick

22 KEITH A. WEAVER

Nevada Bar No. 10271

23 ALISSA N. BESTICK

Nevada Bar No. 14979C

24 6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

25 Attorneys for Defendant Terry Bartmus,

A.P.R.N.

26 ///

27 ///

1 APPROVED AS TO CONTENT:

2 Dated: July 1, 2020

3 ATKINSON WATKINS & HOFFMAN,
4 LLP

5 SUBMITTING COMPETING ORDER

6 MATTHEW W. HOFFMAN
7 Nevada Bar No.: 9601
8 10789 W. Twain Avenue, Ste. 100
9 Las Vegas, NV 89135

10 And

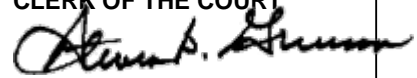
11 BREEN ARNTZ
12 Nevada Bar No.: 3853
13 5545 Mountain Vista, Suite E
14 Las Vegas, NV 89120
15 *Attorneys for Plaintiffs*

Dated: July 1, 2020

MCBRIDE HALL

/s/ Chelsea R. Hueth

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CHELSEA R. HUETH,
Nevada Bar No.: 10904
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*Attorneys for Defendant, Jason Lasry,
M.D.*



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Attorneys for Defendant Terry Bartmus,
7 *A.P.R.N.*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 DARELL L. MOORE and CHARLENE A.
12 MOORE, individually and as husband and
13 wife;

14 Plaintiffs,

15 vs.

16 DIGNITY HEALTH d/b/a ST. ROSE
DOMINICAN HOSPITAL-SAN MARTIN
17 CAMPUS; JASON LASRY, M.D.,
individually; FREMONT EMERGENCY
18 SERVICES (MANDAVIA), LTD.; TERRY
BARTMUS, RN, APRN; and DOES I
19 through X, inclusive; and ROE
CORPORATIONS I through V, inclusive;

20 Defendants.

CASE NO. A-17-766426-C
Dept. No.: XXV

NOTICE OF ENTRY OF ORDER ON
PLAINTIFFS' MOTION FOR NEW TRIAL

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1 PLEASE TAKE NOTICE that the Order was entered into this matter on July 16,
2 2020, a true and correct copy of which is attached hereto.

3 DATED this 16th day of July, 2020

4
5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By /s/ Alissa Bestick
8 KEITH A. WEAVER
9 Nevada Bar No. 10271
10 ALISSA N. BESTICK
11 Nevada Bar No. 14979C
12 6385 S. Rainbow Boulevard, Suite 600
13 Las Vegas, Nevada 89118
14 Tel. 702.893.3383
15 *Attorneys for Defendants Fremont Emergency*
16 *Services (Mandavia) and Terry Bartmus,*
17 *A.P.R.N.*
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CERTIFICATE OF SERVICE

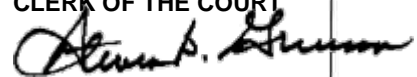
I hereby certify that on this 16th day of July, 2020, a true and correct copy of
NOTICE OF ENTRY OF ORDER ON PLAINTIFFS' MOTION FOR NEW TRIAL was
served electronically with the Clerk of the Court using the Wiznet Electronic Service
system and serving all parties with an email-address on record, who have agreed to
receive Electronic Service in this action.

Matthew W. Hoffman, Esq.
ATKINSON WATKINS & HOFFMAN, LLP
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7 *A.P.R.N.*

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

11 DARELL L. MOORE and CHARLENE A.
12 MOORE, individually and as husband and
wife;

13 Plaintiffs,

14 vs.

15 JASON LASRY, M.D., individually;
16 FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD.; TERRY BARTMUS,
17 RN, APRN; and DOES I through X,
inclusive; and ROE CORPORATIONS I
18 through V, inclusive;

19 Defendants.

CASE NO. A-17-766426-C
Dept. No.: XXV

**ORDER ON PLAINTIFFS' MOTION FOR
NEW TRIAL**

20
21 Plaintiffs' Motion for New Trial came on for hearing before this Court on June 11,
22 2020. This Court issued its decision on June 16, 2020. Keith Weaver, Esq. appeared for
23 Defendant Terry Bartmus, A.P.R.N.; Chelsea Hueth, Esq. and Robert McBride, Esq.
24 appeared for Defendant Jason Lasry, M.D.; Breen Arntz, Esq. and Phil Hymanson, Esq.
25 appeared for Plaintiffs.

26 The Court, having reviewed the pleadings and paper filed by the parties and
27 hearing oral arguments relating thereto, and good cause appearing, finds as follows:

28 07/01/2020

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court did not err
2 in precluding Dr. Wiencek from testifying at trial. The Court finds that Dr. Wiencek's
3 testimony was unnecessary. The Court further finds that Plaintiffs did not provide
4 sufficient notice that Plaintiffs sought to call Dr. Wiencek to testify at trial. The Court
5 further finds that Plaintiffs were not substantially prejudiced by the Court's decision to
6 preclude Dr. Wiencek from testifying.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court finds that
8 it may have erred in allowing the impeachment of Dr. Marmureanu using the article titled
9 "CA Hits Nerve By Singling Out Cardiac Surgeon with Higher Patient Death Rates," and
10 corresponding State of California report upon which the article is based. However, the
11 Court finds that any potential error in allowing the impeachment of Dr. Marmureanu did
12 not substantially prejudice Plaintiffs in their right to a fair trial.

13
14 Plaintiffs' Motion for New Trial is hereby DENIED.

15
16 DATED this the 10th day of July, 2020.

17
18 
DISTRICT COURT JUDGE
JG

19 Respectfully Submitted by:

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 /s/ Alissa N. Bestick

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26 ///

27 ///

1 APPROVED AS TO CONTENT:

2 Dated: July 1, 2020

3 ATKINSON WATKINS & HOFFMAN,
4 LLP

5 SUBMITTING COMPETING ORDER

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10 And

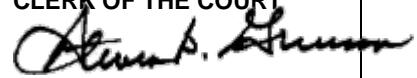
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Dated: July 1, 2020

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/s/ Chelsea R. Hueth

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11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

14 DARELL L. MOORE and CHARLENE A.
15 MOORE, individually and as husband and
16 wife;

17 Plaintiffs,

18 v.

19 JASON LASRY, M.D., individually;
20 FREMONT EMERGENCY SERVICES
21 (MANDAVIA), LTD.; TERRY BARTMUS,
22 RN, APRN; and DOES I through X, inclusive;
23 and ROE CORPORATIONS I through V,
24 inclusive;

25 Defendants.

CASE NO.: A-17-766426-C

DEPT. NO.: Dept. 25

26 **NOTICE OF APPEAL**

27 PLEASE TAKE NOTICE that Plaintiffs, DARELL L. MOORE and CHARLENE A.
28 MOORE, by and through their attorneys of record, MATTHEW W. HOFFMANN, ESQ., of the
law firm of ATKINSON WATKINS & HOFFMANN, LLP, and E. BREEN ARNTZ, ESQ.,
hereby appeal to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law,

1 and Order denying Plaintiffs' Motion for New Trial entered herein on July 15, 2020, with the
2 Notice of Entry of Order filed and served on July 16, 2020.

3 DATED this 14th day of August, 2020.

4 ATKINSON WATKINS & HOFFMANN, LLP

5
6 /s/ E. Breen Arntz, Esq.
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18 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of ATKINSON WATKINS & HOFFMANN, LLP
3 and that on the 14th day of August, 2020, I caused to be served via Odyssey, the Court's mandatory
4 efilings/eservice system, a true and correct copy of the document described herein.

5 **Document Served: NOTICE OF APPEAL**

6
7 **Person(s) Served:**

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24 /s/ Erika Jimenez
25 An Employee of ATKINSON WATKINS & HOFFMANN, LLP