

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID GARVEY, M.D., an
individual.

Petitioner,

vs.

THE FOURTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA ex rel. THE COUNTY OF
ELKO, AND THE HONORABLE
KRISTIN N. HILL,

Respondent,

and

DIANE SCHWARTZ, individually and
as Special Administrator of the Estate
of DOUGLAS R. SCHWARTZ,
deceased,

Real Party In Interest.

Supreme Court No. Electronically Filed
Sep 23 2021 09:09 a.m.
District Court No. : Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX OF EXHIBITS TO PETITION FOR WRIT
OF MANDAMUS – VOLUME 1 OF 13**

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866)]; [VOLUME 11 (PAGES 867-959)]; [VOLUME 12 (PAGES 960-1093)]; [VOLUME 13 (PAGES 1094-1246)]

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Case No.: CUC-17-439
Dept. No: 1

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

DIANE SCHWARTZ, individually and as
administrator of the Estate of DOUGLAS R.
SCHWARTZ, deceased;

Plaintiff,

SUMMONS

vs.

DAVID GARVEY, M.D., an individual; TEAM
HEALTH HOLDINGS, INC., dba RUBY
CREST EMERGENCY MEDICINE, PHC-
ELKO, INC., dba NORTHEASTERN NEVADA
REGIONAL HOSPITAL, a domestic corporation
duly authorized to conduct business in the State
of Nevada; REACH AIR MEDICAL SERVICES,
L.L.C., DOES I through X; ROE BUSINESS
ENTITIES XI through XX, inclusive,

Defendants.

THE STATE OF NEVADA sends greetings to DAVID GARVEY, M.D.

You are hereby summoned and required to serve upon JENNIFER MORALES, ESQ. of
CLAGGETT & SYKES LAW FIRM, Plaintiffs attorney, whose address is 4101 Meadows Lane,
Suite 100 Las Vegas, NV 89107, an Answer to the Complaint which is herewith served upon you,
within TWENTY (20) DAYS after service of this Summons upon you, exclusive of the day of
service. If you fail to do so, judgment by default will be taken against you for the relief demanded in
the Complaint.

1 Said action is brought to recover judgment against you, the said Defendant, and in favor of
2 Plaintiff, as more fully appears by the Complaint on file herein, a copy of which accompanies this
3 Summons and to which you are referred.
4

5 GIVEN UNDER MY HAND this 22 day of June, 2017.

6 ELKO COUNTY CLERK
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8 By: Rebecca Pinkert
9 Clerk
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1 Case No.: CV-C-17-439
2 Dept. No: 1

FILED

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY RP

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7 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE
8 STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

9
10 DIANE SCHWARTZ, individual and as Special
11 Administrator of the Estate of DOUGLAS R.
12 SCHWARTZ, deceased;

13 Plaintiff,

14 vs.

COMPLAINT
(Medical Malpractice)
and Wrongful Death)

15 DAVID GARVEY, M.D., an individual; TEAM
16 HEALTH HOLDINGS, INC., dba RUBY
17 CREST EMERGENCY MEDICINE, PHC-
18 ELKO, INC., dba NORTHEASTERN NEVADA
19 REGIONAL HOSPITAL, a domestic corporation
20 duly authorized to conduct business in the State
21 of Nevada; REACH AIR MEDICAL
22 SERVICES, L.L.C., DOE BARRY, R.N., DOES
23 I through X; ROE BUSINESS ENTITIES XI
24 through XX, inclusive,

25 Defendants.

26
27 COMES NOW, Plaintiff, DIANE SCHWARTZ, individual and as the administrator of the
28 Estate of DOUGLAS SCHWARTZ, by and through her attorneys of record, CLAGGETT & SYKES
LAW FIRM, for their causes of action against Defendants, DAVID GARVEY, M.D., individually,
TEAM HEALTH HOLDINGS, INC., dba RUBY CREST EMERGENCY MEDICINE, PHC-
ELKO, INC., dba NORTHEASTERN NEVADA REGIONAL HOSPITAL, REACH AIR

1 MEDICAL SERVICES, L.L.C. DOES 1 through X; ROE BUSINESS ENTITIES XI through XX;
2 and each of them and alleges as follows:

3 1. At all times relevant herein, Plaintiff, DIANE SCHWARTZ, individually and as the
4 Special Administrator on behalf of the Estate of DOUGLAS R. SCHWARTZ (hereinafter the
5 "Plaintiff" or "Diane"), was and is a resident of Elko County, Nevada.

6 2. At all times relevant herein, Plaintiff DOUGLAS SCHWARTZ (hereinafter the
7 "Plaintiff" or "Mr. Schwartz"), was a resident of Elko County, Nevada.

8 3. Upon information and belief, at all times relevant herein, Defendant, David Garvey,
9 M.D (hereinafter "Dr. Garvey" or "Defendant"), was and is a medical doctor licensed in the State of
10 Nevada, and a resident of Elko County, Nevada.

11 4. Upon information and belief, at all times relevant herein, Defendant, TEAM
12 HEALTH HOLDINGS. INC., dba RUBY CREST EMERGENCY MEDICINE (hereinafter "Ruby
13 Crest" or "Defendant"), was and is a domestic corporation existing pursuant to the laws of
14 Delaware, authorized to do business in Nevada, and doing business in the State of Nevada.

15 5. Upon information and belief, at all times relevant herein, Defendant, PHC-ELKO,
16 INC. dba NORTHEASTERN NEVADA REGIONAL HOSPITAL (hereinafter "NNRH" or
17 "Defendant"), was and is a domestic corporation existing pursuant to the laws of Nevada, authorized
18 to do business in the State of Nevada, and doing business in the State of Nevada.

19 6. Defendant NNRH was and is at all times relevant operating as a medical care facility
20 in Elko County, Nevada and was and is owned, operated, managed, and controlled as a medical care
21 facility within the County of Elko, State of Nevada, and was held out to the public at large, including
22 the Plaintiff herein, as a properly equipped, fully accredited, completely staffed by qualified and
23 prudent personnel, and operating in compliance with standards of due care maintained by other
24 properly equipped, efficiently operated and administered, accredited medical care facilities in said
25 community, offering full, competent, qualified, and efficient health care services to the general
26 public and to the Plaintiff herein; that Plaintiff herein is informed and believes and thereon alleges,
27 that Defendant, NNRH, administered, governed, controlled, managed, and directed all the necessary
28

1 functions, activities, and operations of said medical care facility, including its physician care,
2 nursing care, interns, residents and health staff, and other personnel.

3 7. Upon information and belief, Defendant REACH AIR MEDICAL SERVICES, LLC,
4 (hereinafter "Reach Air" or "Defendant") is a foreign limited liability company existing pursuant to
5 the laws of California, authorized to do business in the State of Nevada, and doing business in the
6 State of Nevada

7 8. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
8 Defendant, Doe Barry, R.N. was and is a resident of Elko, Nevada.

9 9. That the true names or capacities, whether corporate, associate, individual or
10 otherwise, of Defendants, DOE BARRY, R.N., and DOES I through X, inclusive, were and now are
11 physicians, surgeons, registered nurses, licensed vocational nurses, practical nurses, registered
12 technicians, aides, attendants, physician's assistants, CRNAs, or paramedical personnel holding
13 themselves out as duly licensed to practice their professions under and by virtue of the laws of the
14 State of Nevada, and were and are now engaged in the practice of their professions in the State of
15 Nevada, and are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names.
16 Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated herein
17 as a DOE Barry R.N. and DOE is legally responsible in some manner for the events and happenings
18 herein referred to and proximately caused injury and damages thereby to Plaintiff as hereinafter
19 alleged. Plaintiff will seek leave of the Court to amend this Complaint to insert the true names and
20 capacities of DOE BARRY R.N. or DOES I through X when the same have been ascertained and to
21 join such Defendants in this action.

22 10. That the true names or capacities of Defendants, ROE BUSINESS ENTITIES XI
23 through XX, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such
24 fictitious names. Defendants designated herein as ROE BUSINESS ENTITIES XI through XX, and
25 each of them, are corporations, firms, partnerships, associations, other medical entities, including but
26 not limited to nursing staffing companies and/or registry nursing companies, emergency physician
27 services group, predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint
28 venture with, and/or serving as an alter ego of, any and/or all Defendants named herein; and/or are

1 entities responsible for the treatment, diagnosis, surgery, and/or other provision of medical care to
2 Plaintiff herein, and/or otherwise responsible for the supervision of the individually named
3 Defendants at the time of the events and circumstances alleged herein; and/or are entities employed
4 by and/or otherwise directing the individual Defendants in the scope and course of their
5 responsibilities at the time of the events and circumstances alleged herein; and/or are entities
6 otherwise contributing in any way to the acts complained of and the damages alleged to have been
7 suffered by the Plaintiff herein. Plaintiff is informed and, on that basis believes and thereon alleges,
8 that each of the Defendants designated as a ROE BUSINESS ENTITY is in some manner
9 negligently, vicariously, and/or statutorily responsible for the events and happenings referred to and
10 caused damages to Plaintiff as herein alleged. Plaintiff will seek leave of the Court to amend this
11 Complaint to insert the true names of such Defendants when the same have been ascertained.

12 11. Defendants are agents, servants, employees, employers, trade venturers, and/or
13 partners of each other. At the time of the incident described in this Complaint, Defendants were
14 acting within the color, purpose and scope of their relationships, and by reason of their relationships,
15 Defendants may be jointly and severally and/or vicariously responsible and liable for the acts and
16 omissions of their Co-Defendants.

17 GENERAL ALLEGATIONS

18 1. The Plaintiff repeat and reallege the allegations as contained in the preceding
19 paragraphs herein, and incorporates the same herein by reference.

20 2. On June 22, 2016, Mr. Schwartz was struck as a pedestrian by a moving vehicle as he
21 was exiting a local restaurant in the 400 block of Commercial Street in Elko, Nevada.

22 3. Paramedics were called to the scene at 8:17 p.m. and arrived at the scene within a few
23 minutes.

24 4. Mr. Schwartz was placed in full C-spine precautions. During transport to the
25 hospital, his vitals were within normal limits, 4L of oxygen was started routinely, a heart monitor
26 was placed showing normal sinus rhythm.

27 5. Mr. Schwartz was transported by Elko County Ambulance to Northeastern Nevada
28 Regional Hospital on a "non-emergent" transport mode arriving at approximately 8:48 p.m.

1 6. Dr. Garvey performed a physical examination of Mr. Schwartz upon arrival to the
2 emergency department.

3 7. His assessment revealed that Mr. Schwartz had mild abrasions to the forehead, injury
4 to the right lateral posterior chest with moderate pain, and abrasions to the right bicep, elbow and
5 knee.

6 8. Mr. Schwartz had a normal heart rate and rhythm.

7 9. Mr. Schwartz did not display signs of respiratory distress; his respirations were
8 normal with clear breath sounds throughout.

9 10. Mr. Schwartz's neurological status was normal.

10 11. Mr. Schwartz's abdominal evaluation was within normal limits.

11 12. At approximately 9:02 p.m. several diagnostic studies were ordered to further
12 evaluate Mr. Schwartz's injuries including scans of the head, cervical and thoracic spine, chest,
13 abdomen and pelvis.

14 13. Dr. Garvey contacted Dr. Ray at the University of Utah who accepted the patient for
15 transfer.

16 14. The air ambulance crew from Reach Air arrived at NNRH to transport Mr. Schwartz
17 to the airport for an air ambulance transport to the University of Utah Hospital.

18 15. Mr. Schwartz was not informed of the risks of undergoing an intubation. He was not
19 informed of the alternatives to undergoing an intubation procedure.

20 16. Dr. Garvey elected to have the flight nurse, Doe Barry, R.N. from Reach Air, perform
21 the intubation after Rocuronium and Ketamine were administered at 12:18 a.m.

22 17. Mr. Schwartz's vital signs were stable up until this point.

23 18. Doe Barry, R.N. first attempted intubation at 12:20 a.m., unsuccessfully, followed
24 quickly by a deterioration of oxygenation and vital signs.

25 19. Intubation by Doe Barry, R.N. was again unsuccessful at 12:33 a.m. and a large
26 aspiration of gastric contents was noted.

27 20. After the aspiration, the vital signs and oxygenation indicated cardiopulmonary arrest
28 and CPR was administered.

1 21. CPR continued and several subsequent intubation attempts were unsuccessful.

2 22. At 1:20 a.m. Mr. Schwartz had asystole (complete lack of heart beat) and he was
3 pronounced dead at 1:33 a.m.

4 **FIRST CLAIM FOR RELIEF**

5 **(PROFESSIONAL NEGLIGENCE/WRONGFUL DEATH)**

6 **DR. DAVID GARVEY, DOE BARRY, R.N., RUBY CREST, REACH AIR AND NNRH**

7 23. The Plaintiff repeat and reallege the allegations as contained in the preceding
8 paragraphs herein, and incorporates the same herein by reference.

9 24. Defendant Dr. GARVEY owed a duty of care to Mr. Schwartz to render medical care
10 and treatment in a professional manner consistent with the standard of care prescribed in his medical
11 field.

12 25. Defendant Dr. GARVEY fell below the standard of care by deciding to intubate Mr.
13 Schwartz without clinical indications for intubation.¹

14 26. Defendant Dr. GARVEY fell below the standard of care by failing to request an
15 anesthesiologist to perform the intubation due to the high risk of aspiration.²

16 27. Defendant Dr. GARVEY fell below the standard of care by assigning an RN to
17 perform a high risk, semi-elective intubation in a patient who he knew just ate a large meal.³

18 28. Defendant Dr. GARVEY fell below the standard of care by failing to obtain informed
19 consent for Mr. Schwartz when he failed to advise him of the pros and cons of the procedure as well
20 as other acceptable options (including not doing the procedure at all or having it done by an expert
21 physician).⁴

22 29. Defendant Dr. GARVEY fell below the standard of care by electing to continue with
23 the same plan of having an RN attempt intubation even after the initial intubation procedure was
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27 ¹ See Affidavit of Kenneth N. Scissors, M.D., attached hereto as "Exhibit 1".

28 ² Id.

³ Id.

⁴ Id.

1 unsuccessful rather than trying it himself or supporting the patient with a bag-mask technique and/or
2 by calling in an anesthesiologist as the standard of care would require.⁵

3 30. Defendant Dr. GARVEY thereby caused Mr. Schwartz to suffer severe complications
4 including a large aspiration of gastric contents and a fatal cardiopulmonary arrest.⁶

5 31. Defendant DOE BARRY, R.N. owed a duty of care to Mr. Schwartz to render
6 medical care and treatment in a professional manner consistent with the standard of care prescribed
7 in his medical field.⁶

8 32. Defendant DOE BARRY, R.N. fell below the standard of care by agreeing to attempt
9 an intubation of Mr. Schwartz when he did not have clear indications for intubation and had a high
10 risk of aspiration of gastric contents.⁷

11 33. Defendant DOE BARRY, R.N. fell below the standard of care by not deferring to a
12 qualified anesthesiologist.⁸

13 34. Defendant DOE BARRY, R.N. fell below the standard of care by attempting a second
14 intubation after the failed first attempt. At that point Mr. Schwartz was struggling, but supportable
15 with a bag-mask technique. Nurse Barry should have deferred to a qualified physician.⁹

16 35. Defendant DOE BARRY, R.N. thereby caused Mr. Schwartz to suffer severe
17 complications including a large aspiration of gastric contents and a fatal cardiopulmonary arrest.¹⁰

18 36. Defendant NNRH employees, agents, and/or servants, including DOE BARRY, R.N.
19 was acting in the scope of his employment, under Defendant's control, and in the furtherance of
20 Defendant's interest at the time his actions caused injuries to Mr. Schwartz.

21 37. Defendant NNRH in the capacity of a medical hospital, providing medical care to the
22 public owed Mr. Schwartz a non-delegable duty to employ medical staff including Dr. GARVEY to
23 have adequate training in the care and treatment of patients consistent with the degree of skill and
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25
26 ⁵ Id.

27 ⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

1 learning possessed by competent medical personnel practicing in the United States of America under
2 the same or similar circumstances.

3 38. At all relevant times mentioned herein, Defendants knew or in the exercise of
4 reasonable care should have known, that the provisions of medical care and treatment was of such a
5 nature that, if it was not properly given, was likely to injure or cause death to the person to whom it
6 was given.

7 39. Defendants, and each of them, fell below the standard of care for a health care
8 provider who possesses the degree of professional learning, skill, and ability of other similar health
9 care providers in failing to timely and properly treat Mr. Schwartz resulting in significant injuries
10 and death. The allegations against Defendants are supported by the Report of Dr. Kenneth N.
11 Scissors.¹¹

12 40. Mr. Schwartz thereby experienced great pain, suffering, and anxiety to his body and
13 mind, with said injuries ultimately leading to death and damages in the sum in excess of Ten
14 Thousand Dollars (\$10,000.00).

15 41. As a further direct and proximate result of the aforesaid negligence and carelessness
16 of Defendants, Plaintiff have incurred damages, both general and special, including medical
17 expenses as a result of the treatment of Mr. Schwartz's injuries and funeral expenses.

18 42. As a further proximate result of the aforementioned negligence and carelessness of
19 Defendants, the Plaintiff was required to, and did, employ physicians, surgeons, and other health
20 care providers to examine, treat, and care for her and did incur medical and incidental expenses
21 thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges
22 that she has suffered special damages in excess of Ten Thousand Dollars (\$10,000.00).

23 43. As a further direct and proximate result of the negligence and carelessness of
24 Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment
25 of life in an amount to be proven at trial.

27 ¹¹Id.

28 6. Id.

44. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff suffered and will continue to suffer lost wages and/or loss of earning capacity, in an amount to be proven at trial.

45. The actions of the Defendant have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SECOND CLAIM FOR RELIEF

(Vicarious Liability, Corporate Negligence and Ostensible Agency)

Against Defendant NNRH, RUBY CREST AND REACH AIR

46. The Plaintiff repeats and realleges the allegations as contained in the preceding paragraphs herein, and incorporates the same herein by reference.

47. Employers, masters and principals are vicariously liable for the torts committed by their employees, servants and agents if the tort occurs while the employee, servant, or agent was acting in the course and scope of employment.

48. The Defendants were the employers, masters, principals, and/or ostensible agents of each other, the remaining Defendant, and other employees, agents, independent contractors and/or representatives who negligently failed through their credentialing and re-credentialing process to employ and or grant privileges to an emergency room physician with adequate training in the care and treatment of patients consistent with the degree of skill and learning possessed by competent medical personnel practicing in the United States of America under the same or similar circumstances.¹²

49. Defendants' breach of the applicable standard of care directly resulted in Plaintiff sustaining significant injuries that ultimately led to his death.

50. Mr. Schwartz thereby experienced great pain, suffering, and anxiety to his body and mind, sustaining injuries, damages and death in the sum in excess of Ten Thousand Dollars (\$10,000.00).

12 14.

1 51. As a further direct and proximate result of the aforesaid negligence and carelessness
2 of Defendants, Plaintiff has incurred damages, both general and special, including medical expenses
3 as a result of the necessary treatment of her injuries, and will continue to incur damages for future
4 medical treatment necessitated by incident-related injuries she has suffered.

5 52. As a further proximate result of the aforementioned negligence and carelessness of
6 Defendants, the Plaintiff was required to, and did, employ physicians, surgeons, and other health
7 care providers to examine, treat, and care for her and did incur medical and incidental expenses
8 thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges
9 that she has suffered special damages in excess of Ten Thousand Dollars (\$10,000.00).

10 53. As a further direct and proximate result of the negligence and carelessness of
11 Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment
12 of life in an amount to be proven at trial.

13 54. As a direct and proximate result of the negligence and carelessness of Defendants,
14 Plaintiff suffered and will continue to suffer lost wages and a loss of earning capacity, in an amount
15 to be proven at trial.

16 55. Defendants' failure to properly credential and/or re-credential Dr. Garvey or to
17 otherwise assure that an emergency room physician had adequate training in the care and treatment
18 of patients consistent with the degree of skill and learning possessed by competent medical
19 personnel practicing in the United States of America under the same or similar circumstances caused
20 Plaintiff to suffer and ultimately die as a result of his care.

21 56. The actions of the Defendants have forced Plaintiff to retain counsel to represent her
22 in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as
23 attorney fees and costs of suit.

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THIRD CLAIM FOR RELIEF

(Negligent Hiring, Training, and Supervision)

Against Defendant NNRH, RUBY CREST AND REACH AIR

57. The Plaintiff repeat and reallege the allegations as contained in the preceding paragraphs herein, and incorporates the same herein by reference.

58. The Defendants, and each of them, hired, trained, supervised and/or retained employees to provide treatment to patients, to include Plaintiff, within the appropriate standard of care, which required Defendants to properly assess and recognize when intubation is needed.

59. The Defendants had a duty to hire, properly train, properly supervise, and properly retain competent employees, agents, independent contractors and representatives.

60. Upon information and belief, the Defendants, breached their duty by improperly hiring, improperly training, improperly supervising and improperly retaining incompetent employees regarding the examination, diagnosis, and treatment of patients.

61. Defendants' breach of the applicable standard of care directly resulted in Plaintiff sustaining significant injuries that ultimately lead to his untimely death.¹³

62. Plaintiff thereby experienced great pain, suffering, and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Ten Thousand Dollars (\$10,000.00).

63. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by incident-related injuries she has suffered.

64. As a further proximate result of the aforementioned negligence and carelessness of Defendants, the Plaintiff was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for Mr. Schwartz and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff allege that she has suffered special damages in excess of Ten Thousand Dollars (\$10,000.00).

¹³Id

65. As a further direct and proximate result of the negligence and carelessness of Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment of life in an amount to be proven at trial.

66. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff suffered and will continue to suffer lost wages and/or loss of earning capacity, in an amount to be proven at trial.

67. The actions of the Defendants have forced the Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(Lack of Informed Consent)

Against Defendant DAVID GARVEY, M.D.

68. The Plaintiff repeat and reallege the allegations in the preceding paragraphs herein, and incorporate the same herein by reference.

69. Informed Consent requires the attending physician explain to the patient or guardian(s) including but not limited to alternatives to the treatment or procedure and the reasonable risks of undergoing the procedure.¹⁴

70. Dr. Garvey did not explain to the Plaintiff the pros and cons of the procedure and that there are acceptable options, including not doing the procedure at all or having it done by an expert physician.

71. Dr. Garvey did not explain to Plaintiff the reasonable risks of the intubation procedure including the risk of aspiration due to a full stomach and that said aspiration, should it occur, could lead to death.

72. Plaintiff would not have opted to have the intubation procedure had they been informed by Dr. Garvey of the less invasive alternative and of the substantial risks involved with intubation.

¹⁴ See Affidavit of Kenneth N. Scissors, M.D. attached hereto as "Exhibit 1"

1 73. As a result of Dr. Garvey's lack of informed consent, Mr. Schwartz experienced great
2 pain, discomfort and ultimately suffered death.¹⁵

3 74. The actions of the Defendants have forced the Plaintiff to retain counsel to represent
4 them in the prosecution of this action, and they are therefore entitled to an award of a reasonable
5 amount as attorney fees and costs of suit.

6 75. As a direct and proximate result of the negligence and carelessness of Defendants,
7 Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment of life in an
8 amount to be proven at trial.

9 76. As a direct and proximate result of the negligence and carelessness of Defendants,
10 Plaintiff suffered and will suffer lost wages, in an amount to be proven at trial.

11 **FIFTH CLAIM FOR RELIEF**

12 **(Loss of Consortium)**

13 77. Plaintiffs restate and reallege each and every allegation in the preceding paragraphs
14 herein, and incorporate the same herein by reference.

15 78. Plaintiff, Diane Schwartz, is and at all times relevant herein, has been the spouse of
16 Plaintiff Douglas R. Schwartz.

17 79. As a direct and proximate result of Defendants' negligence and carelessness, has lost
18 and will continue to lose a degree of society, comfort and companionship of her spouse, all to her
19 damage in an amount in excess of Ten Thousand Dollars (\$10,000.00).

20 80. The actions of the Defendants have forced the Plaintiff to retain counsel to represent
21 them in the prosecution of this action, and they are therefore entitled to an award of a reasonable
22 amount as attorney fees and costs of suit.

23 81. As a direct and proximate result of the negligence and carelessness of Defendants,
24 Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment of life in an
25 amount to be proven at trial.

26
27
28 ¹⁵ Id.

1 82. As a direct and proximate result of the negligence and carelessness of Defendants,
2 Plaintiff suffered and will suffer lost wages, in an amount to be proven at trial.

3 83. Defendant's conduct complained of herein was despicable and so contemptible that it
4 would be looked down upon and despised by ordinary, decent people, and was carried on by
5 Defendant with willful and conscious disregard for the safety of Mr. Schwartz, and others in the
6 State of Nevada, entitling Plaintiff to exemplary and punitive damages.

7 84. The outrageous and unconscionable conduct of Defendant warrants an award of
8 exemplary and punitive damages in an amount appropriate to punish Defendant and make an
9 example of it, and to deter similar conduct in the future.

10 85. The acts of Defendant complained of herein were willful, malicious, fraudulent,
11 oppressive and done in conscious disregard of Plaintiff's rights and safety, and the rights and safety
12 of others in the State of Nevada, and Plaintiff is entitled to exemplary and punitive damages
13 pursuant to NRS Chapter 42 and common law, for a sum in excess of Ten Thousand Dollars
14 (\$10,000.00), to be proven at the time of trial, together with prejudgment interest at the rate allowed

15 WHEREFORE, Plaintiff, DIANE SCHWARTZ, individually and as administrator of the
16 Estate of DOUGLAS R. SCHWARTZ, deceased, expressly reserves her right to amend this
17 Complaint at the time of trial, to include all items of damage not yet ascertained, demand judgment
18 against Defendants, DAVID GARVEY, M.D., an individual; TEAM HEALTH HOLDINGS, INC.,
19 dba RUBY CREST EMERGENCY MEDICINE, PHC-ELKO, INC., dba NORTHEASTERN
20 NEVADA REGIONAL HOSPITAL, a domestic corporation duly authorized to conduct business in
21 the State of Nevada;; REACH AIR MEDICAL SERVICES, L.L.C.; DOE BARRY, R.N., DOES I
22 through X; ROE BUSINESS ENTITIES XI through XX, inclusive and each of the defendants as
23 follows:


24 For general damages, in an amount in excess of Ten Thousand Dollars (\$10,000.00), to be set forth
25 and proven at the time of trial;

26 86. For general damages, in an amount in excess of Ten Thousand Dollars (\$10,000), to be set
27 forth and proven at the time of trial.
28

- 1 87. For special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00), to be set
2 forth and proven at the time of trial;
3 88. For reasonable attorney's fees;
4 89. For costs and disbursements of this suit; and
5 90. For such other relief as to the Court seems just and proper.


6 DATED this 22nd day of June, 2017.

7 CLAGGETT & SYKES LAW FIRM

8 
9
10 Sean K. Claggett, Esq.
11 Nevada Bar No. 008407
12 Jennifer Morales, Esq.
13 Nevada Bar No. 008829
14 Matthew S. Granda, Esq.
15 Nevada Bar No. 012753
16 4101 Meadows Lane, Suite 100
17 Las Vegas, Nevada 89107
18 (702) 655-2346 - Telephone
19 Attorneys for Plaintiff

17 Pursuant to FJDCR 19.1.A. DIANE SCHWARTZ, Plaintiff in this matter, is not in debt or
18 bankruptcy.

19 Pursuant to NRS 239.030, counsel hereby affirms that this document contains no social
20 security numbers.

21 
22 Jennifer Morales, Esq., Attorney for Plaintiff
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Table of Exhibits

Exhibit "I"	Affidavit of Kenneth Scissors, M.D.	5 pages
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Exhibit "1"

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AFFIDAVIT OF KENNETH N. SCISSORS, M.D.

I, Kenneth N. Scissors, MD, being duly sworn, under oath, state that the following assertions are true to the best of my personal knowledge training, experience and belief;

- 1) I am licensed by the Colorado Board of Medical Examiners to practice medicine in the State of Colorado.
- 2) My licenses are current with the appropriate State and Federal agencies.
- 3) My additional qualifications to serve as an expert are set forth in my Curriculum Vitae, attached as Exhibit 1.
- 4) Based on my training, background, knowledge and experience, I am familiar with the applicable standard of care for the treatment of the signs, symptoms, and condition presented by Mr. Schwartz in the emergency department. I am familiar with the team approach involved in the emergency room to include but not limited to transport teams and nursing care. The areas covered in this report overlap and based on my experience and training I am familiar and qualified in the areas addressed in this report to provide opinions.
- 5) I am qualified on the basis of my training background, knowledge, experience to offer an expert opinion regarding the accepted standard of medical care of the emergency room physician and the nurse who attempted to intubate Douglas Schwartz, the breaches thereof and the resulting injuries and damages arising therefrom.

Documents Reviewed

- 1.) Northeaster Nevada Regional Hospital Medical Records
- 2.) Elko County Ambulance Medical Records
- 3.) Certificate of Death

- 4.) Autopsy Protocol
- 5.) NMS Lab Report
- 6.) Elko County Sheriff's Office Investigation Report
- 7.) Radiology Disc from Northeastern Nevada Regional Hospital

**Summary of Medical Care at Northern Nevada Regional Hospital Emergency
Department on June 22, 2016**

On June 22, 2016 Mr. Douglas Schwartz was struck as a pedestrian by a moving vehicle. Paramedics were called at 8:17 p.m. and arrived at the scene within a few minutes. Mr. Schwartz was placed in full C-spine precautions. During his transport to the hospital his vitals were within normal limits, 4L of O2 was started routinely, a monitor was placed showing normal sinus rhythm. Mr. Schwartz was given 4 mg Zofran IVP followed by 100 mcg Fentanyl IVP which helped with his pain. He was transported by Elko County Ambulance to Northern Nevada Regional Hospital on a "non-emergent" transport mode arriving at 8:48 p.m.

Dr. David Garvey performed a physical evaluation of Douglas Schwartz upon arrival to the emergency department. He noted that Douglas Schwartz sustained mild abrasions to the forehead, injury to the right lateral posterior chest with moderate pain, and abrasions of the right bicep, elbow, and knee. Mr. Schwartz had a normal heart rate and rhythm. Mr. Schwartz did not display signs of respiratory distress; his respirations were normal with clear breath sounds throughout. Mr. Schwartz's neurological status was normal. His abdominal evaluation was also within normal limits. Mr. Schwartz's condition was stable.

At approximately 9:02 p.m. several diagnostic studies were ordered to further evaluate Mr. Schwartz's injuries including CT scans of the head, cervical and thoracic spine, chest, abdomen and pelvis.

Dr. Garvey contacted Dr. Ray at University of Utah trauma service who accepted the patient for transfer. According to Dr. Garvey's chart note, Dr. Ray requested that a chest tube be placed and possibly intubation prior to air medical transport.

Dr. Garvey elected to have the flight nurse, Barry, perform the intubation after Rocuronium and Ketamine administration at 0018 hours. The vital signs were stable up until this point. The intubation was first attempted at 0020 unsuccessfully, followed quickly by deterioration of oxygenation and vital signs. Intubation was again unsuccessful at 0033 and a large aspiration of gastric contents was noted. After the aspiration, the vital signs and oxygenation indicated cardiopulmonary arrest and CPR was administered. CPR continued and several subsequent intubation attempts were unsuccessful. At 0120 Mr. Schwartz had asystole (complete lack of heart beat) and he was pronounced dead at 0133

Deviations from the Standard of Care.

Northern Nevada Regional Hospital and Ruby Crest Emergency Medicine through its owners, officers, employees, agents and/or contractors, deviated from the applicable standard of care, through the actions of its employee, agent or contractor, Dr. David Garvey who provided medical care and treatment to Mr. Schwartz in the emergency room on June 22, 2016.

Northern Nevada Regional Hospital and Ruby Crest Emergency Medicine are required to properly hire, train, supervise and/or retain employees, including Dr. David Garvey to provide treatment within the appropriate standard of care to patients such as Douglas Schwartz in the emergency room on June 22, 2016.

Dr. David Garvey breached the standard of care in several ways:

1. Deciding to intubate Mr. Schwartz without clinical indications for intubation. Preventive intubation for air flight is not the standard of care. Intubation has inherent risks, especially in a patient who likely has food in the stomach. Intubation is reserved for patients who are unable to breath adequately on their own, yet Mr. Schwartz was breathing without difficulty and had adequate oxygen levels on simple oxygen supplementation.
2. Even if there was a pressing but non-emergent need to intubate Mr. Schwartz with likely food in the stomach, the standard of care would be to request an anesthesiologist to perform the intubation due to the high

risk of aspiration. It is a deviation from the standard of care for an emergency room physician to assign a RN to perform a high risk semi-elective intubation in a patient with likely gastric contents when highly skilled physicians are available.

3. Since this was a non-emergent and non-essential invasive procedure in an awake, cognitive patient, informed consent was required. That means more than just telling the patient what is to be done. The patient must be told the pros and cons of the procedure and that there are acceptable options, including not doing the procedure at all or having it done by an expert physician. Dr. Garvey deviated from the standard of care by not giving Mr. Schwartz the opportunity to decline this risky and unnecessary procedure.
4. Once the initial intubation was unsuccessful, Dr. Garvey elected to continue with the same plan of having a RN attempt intubation rather than trying it himself or supporting the patient with a bag-mask technique and calling in an anesthesiologist as the standard of care would require. This led to a large aspiration of gastric contents and a fatal cardiopulmonary arrest.

Reach Air Medical Services through its owners, officers, employees, agents and/or contractors, deviated from the applicable standard of care, through the actions of its employee, agent or contractor, identified as "Barry RN" who provided medical care and treatment to Mr. Schwartz in the emergency room on June 22, 2016.

Reach Air Medical Services is required to properly hire, train, supervise and/or retain employees, including "Barry RN" to provide treatment within the appropriate standard of care to patients such as Douglas Schwartz in the emergency room on June 22, 2016.

Nurse Barry violated the standard of care in two instances:

1. Nurse Barry should not have agreed to attempt to intubate Mr. Schwartz given that he did not have clear indications for intubation and had a high risk of aspiration of gastric contents. In this situation, a RN should defer to a qualified physician, preferably an anesthesiologist.

2. Nurse Barry should not have attempted a second intubation after the failed first attempt. At that point Mr. Schwartz was struggling, but still supportable with a bag-mask technique. Nurse Barry should have deferred to a qualified physician at this point rather than repeating the same mistake he made initially. The second failed attempt caused a fatal aspiration.

All of the aforementioned breaches of the standard of care caused or contributed to the death of Mr. Schwartz.

All of my opinions expressed herein are to a reasonable degree of medical certainty.

I reserve the right to amend, modify, and add to my opinions upon further review of any additional documents and/or information.

Further Affidant Sayeth Not.

Dated this 21 day of June, 2017

[Signature]

KENNETH N. SCISSORS, M.D.

State of Colorado
County of Mesa
On this 21 day of June, 2017, Kenneth Scissors, MD
personally appeared before me,
who is personally known to me,
X whose identity I verified on the basis of CO-DC,
whose identity I verified on the oath affirmation of _____,
a credible witness,
to be the signer of the foregoing document, and he acknowledged that he signed it.
[Signature]
Notary Public
My Commission Expires 4-5-2021

TERESE LUELLEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014010801
MY COMMISSION EXPIRES 04/05/2021

1 CASE NO.: W-C-17-439

2 DEPT. NO.: I

3
4 **AFFIRMATION**

Pursuant to NRS 239B.030

5 This document does not contain
6 any Social Security Numbers

7 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE
8 STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

9 DIANE SCHWARTZ, individual and as Special
10 Administrator of the Estate of DOUGLAS R.
11 SCHWARTZ, deceased;

12 Plaintiff,

13 v.

14 DAVID GARVEY, M.D., an individual; TEAM
15 HEALTH HOLDINGS, INC., dba RUBY
16 CREST EMERGENCY MEDICINE; PHC-
17 ELKO, INC., dba NORTHEASTERN NEVADA
18 REGIONAL HOSPITAL, a domestic corporation
19 duly authorized to conduct business in the State
20 of Nevada; REACH AIR MEDICAL
21 SERVICES, LLC, DOE BARRY, R.N., DOES I
22 through X; ROE BUSINESS ENTITIES XI
23 through XX, inclusive,

24 Defendants.

25 **ACCEPTANCE OF SERVICE OF SUMMONS AND COMPLAINT**
26 **FOR DEFENDANT, DAVID GARVEY MD**

27 The undersigned does hereby accept and acknowledge service of the Summons and
28 Complaint on behalf of Defendant, David Garvey, MD.

29 A copy of the Summons and Complaint are attached as Exhibit 1.

30 Dated this 13th day of July, 2017.

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LEWIS BRISBOIS BISGAARD & SMITH LLP

FILED

2017 OCT 20 PM 3:40

ELKO CO DISTRICT COURT

CLERK DEPUTY

Case No.: CV-C-17-439

Dept. No: 1

AFFIRMATION

Pursuant to NRS 239B.030

This document does not contain
any Social Security Numbers

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

DIANE SCHWARTZ, individual and as Special
Administrator of the Estate of DOUGLAS R.
SCHWARTZ, deceased;

Plaintiff,

vs.

AMENDED COMPLAINT
(Medical Malpractice)
and Wrongful Death)

DAVID GARVEY, M.D., an individual;
BARRY BARTLETT, an individual (Formerly
Identified as BARRY RN); CRUM,
STEFANKO, & JONWA LTF, dba Ruby Crest
Emergency Medicine; PHC-ELKO INC. dba
NORTHEASTERN NEVADA REGIONAL
HOSPITAL, a domestic corporation duly
authorized to conduct business in the State of
Nevada; REACH AIR MEDICAL SERVICES,
L.L.C.; DOES I through X; ROE BUSINESS
ENTITIES XI through XX, inclusive,

Defendants.

COMES NOW, Plaintiff, DIANE SCHWARTZ, individual and as the administrator of the
Estate of DOUGLAS SCHWARTZ, by and through her attorneys of record, CLAGGETT & SYKES
LAW FIRM, for their causes of action against Defendants, DAVID GARVEY, M.D., individually;
BARRY BARTLETT, individually; CRUM, STEFANKO, & JONWA LTF, dba RUBY CREST
EMERGENCY MEDICINE; PHC-ELKO, INC., dba NORTHEASTERN NEVADA REGIONAL

1 HOSPITAL, REACH AIR MEDICAL SERVICES, L.L.C; DOES 1 through X; ROE BUSINESS
2 ENTITIES X1 through XX; and each of them and alleges as follows:

3 1. At all times relevant herein, Plaintiff, DIANE SCHWARTZ, individually and as the
4 Special Administrator on behalf of the Estate of DOUGLAS R. SCHWARTZ (hereinafter the
5 "Plaintiff" or "Diane"), was and is a resident of Elko County, Nevada.

6 2. At all times relevant herein, Plaintiff DOUGLAS SCHWARTZ (hereinafter the
7 "Plaintiff" or "Mr. Schwartz"), was a resident of Elko County, Nevada.

8 3. Upon information and belief, at all times relevant herein, Defendant, David Garvey,
9 M.D. (hereinafter "Dr. Garvey" or "Defendant"), was and is a medical doctor licensed in the State of
10 Nevada, and a resident of Elko County, Nevada.

11 4. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
12 Defendant, BARRY BARTLETT, (hereinafter "Bartlett" or "Defendant") was and is a resident of
13 Elko, Nevada.

14 5. Upon information and belief, at all times relevant herein, Defendant, CRUM,
15 STEFANKO, & JONWA LTF, dba RUBY CREST EMERGENCY MEDICINE (hereinafter "Ruby
16 Crest" or "Defendant"), was and is a domestic corporation existing pursuant to the laws of
17 Delaware, authorized to do business in Nevada, and doing business in the State of Nevada.

18 6. Upon information and belief, at all times relevant herein, Defendant, PHC-ELKO,
19 INC. dba NORTHEASTERN NEVADA REGIONAL HOSPITAL (hereinafter "NNRH" or
20 "Defendant"), was and is a domestic corporation existing pursuant to the laws of Nevada, authorized
21 to do business in the State of Nevada, and doing business in the State of Nevada.

22 7. Defendant NNRH was and is at all times relevant operating as a medical care facility
23 in Elko County, Nevada and was and is owned, operated, managed, and controlled as a medical care
24 facility within the County of Elko, State of Nevada, and was held out to the public at large, including
25 the Plaintiff herein, as a properly equipped, fully accredited, completely staffed by qualified and
26 prudent personnel, and operating in compliance with standards of due care maintained by other
27 properly equipped, efficiently operated and administered, accredited medical care facilities in said
28 community, offering full, competent, qualified, and efficient health care services to the general

1 public and to the Plaintiff herein; that Plaintiff herein is informed and believes and thereon alleges,
2 that Defendant, NNRH, administered, governed, controlled, managed, and directed all the necessary
3 functions, activities, and operations of said medical care facility, including its physician care,
4 nursing care, interns, residents and health staff, and other personnel.

5 8. Upon information and belief, Defendant REACH AIR MEDICAL SERVICES, LLC,
6 (hereinafter "Reach Air" or "Defendant") is a foreign limited liability company existing pursuant to
7 the laws of California, authorized to do business in the State of Nevada, and doing business in the
8 State of Nevada

9 9. That the true names or capacities, whether corporate, associate, individual or
10 otherwise, of DOES I through X, inclusive, were and now are physicians, surgeons, registered
11 nurses, licensed vocational nurses, practical nurses, registered technicians, aides, attendants,
12 physician's assistants, CRNAs, or paramedical personnel holding themselves out as duly licensed to
13 practice their professions under and by virtue of the laws of the State of Nevada, and were and are
14 now engaged in the practice of their professions in the State of Nevada, and are unknown to Plaintiff
15 who, therefore, sues said Defendants by such fictitious names. Plaintiff is informed and believes, and
16 thereon alleges, that each of the Defendants designated herein as a DOE Barry R.N. and DOE is
17 legally responsible in some manner for the events and happenings herein referred to and proximately
18 caused injury and damages thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of the
19 Court to amend this Complaint to insert the true names and capacities of DOE BARRY R.N. or
20 DOES I through X when the same have been ascertained and to join such Defendants in this action.

21 10. That the true names or capacities of Defendants, ROE BUSINESS ENTITIES XI
22 through XX, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such
23 fictitious names. Defendants designated herein as ROE BUSINESS ENTITIES XI through XX, and
24 each of them, are corporations, firms, partnerships, associations, other medical entities, including but
25 not limited to nursing staffing companies and/or registry nursing companies, emergency physician
26 services group, predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint
27 venture with, and/or serving as an alter ego of, any and/or all Defendants named herein; and/or are
28 entities responsible for the treatment, diagnosis, surgery, and/or other provision of medical care to

1 Plaintiff herein, and/or otherwise responsible for the supervision of the individually named
2 Defendants at the time of the events and circumstances alleged herein; and/or are entities employed
3 by and/or otherwise directing the individual Defendants in the scope and course of their
4 responsibilities at the time of the events and circumstances alleged herein; and/or are entities
5 otherwise contributing in any way to the acts complained of and the damages alleged to have been
6 suffered by the Plaintiff herein. Plaintiff is informed and, on that basis believes and thereon alleges,
7 that each of the Defendants designated as a ROE BUSINESS ENTITY is in some manner
8 negligently, vicariously, and/or statutorily responsible for the events and happenings referred to and
9 caused damages to Plaintiff as herein alleged. Plaintiff will seek leave of the Court to amend this
10 Complaint to insert the true names of such Defendants when the same have been ascertained.

11 11. Defendants are agents, servants, employees, employers, trade venturers, and/or
12 partners of each other. At the time of the incident described in this Complaint, Defendants were
13 acting within the color, purpose and scope of their relationships, and by reason of their relationships,
14 Defendants may be jointly and severally and/or vicariously responsible and liable for the acts and
15 omissions of their Co-Defendants.

16 GENERAL ALLEGATIONS

17 1. The Plaintiff repeat and reallege the allegations as contained in the preceding
18 paragraphs herein, and incorporates the same herein by reference.

19 2. On June 22, 2016, Mr. Schwartz was struck as a pedestrian by a moving vehicle as he
20 was exiting a local restaurant in the 400 block of Commercial Street in Elko, Nevada.

21 3. Paramedics were called to the scene at 8:17 p.m. and arrived at the scene within a few
22 minutes.

23 4. Mr. Schwartz was placed in full C-spine precautions. During transport to the
24 hospital, his vitals were within normal limits, 4L of oxygen was started routinely, a heart monitor
25 was placed showing normal sinus rhythm.

26 5. Mr. Schwartz was transported by Elko County Ambulance to Northeastern Nevada
27 Regional Hospital on a "non-emergent" transport mode arriving at approximately 8:48 p.m.
28

1 6. Dr. Garvey performed a physical examination of Mr. Schwartz upon arrival to the
2 emergency department.

3 7. His assessment revealed that Mr. Schwartz had mild abrasions to the forehead, injury
4 to the right lateral posterior chest with moderate pain, and abrasions to the right bicep, elbow and
5 knee.

6 8. Mr. Schwartz had a normal heart rate and rhythm.

7 9. Mr. Schwartz did not display signs of respiratory distress; his respirations were
8 normal with clear breath sounds throughout.

9 10. Mr. Schwartz's neurological status was normal.

10 11. Mr. Schwartz's abdominal evaluation was within normal limits.

11 12. At approximately 9:02 p.m. several diagnostic studies were ordered to further
12 evaluate Mr. Schwartz's injuries including scans of the head, cervical and thoracic spine, chest,
13 abdomen and pelvis.

14 13. Dr. Garvey contacted Dr. Ray at the University of Utah who accepted the patient for
15 transfer.

16 14. The air ambulance crew from Reach Air arrived at NNRH to transport Mr. Schwartz
17 to the airport for an air ambulance transport to the University of Utah Hospital.

18 15. Mr. Schwartz was not informed of the risks of undergoing an intubation. He was not
19 informed of the alternatives to undergoing an intubation procedure.

20 16. Dr. Garvey elected to have the flight nurse, Barry Bartlett, from Reach Air, perform
21 the intubation after Rocuronium and Ketamine were administered at 12:18 a.m.

22 17. Mr. Schwartz's vital signs were stable up until this point.

23 18. Barry Bartlett, first attempted intubation at 12:20 a.m., unsuccessfully, followed
24 quickly by a deterioration of oxygenation and vital signs.

25 19. Intubation by Barry Bartlett, was again unsuccessful at 12:33 a.m. and a large
26 aspiration of gastric contents was noted.

27 20. After the aspiration, the vital signs and oxygenation indicated cardiopulmonary arrest
28 and CPR was administered.

1 21. CPR continued and several subsequent intubation attempts were unsuccessful.

2 22. At 1:20 a.m. Mr. Schwartz had asystole (complete lack of heart beat) and he was
3 pronounced dead at 1:33 a.m.

4 **FIRST CLAIM FOR RELIEF**

5 **(PROFESSIONAL NEGLIGENCE/WRONGFUL DEATH)**

6 **DR. DAVID GARVEY, BARRY BARTLETT,**

7 **RUBY CREST, REACH AIR, AND NNRH**

8 23. The Plaintiff repeat and reallege the allegations as contained in the preceding
9 paragraphs herein, and incorporates the same herein by reference.

10 24. Defendant Dr. GARVEY owed a duty of care to Mr. Schwartz to render medical care
11 and treatment in a professional manner consistent with the standard of care prescribed in his medical
12 field.

13 25. Defendant Dr. GARVEY fell below the standard of care by deciding to intubate Mr.
14 Schwartz without clinical indications for intubation.¹

15 26. Defendant Dr. GARVEY fell below the standard of care by failing to request an
16 anesthesiologist to perform the intubation due to the high risk of aspiration.²

17 27. Defendant Dr. GARVEY fell below the standard of care by assigning an RN to
18 perform a high risk, semi-elective intubation in a patient who he knew just ate a large meal.³

19 28. Defendant Dr. GARVEY fell below the standard of care by failing to obtain informed
20 consent for Mr. Schwartz when he failed to advise him of the pros and cons of the procedure as well
21 as other acceptable options (including not doing the procedure at all or having it done by an expert
22 physician).⁴

23 29. Defendant Dr. GARVEY fell below the standard of care by electing to continue with
24 the same plan of having an RN attempt intubation even after the initial intubation procedure was
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26
27 ¹ See Affidavit of Kenneth N. Scissors, M.D., attached hereto as "Exhibit 1".

28 ² Id.

³ Id.

⁴ Id.

1 unsuccessful rather than trying it himself or supporting the patient with a bag-mask technique and/or
2 by calling in an anesthesiologist as the standard of care would require.⁵

3 30. Defendant Dr. GARVEY thereby caused Mr. Schwartz to suffer severe complications
4 including a large aspiration of gastric contents and a fatal cardiopulmonary arrest.⁶

5 31. Defendant BARRY BARTLETT, owed a duty of care to Mr. Schwartz to render
6 medical care and treatment in a professional manner consistent with the standard of care prescribed
7 in his medical field.⁶

8 32. Defendant BARRY BARTLETT, fell below the standard of care by agreeing to
9 attempt an intubation of Mr. Schwartz when he did not have clear indications for intubation and had
10 a high risk of aspiration of gastric contents.⁷

11 33. Defendant BARRY BARTLETT, fell below the standard of care by not deferring to a
12 qualified anesthesiologist.⁸

13 34. Defendant BARRY BARTLETT, fell below the standard of care by attempting a
14 second intubation after the failed first attempt. At that point Mr. Schwartz was struggling, but
15 supportable with a bag-mask technique. Nurse Barry should have deferred to a qualified physician.⁹

16 35. Defendant BARRY BARTLETT, thereby caused Mr. Schwartz to suffer severe
17 complications including a large aspiration of gastric contents and a fatal cardiopulmonary arrest.¹⁰

18 36. Defendant NNRH employees, agents, and/or servants, including BARRY
19 BARTLETT, was acting in the scope of his employment, under Defendant's control, and in the
20 furtherance of Defendant's interest at the time his actions caused injuries to Mr. Schwartz.

21 37. Defendant NNRH in the capacity of a medical hospital, providing medical care to the
22 public owed Mr. Schwartz a non-delegable duty to employ medical staff including Dr. GARVEY to
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24
25 ⁵ Id.

26 ⁶ Id.

27 ⁷ Id.

28 ⁸ Id.

⁹ Id.

¹⁰ Id.

1 have adequate training in the care and treatment of patients consistent with the degree of skill and
2 learning possessed by competent medical personnel practicing in the United States of America under
3 the same or similar circumstances.

4 38. At all relevant times mentioned herein, Defendants knew or in the exercise of
5 reasonable care should have known, that the provisions of medical care and treatment was of such a
6 nature that, if it was not properly given, was likely to injure or cause death to the person to whom it
7 was given.

8 39. Defendants, and each of them, fell below the standard of care for a health care
9 provider who possesses the degree of professional learning, skill, and ability of other similar health
10 care providers in failing to timely and properly treat Mr. Schwartz resulting in significant injuries
11 and death. The allegations against Defendants are supported by the Report of Dr. Kenneth N.
12 Scissors.¹¹

13 40. Mr. Schwartz thereby experienced great pain, suffering, and anxiety to his body and
14 mind, with said injuries ultimately leading to death and damages in the sum in excess of Ten
15 Thousand Dollars (\$10,000.00).

16 41. As a further direct and proximate result of the aforesaid negligence and carelessness
17 of Defendants, Plaintiff have incurred damages, both general and special, including medical
18 expenses as a result of the treatment of Mr. Schwartz's injuries and funeral expenses.

19 42. As a further proximate result of the aforementioned negligence and carelessness of
20 Defendants, the Plaintiff was required to, and did, employ physicians, surgeons, and other health
21 care providers to examine, treat, and care for her and did incur medical and incidental expenses
22 thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges
23 that she has suffered special damages in excess of Ten Thousand Dollars (\$10,000.00).

24 43. As a further direct and proximate result of the negligence and carelessness of
25 Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment
26 of life in an amount to be proven at trial.

27
28 ¹¹Id.

44. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff suffered and will continue to suffer lost wages and/or loss of earning capacity, in an amount to be proven at trial.

45. The actions of the Defendant have forced Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

SECOND CLAIM FOR RELIEF

(Vicarious Liability, Corporate Negligence and Ostensible Agency)

Against Defendant NNRH, RUBY CREST, AND REACH AIR

46. The Plaintiff repeats and realleges the allegations as contained in the preceding paragraphs herein, and incorporates the same herein by reference.

47. Employers, masters and principals are vicariously liable for the torts committed by their employees, servants and agents if the tort occurs while the employee, servant, or agent was acting in the course and scope of employment.

48. The Defendants were the employers, masters, principals, and/or ostensible agents of each other, the remaining Defendant, and other employees, agents, independent contractors and/or representatives who negligently failed through their credentialing and re-credentialing process to employ and or grant privileges to an emergency room physician with adequate training in the care and treatment of patients consistent with the degree of skill and learning possessed by competent medical personnel practicing in the United States of America under the same or similar circumstances.¹²

49. Defendants' breach of the applicable standard of care directly resulted in Plaintiff sustaining significant injuries that ultimately led to his death.

50. Mr. Schwartz thereby experienced great pain, suffering, and anxiety to his body and mind, sustaining injuries, damages and death in the sum in excess of Ten Thousand Dollars (\$10,000.00).

¹² *Id.*

1 51. As a further direct and proximate result of the aforesaid negligence and carelessness
2 of Defendants, Plaintiff has incurred damages, both general and special, including medical expenses
3 as a result of the necessary treatment of her injuries, and will continue to incur damages for future
4 medical treatment necessitated by incident-related injuries she has suffered.

5 52. As a further proximate result of the aforementioned negligence and carelessness of
6 Defendants, the Plaintiff was required to, and did, employ physicians, surgeons, and other health
7 care providers to examine, treat, and care for her and did incur medical and incidental expenses
8 thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges
9 that she has suffered special damages in excess of Ten Thousand Dollars (\$10,000.00).

10 53. As a further direct and proximate result of the negligence and carelessness of
11 Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment
12 of life in an amount to be proven at trial.

13 54. As a direct and proximate result of the negligence and carelessness of Defendants,
14 Plaintiff suffered and will continue to suffer lost wages and a loss of earning capacity, in an amount
15 to be proven at trial.

16 55. Defendants' failure to properly credential and/or re-credential Dr. Garvey or to
17 otherwise assure that an emergency room physician had adequate training in the care and treatment
18 of patients consistent with the degree of skill and learning possessed by competent medical
19 personnel practicing in the United States of America under the same or similar circumstances caused
20 Plaintiff to suffer and ultimately die as a result of his care.

21 56. The actions of the Defendants have forced Plaintiff to retain counsel to represent her
22 in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as
23 attorney fees and costs of suit.

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THIRD CLAIM FOR RELIEF

(Negligent Hiring, Training, and Supervision)

Against Defendant NNRH, RUBY CREST, AND REACH AIR

57. The Plaintiff repeat and reallege the allegations as contained in the preceding paragraphs herein, and incorporates the same herein by reference.

58. The Defendants, and each of them, hired, trained, supervised and/or retained employees to provide treatment to patients, to include Plaintiff, within the appropriate standard of care, which required Defendants to properly assess and recognize when intubation is needed.

59. The Defendants had a duty to hire, properly train, properly supervise, and properly retain competent employees, agents, independent contractors and representatives.

60. Upon information and belief, the Defendants, breached their duty by improperly hiring, improperly training, improperly supervising and improperly retaining incompetent employees regarding the examination , diagnosis, and treatment of patients.

61. Defendants' breach of the applicable standard of care directly resulted in Plaintiff sustaining significant injuries that ultimately lead to his untimely death.¹³

62. Plaintiff thereby experienced great pain, suffering, and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Ten Thousand Dollars (\$10,000.00).

63. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of her injuries, and will continue to incur damages for future medical treatment necessitated by incident-related injuries she has suffered.

64. As a further proximate result of the aforementioned negligence and carelessness of Defendants, the Plaintiff was required to, and did, employ physicians, surgeons, and other health care providers to examine, treat, and care for Mr. Schwartz and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff allege that she has suffered special damages in excess of Ten Thousand Dollars (\$10,000.00).

¹³Id.

65. As a further direct and proximate result of the negligence and carelessness of Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment of life in an amount to be proven at trial.

66. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff suffered and will continue to suffer lost wages and/or loss of earning capacity, in an amount to be proven at trial.

67. The actions of the Defendants have forced the Plaintiff to retain counsel to represent her in the prosecution of this action, and she is therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(Lack of Informed Consent)

Against Defendant DAVID GARVEY, M.D.

68. The Plaintiff repeat and reallege the allegations in the preceding paragraphs herein, and incorporate the same herein by reference.

69. Informed Consent requires the attending physician explain to the patient or guardian(s) including but not limited to alternatives to the treatment or procedure and the reasonable risks of undergoing the procedure.¹⁴

70. Dr. Garvey did not explain to the Plaintiff the pros and cons of the procedure and that there are acceptable options, including not doing the procedure at all or having it done by an expert physician.

71. Dr. Garvey did not explain to Plaintiff the reasonable risks of the intubation procedure including the risk of aspiration due to a full stomach and that said aspiration, should it occur, could lead to death.

72. Plaintiff would not have opted to have the intubation procedure had they been informed by Dr. Garvey of the less invasive alternative and of the substantial risks involved with intubation.

¹⁴ See Affidavit of Kenneth N. Scissors, M.D. attached hereto as "Exhibit 1"

73. As a result of Dr. Garvey's lack of informed consent, Mr. Schwartz experienced great pain, discomfort and ultimately suffered death.¹⁵

74. The actions of the Defendants have forced the Plaintiff to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

75. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment of life in an amount to be proven at trial.

76. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff suffered and will suffer lost wages, in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF

(Loss of Consortium)

Luther Eli Colburn's Claim Against All Defendants

77. Plaintiff restate and reallege each and every allegation contained in the preceding paragraphs herein, and incorporate the same herein by reference.

78. Plaintiff, Diane Schwartz, is and at all times relevant herein, has been the spouse of Plaintiff Douglas R. Schwartz.

79. As a direct and proximate result of Defendants' negligence and carelessness, has lost and will continue to lose a degree of society, comfort and companionship of his spouse, all to her damage in an amount in excess of Ten Thousand Dollars (\$10,000.00).

80. The actions of the Defendants have forced the Plaintiff to retain counsel to represent them in the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as attorney fees and costs of suit.

81. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff has suffered, and will continue to suffer, pain, suffering, and loss of enjoyment of life in an amount to be proven at trial.

¹⁵ Id.

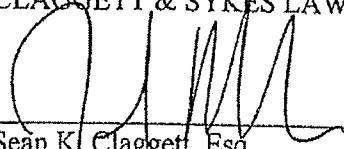
1 82. As a direct and proximate result of the negligence and carelessness of Defendants,
2 Plaintiff suffered and will suffer lost wages, in an amount to be proven at trial.

3 WHEREFORE, Plaintiff, DIANE SCHWARTZ, individually and as administrator of the
4 Estate of DOUGLAS R. SCHWARTZ, deceased, expressly reserves her right to amend this
5 Complaint at the time of trial, to include all items of damage not yet ascertained, demand judgment
6 against Defendants, DAVID GARVEY, M.D., an individual; BARRY BARTLETT, an individual;
7 CRUM, STEFANKO, & JONWA LTF dba RUBY CREST EMERGENCY MEDICINE; PHC-
8 ELKO, INC., dba NORTHEASTERN NEVADA REGIONAL HOSPITAL, a domestic corporation
9 duly authorized to conduct business in the State of Nevada; REACH AIR MEDICAL SERVICES,
10 L.L.C.; DOES I through X; ROE BUSINESS ENTITIES XI through XX, inclusive and each of the
11 defendants as follows:

- 12 1. For general damages, in an amount in excess of Ten Thousand Dollars (\$10,000.00),
13 to be set forth and proven at the time of trial;
- 14 2. For special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00),
15 to be set forth and proven at the time of trial;
- 16 3. For reasonable attorney's fees;
- 17 4. For costs and disbursements of this suit; and
- 18 5. For such other relief as to the Court seems just and proper.

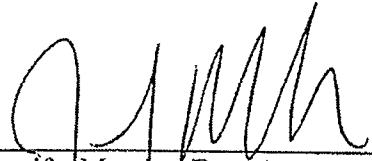
19 DATED this 21st day of August, 2017.

20 CLAGGETT & SYKES LAW FIRM

21 
22 Sean K. Claggett, Esq.
23 Nevada Bar No. 008407
24 Jennifer Morales, Esq.
25 Nevada Bar No. 008829
26 Matthew S. Granda, Esq.
27 Nevada Bar No. 012753
28 4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
Attorneys for Plaintiff

1 Pursuant to FJDCR 19.1.A. DIANE SCHWARTZ, Plaintiff in this matter, is not in debt or
2 bankruptcy.

3 Pursuant to NRS 239.030, counsel hereby affirms that this document contains no social
4 security numbers.

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7 Jennifer Morales, Esq., Attorney for Plaintiff
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Table of Exhibits

Exhibit "1"	Affidavit of Kenneth Scissors, M.D. -	5 pages
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Exhibit "1"

AFFIDAVIT OF KENNETH N. SCISSORS, M.D.

I, Kenneth N. Scissors, MD, being duly sworn, under oath, state that the following assertions are true to the best of my personal knowledge training, experience and belief;

- 1) I am licensed by the Colorado Board of Medical Examiners to practice medicine in the State of Colorado.
- 2) My licenses are current with the appropriate State and Federal agencies.
- 3) My additional qualifications to serve as an expert are set forth in my Curriculum Vitae, attached as Exhibit 1.
- 4) Based on my training, background, knowledge and experience, I am familiar with the applicable standard of care for the treatment of the signs, symptoms, and condition presented by Mr. Schwartz in the emergency department. I am familiar with the team approach involved in the emergency room to include but not limited to transport teams and nursing care. The areas covered in this report overlap and based on my experience and training I am familiar and qualified in the areas addressed in this report to provide opinions.
- 5) I am qualified on the basis of my training background, knowledge, experience to offer an expert opinion regarding the accepted standard of medical care of the emergency room physician and the nurse who attempted to intubate Douglas Schwartz, the breaches thereof and the resulting injuries and damages arising therefrom.

Documents Reviewed

- 1.) Northeaster Nevada Regional Hospital Medical Records
- 2.) Elko County Ambulance Medical Records
- 3.) Certificate of Death

- 4.) Autopsy Protocol
- 5.) NMS Lab Report
- 6.) Elko County Sheriff's Office Investigation Report
- 7.) Radiology Disc from Northeastern Nevada Regional Hospital

**Summary of Medical Care at Northern Nevada Regional Hospital Emergency
Department on June 22, 2016**

On June 22, 2016 Mr. Douglas Schwartz was struck as a pedestrian by a moving vehicle. Paramedics were called at 8:17 p.m. and arrived at the scene within a few minutes. Mr. Schwartz was placed in full C-spine precautions. During his transport to the hospital his vitals were within normal limits, 4L of O2 was started routinely, a monitor was placed showing normal sinus rhythm. Mr. Schwartz was given 4 mg Zofran IVP followed by 100 mcg Fentanyl IVP which helped with his pain. He was transported by Elko County Ambulance to Northern Nevada Regional Hospital on a "non-emergent" transport mode arriving at 8:48 p.m.

Dr. David Garvey performed a physical evaluation of Douglas Schwartz upon arrival to the emergency department. He noted that Douglas Schwartz sustained mild abrasions to the forehead, injury to the right lateral posterior chest with moderate pain, and abrasions of the right bicep, elbow, and knee. Mr. Schwartz had a normal heart rate and rhythm. Mr. Schwartz did not display signs of respiratory distress; his respirations were normal with clear breath sounds throughout. Mr. Schwartz's neurological status was normal. His abdominal evaluation was also within normal limits. Mr. Schwartz's condition was stable.

At approximately 9:02 p.m. several diagnostic studies were ordered to further evaluate Mr. Schwartz's injuries including CT scans of the head, cervical and thoracic spine, chest, abdomen and pelvis.

Dr. Garvey contacted Dr. Ray at University of Utah trauma service who accepted the patient for transfer. According to Dr. Garvey's chart note, Dr. Ray requested that a chest tube be placed and possibly intubation prior to air medical transport.

Dr. Garvey elected to have the flight nurse, Barry, perform the intubation after Rocuronium and Ketamine administration at 0018 hours. The vital signs were stable up until this point. The intubation was first attempted at 0020 unsuccessfully, followed quickly by deterioration of oxygenation and vital signs. Intubation was again unsuccessful at 0033 and a large aspiration of gastric contents was noted. After the aspiration, the vital signs and oxygenation indicated cardiopulmonary arrest and CPR was administered. CPR continued and several subsequent intubation attempts were unsuccessful. At 0120 Mr. Schwartz had asystole (complete lack of heart beat) and he was pronounced dead at 0133

Deviations from the Standard of Care.

Northern Nevada Regional Hospital and Ruby Crest Emergency Medicine through its owners, officers, employees, agents and/or contractors, deviated from the applicable standard of care, through the actions of its employee, agent or contractor, Dr. David Garvey who provided medical care and treatment to Mr. Schwartz in the emergency room on June 22, 2016.

Northern Nevada Regional Hospital and Ruby Crest Emergency Medicine are required to properly hire, train, supervise and/or retain employees, including Dr. David Garvey to provide treatment within the appropriate standard of care to patients such as Douglas Schwartz in the emergency room on June 22, 2016.

Dr. David Garvey breached the standard of care in several ways:

1. Deciding to intubate Mr. Schwartz without clinical indications for intubation. Preventive intubation for air flight is not the standard of care. Intubation has inherent risks, especially in a patient who likely has food in the stomach. Intubation is reserved for patients who are unable to breath adequately on their own, yet Mr. Schwartz was breathing without difficulty and had adequate oxygen levels on simple oxygen supplementation.
2. Even if there was a pressing but non-emergent need to intubate Mr. Schwartz with likely food in the stomach, the standard of care would be to request an anesthesiologist to perform the intubation due to the high

risk of aspiration. It is a deviation from the standard of care for an emergency room physician to assign a RN to perform a high risk semi-elective intubation in a patient with likely gastric contents when highly skilled physicians are available.

3. Since this was a non-emergent and non-essential invasive procedure in an awake, cognitive patient, informed consent was required. That means more than just telling the patient what is to be done. The patient must be told the pros and cons of the procedure and that there are acceptable options, including not doing the procedure at all or having it done by an expert physician. Dr. Garvey deviated from the standard of care by not giving Mr. Schwartz the opportunity to decline this risky and unnecessary procedure.
4. Once the initial intubation was unsuccessful, Dr. Garvey elected to continue with the same plan of having a RN attempt intubation rather than trying it himself or supporting the patient with a bag-mask technique and calling in an anesthesiologist as the standard of care would require. This led to a large aspiration of gastric contents and a fatal cardiopulmonary arrest.

Reach Air Medical Services through its owners, officers, employees, agents and/or contractors, deviated from the applicable standard of care, through the actions of its employee, agent or contractor, identified as "Barry RN" who provided medical care and treatment to Mr. Schwartz in the emergency room on June 22, 2016.

Reach Air Medical Services is required to properly hire, train, supervise and/or retain employees, including "Barry RN" to provide treatment within the appropriate standard of care to patients such as Douglas Schwartz in the emergency room on June 22, 2016.

Nurse Barry violated the standard of care in two instances:

1. Nurse Barry should not have agreed to attempt to intubate Mr. Schwartz given that he did not have clear indications for intubation and had a high risk of aspiration of gastric contents. In this situation, a RN should defer to a qualified physician, preferably an anesthesiologist.

2. Nurse Barry should not have attempted a second intubation after the failed first attempt. At that point Mr. Schwartz was struggling, but still supportable with a bag-mask technique. Nurse Barry should have deferred to a qualified physician at this point rather than repeating the same mistake he made initially. The second failed attempt caused a fatal aspiration.

All of the aforementioned breaches of the standard of care caused or contributed to the death of Mr. Schwartz.

All of my opinions expressed herein are to a reasonable degree of medical certainty.

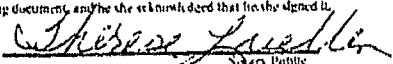
I reserve the right to amend, modify, and add to my opinions upon further review of any additional documents and/or information.

Further Affiant Sayeth Not.

Dated this 21 day of June, 2017



KENNETH N. SCISSORS, M.D.

State of Colorado
County of Mesa
On this 21 day of June, 2017, Kenneth Scissors, MD
personally appeared before me,
who is personally known to me,
☒ whose identity I verified on the basis of CO-DL,
whose identity I verified on the basis of affirmation of _____,
a credible witness,
to be the signer of the foregoing document, and he acknowledged that he signed it.

My Commission Expires: 4-5-2021

THERESE LUELLEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014010801
MY COMMISSION EXPIRES 04/05/2021