

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 09:10 a.m.
District Court No. : Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX OF EXHIBITS TO PETITION FOR
WRIT OF MANDAMUS – VOLUME 2 OF 13**

[VOLUME 1 (PAGES 1-54)]; [VOLUME 2 (PAGES 55-101)]; [VOLUME 3 (PAGES 102-143)];
[VOLUME 4 (PAGES 144-174)]; [VOLUME 5 (PAGES 175-412)]; [VOLUME 6 (PAGES 413-508)]; [VOLUME 7
(PAGES 509-568)]; [VOLUME 8 (PAGES 569-717)]; [VOLUME 9 (PAGES 718-798)]; [VOLUME 10 (PAGES 799-
866)]; [VOLUME 11 (PAGES 867-959)]; [VOLUME 12 (PAGES 960-1093)]; [VOLUME 13 (PAGES 1094-1246)]

LEWIS BRISBOIS BISGAARD & SMITH LLP
KEITH A. WEAVER
Nevada Bar No. 10271
ALISSA N. BESTICK
Nevada Bar No. 14979C
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Fax 702.893.3789
Attorneys for Petitioner

CHRONOLOGICAL INDEX

Number	Document	Filing Date	Volume	Page
1	Summons	06/22/2017	1	8
2	Plaintiff's Complaint	06/22/2017	1	10
3	Acceptance of Summons and Complaint	07/13/2017	1	32
4	Plaintiff's Amended Complaint	10/20/2017	1	33
5	Plaintiff's Second Amended Complaint (Medical Malpractice and Wrongful Death)	02/12/2018	2	62
6	Errata to Plaintiffs Complaint Amended Complaint and Second Amended Complaint	09/10/2018	2	84
7	Notice of Entry of Order Denying Plaintiff's Motion for Leave to Amend Complaint (erroneously titled order denying plaintiff's motion to dismiss)	10/28/2019	2	91
8	Defendant David Garvey, M.D.'s Motion for Partial Summary Judgment to Statutorily Limit Damages	07/27/2020	3 4 5	109 151 182
9	Defendant David Garvey MD;s Errata to Motion for Partial Summary Judgment	08/06/2020	6	420
10	Plaintiffs' Opposition to Defendant David Garvey M.D.'s Motion for Partial Summary Judgment to Statutorily Limit Damages, and All Joinders Thereto	08/18/2020	6 7 8	430 516 679
11	Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Shirley Blazich, Esq.	09/08/2020	9	725

Number	Document	Filing Date	Volume	Page
12	Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Seth Womack, M.D.	09/08/2020	9	757
13	Defendant David Garvey, M.D.'s Reply in Support of Motion For Partial Summary Judgment to Statutorily Limit Damages	09/08/2020	9	765
14	Plaintiffs' Opposition to: (1) Defendant David Garvey M.D.'s Motion To Strike The Declaration Of Shirley Blazich, Esq., And (2) Defendant David Garvey M.D.'s; (2) Motion To Strike The Declaration Of Seth Womack, M.D., and Any Joinders Thereto And Plaintiff's Countermotion (3) For Leave to Amend the Complaint	09/11/2020	10 11 12	806 874 1055
15	Defendant David Garvey, M.D.'s Response to Plaintiff's Improper Surreply To Partial Summary Judgment Motion and Request that the Court Disregard Plaintiff's Mislabeled and Untimely Motion For Reconsideration of this Court's October 16, 2019 Order Denying Leave to Amend With Prejudice	09/21/2020	13	1101
16	Defendant David Garvey, M.D.'s Errata to Motion for Partial Summary Judgment	04/19/2021	13	1117
17	Defendant David Garvey, M.D.'s Answer to Plaintiff's Second Amended Complaint	04/23/2021	13	1121
18	Order Granting Plaintiff's Motion for Leave to Amend Complaint	05/06/2021	13	1131

Number	Document	Filing Date	Volume	Page
19	<p>Order Denying:</p> <p>1. Defendant Phc-Elko, Inc. dba Northeastern Nevada Regional Hospital's Motion that All of Plaintiff's Claims Against Northeastern Nevada Regional Hospital Are Subject to the Requirements And Limitations of NRS 41.503 (The "Trauma" Statute) (Filed July 6,2020);</p> <p>2. Defendant David Garvey, M.D.'s Motion for Partial Summary Judgment to Statutorily Limit Damages (Filed July 27,2021);</p> <p>3. Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Seth Womack, M.D.; and</p> <p>4. Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Shirley Blazich,Esq.</p>	06/03/2021	13	1135
20	Order Denying Plaintiff's Countermotion for Leave to Amend Complaint	06/03/2021	13	1141
21	Third Amended Complaint (Medical Malpractice and Wrongful Death)	06/28/2021	13	1147
22	Defendant David Garvey, M.D.'s Answer To Third Amended Complaint	07/16/2021	13	1231

ALPHABETICAL INDEX

Number	Document	Filing Date	Volume	Page
3	Acceptance of Summons and Complaint	07/13/2017	1	32
9	Defendant David Garvey MD;s Errata to Motion for Partial Summary Judgment	08/06/2020	6	420
22	Defendant David Garvey, M.D.'s Answer To Third Amended Complaint	07/16/2021	13	1231
16	Defendant David Garvey, M.D.'s Errata to Motion for Partial Summary Judgment	04/19/2021	13	1117
8	Defendant David Garvey, M.D.'s Motion for Partial Summary Judgment to Statutorily Limit Damages	07/27/2020	3 4 5	109 151 182
11	Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Shirley Blazich, Esq.	09/08/2020	9	725
12	Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Seth Womack, M.D.	09/08/2020	9	757
13	Defendant David Garvey, M.D.'s Reply in Support of Motion For Partial Summary Judgment to Statutorily Limit Damages	09/08/2020	9	765
15	Defendant David Garvey, M.D.'s Response to Plaintiff's Improper Surreply To Partial Summary Judgment Motion and Request that the Court Disregard Plaintiff's Mislabeled and Untimely Motion For Reconsideration of this Court's October 16, 2019 Order Denying Leave to Amend With Prejudice	09/21/2020	13	1101

Number	Document	Filing Date	Volume	Page
17	Defendant David Garvey, M.D.'s Answer to Plaintiff's Second Amended Complaint	04/23/2021	13	1121
6	Errata to Plaintiffs Complaint Amended Complaint and Second Amended Complaint	09/10/2018	2	84
7	Notice of Entry of Order Denying Plaintiff's Motion for Leave to Amend Complaint (erroneously titled order denying plaintiff's motion to dismiss)	10/28/2019	2	91
20	Order Denying Plaintiff's Countermotion for Leave to Amend Complaint	06/03/2021	13	1141
19	<p>Order Denying:</p> <p>1. Defendant Phc-Elko, Inc. dba Northeastern Nevada Regional Hospital's Motion that All of Plaintiff's Claims Against Northeastern Nevada Regional Hospital Are Subject to the Requirements And Limitations of NRS 41.503 (The "Trauma" Statute) (Filed July 6,2020);</p> <p>2. Defendant David Garvey, M.D.'s Motion for Partial Summary Judgment to Statutorily Limit Damages (Filed July 27,2021);</p> <p>3. Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Seth Womack, M.D.; and</p> <p>4. Defendant David Garvey, M.D.'s Motion to Strike the Declaration of Shirley Blazich,Esq.</p>	06/03/2021	13	1135
18	Order Granting Plaintiff's Motion for Leave to Amend Complaint	05/06/2021	13	1131

Number	Document	Filing Date	Volume	Page
4	Plaintiff's Amended Complaint	10/20/2017	1	33
2	Plaintiff's Complaint	06/22/2017	1	10
5	Plaintiff's Second Amended Complaint (Medical Malpractice and Wrongful Death)	02/12/2018	2	62
14	Plaintiffs' Opposition to: (4) Defendant David Garvey M.D.'s Motion To Strike The Declaration Of Shirley Blazich, Esq., And (2) Defendant David Garvey M.D.'s; (5) Motion To Strike The Declaration Of Seth Womack, M.D., and Any Joinders Thereto And Plaintiff's Countermotion (6) For Leave to Amend the Complaint	09/11/2020	10 11 12	806 874 1055
10	Plaintiffs' Opposition to Defendant David Garvey M.D.'s Motion for Partial Summary Judgment to Statutorily Limit Damages, and All Joinders Thereto	08/18/2020	6 7 8	430 516 679
1	Summons	06/22/2017	1	8
21	Third Amended Complaint (Medical Malpractice and Wrongful Death)	06/28/2021	13	1147

Case No.: CV-C-17-439

Dept. No: 1

AFFIRMATION

Pursuant to NRS 239B.030

This document does not contain
any Social Security Numbers

FILED
2018 FEB 12 PM 3:37
ELKO DISTRICT COURT
CLERK _____ DEPUTY _____

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.

DAVID GARVEY, M.D., an individual;
BARRY BARTLETT, an individual (Formerly
Identified as BARRY RN); CRUM,
STEFANKO, & **JONES LTD**, 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.

SECOND AMENDED COMPLAINT
(Medical Malpractice)
and Wrongful Death)

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, & **JONES LTD**, 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, & **JONES LTD**, dba RUBY CREST EMERGENCY MEDICINE (hereinafter "Ruby
16 Crest" or "Defendant"), was and is a domestic corporation existing pursuant to the laws of Delaware,
17 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, INC.
19 dba NORTHEASTERN NEVADA REGIONAL HOSPITAL (hereinafter "NNRH" or "Defendant"),
20 was and is a domestic corporation existing pursuant to the laws of Nevada, authorized to do business
21 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 public

1 and to the Plaintiff herein; that Plaintiff herein is informed and believes and thereon alleges, that
2 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, nursing
4 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 otherwise,
10 of DOES I through X, inclusive, were and now are physicians, surgeons, registered nurses, licensed
11 vocational nurses, practical nurses, registered technicians, aides, attendants, physician's assistants,
12 CRNAs, or paramedical personnel holding themselves out as duly licensed to practice their
13 professions under and by virtue of the laws of the State of Nevada, and were and are now engaged in
14 the practice of their professions in the State of Nevada, and are unknown to Plaintiff who, therefore,
15 sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges,
16 that each of the Defendants designated herein as a DOE Barry R.N. and DOE is legally responsible in
17 some manner for the events and happenings herein referred to and proximately caused injury and
18 damages thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of the Court to amend
19 this Complaint to insert the true names and capacities of DOE BARRY R.N. or DOES I through X
20 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 fictitious
23 names. Defendants designated herein as ROE BUSINESS ENTITIES XI through XX, and each of
24 them, are corporations, firms, partnerships, associations, other medical entities, including but not
25 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 Defendants
2 at the time of the events and circumstances alleged herein; and/or are entities employed by and/or
3 otherwise directing the individual Defendants in the scope and course of their responsibilities at the
4 time of the events and circumstances alleged herein; and/or are entities otherwise contributing in any
5 way to the acts complained of and the damages alleged to have been suffered by the Plaintiff herein.
6 Plaintiff is informed and, on that basis believes and thereon alleges, that each of the Defendants
7 designated as a ROE BUSINESS ENTITY is in some manner negligently, vicariously, and/or
8 statutorily responsible for the events and happenings referred to and caused damages to Plaintiff as
9 herein alleged. Plaintiff will seek leave of the Court to amend this Complaint to insert the true names
10 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 acting
13 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 repeats and realleges 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 hospital,
24 his vitals were within normal limits, 4L of oxygen was started routinely, a heart monitor was placed
25 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 knee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **FIRST CLAIM FOR RELIEF**
4 **(PROFESSIONAL NEGLIGENCE/WRONGFUL DEATH)**
5 **DR. DAVID GARVEY, BARRY BARTLETT,**
6 **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 perform
17 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
24

25
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 in
7 his medical field.⁶

8 32. Defendant BARRY BARTLETT, 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 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
23 have adequate training in the care and treatment of patients consistent with the degree of skill and
24

25 ⁵ Id.

26 ⁶ Id.

27 ⁷ Id.

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

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

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

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

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

25
26
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 of
2 Defendants, Plaintiff has incurred damages, both general and special, including medical expenses as
3 a result of the necessary treatment of her injuries, and will continue to incur damages for future medical
4 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 care
7 providers to examine, treat, and care for her and did incur medical and incidental expenses thereby.
8 The exact amount of such expenses is unknown at this present time, but Plaintiff alleges that she has
9 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 of
18 patients consistent with the degree of skill and learning possessed by competent medical personnel
19 practicing in the United States of America under the same or similar circumstances caused Plaintiff to
20 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.

24 ///

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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)

DIANE SCHWARTZ'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.*

82. 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.

WHEREFORE, Plaintiff, DIANE SCHWARTZ, individually and as administrator of the Estate of DOUGLAS R. SCHWARTZ, deceased, expressly reserves her right to amend this Complaint at the time of trial, to include all items of damage not yet ascertained, demand judgment against Defendants, DAVID GARVEY, M.D., an individual; BARRY BARTLETT, an individual; CRUM, STEFANKO, & **JONES LTD** 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 and each of the defendants as follows:

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

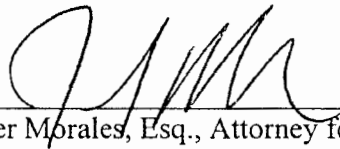
DATED this 12th day of February, 2018.

CLAGGETT & SYKES LAW FIRM

Sean K. Claggett, Esq.
Nevada Bar No. 008407
Jennifer Morales, Esq.
Nevada Bar No. 008829
Matthew S. Granda, Esq.
Nevada Bar No. 012753
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.

5 
6 _____
7 Jennifer Morales, Esq., Attorney for Plaintiff
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Exhibits

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

Exhibit “1”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,
☐ 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

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

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.

DAVID GARVEY, M.D., an individual;
BARRY BARTLETT, an individual (Formerly
Identified as BARRY RN); CRUM,
STEFANKO, & JONES LTD, 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.

**ERRATA TO PLAINTIFF'S
COMPLAINT, AMENDED COMPLAINT
AND SECOND AMENDED COMPLAINT**

COMES NOW, Plaintiff DIANE SCHWARTZ, individual and as Special Administrator of the
Estate of DOUGLAS R. SCHWARTZ, deceased by and through her counsel of record, CLAGGETT
& SYKES LAW FIRM, and submits her Errata to Plaintiff's Complaint, Amended Complaint and
Second Amended Complaint.

///

///

///

1 Plaintiff erroneously omitted Kenneth N. Scissors, M.D.'s Curriculum Vitae to his affidavit
2 attached to Plaintiff's Complaint, Amended Complaint and Second Amended Complaint.

3 Dr. Scissor's Curriculum Vitae is attached hereto **Exhibit "1"**.

4 DATED this 10th day of September, 2018.

5 CLAGGETT & SYKES LAW FIRM

6 /s/ Jennifer Morales, Esq.

7
8 Sean K. Claggett, Esq.
9 Nevada Bar No. 008407
10 Jennifer Morales, Esq.
11 Nevada Bar No. 008829
12 Shannon L. Diaz, Esq.
13 Nevada Bar No. 014509
14 4101 Meadows Lane, Suite 100
15 Las Vegas, Nevada 89107
16 (702) 655-2346 – Telephone
17 *Attorneys for Plaintiff*
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of September, 2018, I caused to be served a true and correct copy of the foregoing **ERRATA TO PLAINTIFF'S COMPLAINT, AMENDED COMPLAINT AND SECOND AMENDED COMPLAINT** on the following person(s) by the following methods pursuant to NRCP 5(b) and NEFCR 9:

<i>VIA US MAIL</i> Casey W. Tyler, Esq. James W. Fox, Esq. HALL PRANGE & SCHOOVELD, LLC 1160 N. Town Center Drive, Suite 200 Las Vegas, NV 89144 <i>Attorneys for Defendant, PHC-Elko, Inc. dba Northeastern Nevada Regional Hospital</i>	<i>VIA US MAIL</i> Keith A. Weaver, Esq. Bianca Gonzalez, Esq. LEWIS BRISBOIS BISGAARD & SMITH, LLP 6385 S. Rainbow Blvd., Suite 600 Las Vegas, NV 89118 <i>Attorneys for Defendant, David Garvey, M.D.</i>
<i>VIA US MAIL</i> Todd L. Moody, Esq. L. Kristopher Rath, Esq. HUTCHISON & STEFFEN, PLLC. 10080 West Alta Drive, Suite 200 Las Vegas, NV 89145 James T. Burton, Esq. KIRTON MCCONKIE 36 S. State Street, Suite 1900 Salt Lake City, UT 84111 <i>Attorneys for Defendant, Reach Air Medical Services, LLC and for its individually named employees</i>	<i>VIA US MAIL</i> Robert C. McBride, Esq. Chelsea R. Hueth, Esq. CARROLL KELLY TROTTER FRANZEN MCBRIDE & PEABODY 8329 W. Sunset Road, Suite 260 Las Vegas, NV 89113 <i>Attorneys for Defendant, Crum, Stefanko, & Jones, LTD dba Ruby Crest Emergency Medicine</i>

/s/ Moises Garcia

An Employee of CLAGGETT & SYKES LAW FIRM

EXHIBIT 1

KENNETH SCISSORS MD

CURRICULUM VITAE

May 24, 2017

PERSONAL INFORMATION

Kenneth Scissors M.D.
2534 Park Mesa Ct.
Grand Junction, Co. 81507

scissorsgj@gmail.com
(970) 314-0005

D.O.B. 12/31/53

PREMEDICAL EDUCATION

Tulane University, New Orleans, La., 1971-73
Washington University, St. Louis, Mo. 1973-75
Major: Biology
Research Experience: Molecular Virology, Dr. Maurice Green, St. Louis University
Degree: Bachelor of Arts, 1975

MEDICAL EDUCATION

Washington University, St. Louis, Mo. 1975-79
Degree: Doctor of Medicine, 1979.

POSTGRADUATE TRAINING

Greenville Hospital System, Greenville, S.C., 1979-80
Completed Flexible Internship

Emanuel Hospital, Portland, Or. 1985-87
Completed Residency in Internal Medicine

PROFESSIONAL EXPERIENCE

Current:

St. Mary's Hospital, Grand Junction, Co. part-time hospitalist, emergency room consultant.

Prior:

Veteran's Administration Hospital Grand Junction, Co.

Acute Care Internal Medicine: Hospitalist, Emergency Room 2004-2014

Chronic Care: Outpatient Primary Care staff physician 2004-2009

Community Hospital Emergency Department, Grand Junction, Co., Staff Physician.

Aug 1998-June 2005

Emanuel Hospital, Portland, Or.

Internal Medicine Teaching Faculty, Medical Director of Hospital-based Internal Medicine private practice.

1989-98

Northern Inyo Hospital, Bishop, Ca.

Private practice, Internal Medicine

1987-89

Health Stop, Boston, Ma.

Emergency Department and Urgent Care center staff physician

1984-85

Ashton Memorial Hospital, Ashton, Id.

General and Emergency Practice

1980-84

CERTIFICATIONS

1. National Board of Medical Examiners, Parts I, II, III.
2. American Board of Internal Medicine
3. Advanced Cardiac Life Support--current
4. Advanced Trauma Life Support—expired.
5. Advanced Pediatric Life Support—expired

LICENSURE

Active: Colorado

Inactive: Oregon, California, Idaho, Massachusetts, Washington, Montana.

CAREER APPOINTMENTS AND POSITIONS

- Clinical Director Medical Intensive Care Unit, VAMC Grand Junction, Co.
- Chairman Critical Care Committee, VAMC, Grand Junction, Co.
- Pharmacy Committee member, VAMC Grand Junction, Co.
- Co-Director and Clinical Ethicist, Emanuel Hospital Bioethics Program
- Assistant Program Director, Emanuel Hospital Internal Medicine Residency
- Clinical Assistant Professor, Oregon Health Sciences University
- Hospitalist, Legacy Health Systems
- Medical Director, Emmanuel Internal Medicine Associates
- Co-Director Bioethics Committee, Community Hospital
- Employee Health Director VAMC, Grand Junction, Co.
- Emergency Room Director VAMC Grand Junction, Co.
- Director Lipid Clinic, VAMC Grand Junction, Co.
- Director Journal Club, VAMC Grand Junction, Co.

MEMBERSHIPS

- Society of Hospital Medicine

SANCTIONS, DISCIPLINARY ACTIONS, LAW SUITS

- None

MEDICAL MALPRACTICE EXPERT TESTIMONY AND CONSULTATIONS

Total consultations ~300

Depositions: 53

Trials: 9

FILED

2019 OCT 28 AM 11:50

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY B

1 KEITH A. WEAVER
Nevada Bar No. 10271
2 E-Mail: Keith.Weaver@lewisbrisbois.com
DANIELLE WOODRUM
3 Nevada Bar No. 12902
E-Mail: Danielle.Woodrum@lewisbrisbois.com
4 ALISSA N. BESTICK
Nevada Bar No. 14979C
5 E-Mail: Alissa.Bestick@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendant David Garvey, M.D.*

9
10 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF ELKO

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

14 Plaintiff,

15 vs.

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

23 Defendants.
24

CASE NO. CV-C-17-439
Dept. No.: 1

NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION FOR
LEAVE TO AMEND COMPLAINT
(ERRONEOUSLY TITLED ORDER
DENYING PLAINTIFF'S MOTION TO
DISMISS)

25
26 ///

27 ///

28 ///

1 PLEASE TAKE NOTICE that the Order Denying Plaintiff's Motion for Leave to
2 Amend Complaint (Erroneously Titled Order Denying Plaintiff's Motion to Dismiss) was
3 entered on October 16, 2019, a true and correct copy of which is attached hereto.

4 AFFIRMATION

5 PURSUANT TO NRS 239B.030

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

8 DATED this 21st day of October, 2019

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10
11
12 By

Keith A. Weaver

KEITH A. WEAVER

Nevada Bar No. 10271

DANIELLE WOODRUM

Nevada Bar No. 12902

ALISSA N. BESTICK

Nevada Bar No. 14979C

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Attorneys for Defendant David Garvey, M.D.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

I also hereby certify that on this the 2nd day of October, 2019, a true and correct copy of **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT (ERRONEOUSLY TITLED ORDER DENYING PLAINTIFF'S MOTION TO DISMISS)** was sent via electronic mail to the following:

[illegible]

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sean Claggett, Esq.
Jennifer Morales, Esq.
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
Tel: 702.655.2346
Fax: 702.655.3763
Email: sclaggett@claggettlaw.com
Email: jmorales@claggettlaw.com
Attorneys for Plaintiff

James T. Burton, Esq.
Matthew Ballard, Esq.
KIRTON MCCONKIE
36 S. State Street, Suite 1900
Salt Lake City UT 84111
Tel: 801.328.3600
Fax: 801.321.4893
Email: jbarton@kmclaw.com
Attorneys for Defendant, Reach Air Medical Services, LLC and for its individually named employees

Robert McBride, Esq.
Chelsea R. Hueth, Esq.
Gerald L. Tan, Esq.
CARROLL, KELLY, TROTTER, FANZEN,
McKENNA & PEABODY
8329 W. Sunset Rd., Suite 260
Las Vegas, NV 89113
Tel: 702.792.5855
Fax: 702.796.5855
Email: crhueth@cktfmlaw.com
Attorneys for Defendant Ruby Crest

Casey W. Tyler, Esq.
Tyson J. Dobbs Esq.
HALL PRANGLE & SCHOOVELD, LLC
1140 N. Town Center Drive, Suite 350
Las Vegas, NV 89144
Tel: 702.889.6400
Fax: 702.384.6025
Attorneys for Defendant, PHC-Elko, Inc. d/b/a Northeastern Nevada Regional Hospital

Todd L. Moody, Esq.
L. Kristopher Rath, Esq.
HUTCHISON & STEFFEN
Peccole Professional Park
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Tel: 702-385-2500
Fax: 702.385.2086
Email: tmoody@hutchlegal.com
Email: krath@hutchlegal.com
Attorneys for Defendant, Reach Air Medical Services, LLC and for its individually named employees

By



An Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP

1 CASE NO. CV-C-17-439

2 DEPT. NO. 1

FILED

2019 OCT 16 P 2:22

ELKO COUNTY CLERK
CLERK _____



3
4
5
6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

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

**ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS**

11 Plaintiff,

12 V. _____

13 DAVID GARVEY, M.D., an individual;
14 TEAM HEALTH HOLDINGS, INC., dba
15 RUBY CREST EMERGENCY MEDICINE,
16 PHC-ELKO, INC., dba NORTHEASTERN
17 NEVADA REGIONAL HOSPITAL, a
18 domestic corporation duly authorized to
19 conduct business in the State of Nevada;
20 REACH MEDICAL SERVICES, L.L.C.,
21 DOES 1 through X; ROE BUSINESS
22 ENTITIES XI through XX, inclusive,

23 Defendants.
24 _____ /
25
26

20 This matter came before the Court on Plaintiff's Motion to Amend Complaint filed
21 September 4, 2018. The proposed Third Amended Complaint is attached to the motion. On
22 September 20, 2018, Defendant Garvey filed Defendant David Garvey M.D.'s Opposition to
23 Plaintiff's Motion for Leave to Amend Complaint. On September 24, 2018, Defendant PHC filed
24 Defendant PHC-ELKO, Inc. dba Northeastern Nevada Regional Hospital's Opposition to
25 Plaintiff's Motion for Leave to Amend Complaint and Defendant PHC-ELKO, Inc. dba
26 Northeastern Nevada Regional Hospital's Joinder to Defendant David Garvey, M.D.'s

1 Opposition to Plaintiff's Motion for Leave to Amend Complaint. On that same date, Defendant
2 REACH Air filed REACH Air Medical Services, LLC's Memorandum in Opposition to
3 Plaintiff's Motion for Leave to Amend Complaint. On September 28, 2018, Defendants Crum,
4 Stefanko, & Jones Ltd filed Defendant, Crum, Stefanko, & Jones Ltd, d/b/a Ruby Crest
5 Emergency Medicine's Joinder to Defendant PHC-ELKO, Inc. dba Northeastern Nevada
6 Regional Hospital's Opposition to Plaintiff's Motion for Leave to Amend Complaint. On
7 October 1, 2018, Defendant Garvey filed Defendant David Garvey, M.D.'s Joinder to Defendant
8 REACH Air Medical Services, LLC's Memorandum in Opposition to Plaintiff's Motion for
9 Leave to Amend Complaint. On October 2, 2018, Plaintiff filed Plaintiff's Reply to David
10 Garvey, M.D.'s Opposition to Plaintiff's Motion for Leave to Amend Complaint; Plaintiff's
11 Reply to Defendant PHC-ELKO Inc.. dba Northeastern Nevada Regional Hospital's Opposition
12 to Plaintiff's Motion for Leave to Amend Complaint; and, Plaintiff's Reply to REACH Air
13 Medical Services, LLC's Opposition to Plaintiff's Motion for Leave to Amend Complaint.

14 On October 4, 2018, Plaintiff filed a Request for Review. On October 5, 2018, Defendant
15 PHC filed a Request for Submission of Defendant PHC-ELKO, Inc. dba Northeastern Nevada
16 Regional Hospital's Joinder to Defendant David Garvey, M.D.'s Opposition to Plaintiff's Motion
17 for Leave to Amend Complaint.

18 A hearing on this matter was held on June 5, 2019. None of the parties was present.
19 Plaintiff was represented by Jennifer Morales, Esq. Defendant Garvey was represented by Alissa
20 Bestick, Esq. Defendant PHC was represented by Zachary Thompson, Esq. Defendant REACH
21 Air was represented by Austin Westergard, Esq. Defendants Crum, et.al. were represented by
22 Gerald Tan, Esq. The Court, having considered the documents filed by the parties and the oral
23 arguments, finds and orders as follows.

24 //

25 //

26 //

1 Plaintiff seeks leave of the Court to file her Third Amended Complaint. All Defendants
2 have opposed the amendment for several reasons. In Adamson v. Bowker, 85 Nev. 115, 121, 450
3 P.2d 796, ___ (1969), the Nevada Supreme Court quoted with approval Foman v. Davis, 371
4 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d, 222, 226 (1962), wherein it was stated:

5 If the underlying facts or circumstances relied upon by a plaintiff
6 may be a proper subject of relief, he ought to be afforded an
7 opportunity to test his claim on the merits. In the absence of any
8 apparent or declared reason—such as undue delay, bad faith or
9 dilatory motive on the part of the movant, repeated failure to cure
deficiencies by amendment previously allowed, undue prejudice to
the opposing party by virtue of allowance of the amendment,
futility of amendment, etc.—the leave sought should, as the rules
require, be “freely given.”

10 In the case at hand, the Complaint was filed June 22, 2017. The original Complaint
11 included a claim for punitive damages in the Fifth Claim for Relief (Loss of Consortium). On
12 July 20, 2017, Defendant PHC filed its Motion for Partial Dismissal of Plaintiff's Complaint.
13 PHC sought dismissal of the first claim for relief and the punitive damages portion of the Fifth
14 Claim for Relief. On August 3, 2017, Defendant Garvey filed a Motion to Dismiss Plaintiff's
15 prayer for punitive damages. On August 28, 2017, Defendant REACH Air filed its Answer to
16 Complaint as well as its Joinder in David Garvey, M.D.'s Motion to Dismiss Plaintiff's Request
17 for Punitive Damages. On September 1, 2017, Defendant Garvey filed his Request for
18 Submission of his Motion to Dismiss.

19 According to Defendant REACH Air, in its opposition to the motion to amend, on
20 October 17, 2017, Plaintiff amended her complaint, omitting any claim for punitive damages.
21 The court docket does not show an Amended Complaint filed on October 17, 2017. An
22 Amended Complaint is loose in the court file with a notation, written in red ink, “REC'D
23 10/20/17.” It does not have a certificate of service attached. The Amended Complaint was
24 actually filed on February 5, 2018, but it, also, does not include a certificate of service, so the
25 Court cannot tell when, or if, it was served on the parties. The Amended Complaint does not
26 contain any claim for punitive damages and does not request punitive damages in the prayer.

1 Moreover, at page 13 of the Amended Complaint, under the Fifth Claim for Relief, the heading
2 states, "Plaintiff Eli Colburn's Claim Against All Defendants." Eli Colburn is not a party to this
3 action.

4 In any event, on October 12, 2017, Defendant PHC-ELKO, Inc. dba Northeastern Nevada
5 Regional Hospital's Answer to Amended Complaint was filed. On November 13, 2017, REACH
6 Air filed its Answer to Amended Complaint. On February 2, 2018, a Stipulation and Order to
7 Amend the Amended Complaint was filed. On February 12, 2018, Plaintiff filed her Second
8 Amended Complaint. It does not include a claim or prayer for punitive damages or a certificate of
9 service. However, on April 23, 2018, Defendant David Garvey M.D.'s Answer to Plaintiff's
10 Second Amended Complaint was filed. On May 25, 2018, an Order Setting Hearing on Pending
11 Motions was filed. A hearing was scheduled for one-half day on September 6, 2018, on
12 Defendant PHC's motion for partial dismissal; Defendant Garvey's motion to dismiss the request
13 for punitive damages; and Defendant REACH Air's motion to dismiss the request for punitive
14 damages. On June 21, 2018, Defendant, Crum, Stefanko, & Jones Ltd dba Ruby Crest
15 Emergency Medicine's Answer to Plaintiff's Second Amended Complaint was filed.

16 On June 28, 2018, the Joint Case Conference Report was filed. All parties participated
17 except Defendants Crum, et.al. The report was signed by the attorneys for the participating
18 parties. The only mention of punitive damages is included in a recitation of Defendant REACH
19 Air's Affirmative Defenses Twenty-Ninth through Thirty-Sixth.

20 The hearing on the various motions to dismiss went forward on September 6, 2018, with
21 counsel appearing for all parties except Defendants Crum, et.al. At that hearing, counsel
22 informed the Court that they would not be arguing the motions to dismiss the punitive damages
23 request because punitive damages had been omitted from the Amended Complaint and Second
24 Amended Complaint. Additionally, Plaintiff had filed her Motion to Amend Complaint two days
25 before the hearing. Plaintiff's counsel told the Court that punitive damages had been
26 unintentionally omitted by her office from the Amended Complaint and Second Amended

1 Complaint.

2 On September 10, 2018, Plaintiff filed her Errata to Plaintiff's Complaint, Amended
3 Complaint and Second Amended Complaint. Exhibit 1 to the Errata is the *curriculum vitae* of
4 Kenneth Scissors, M.D., the doctor who had authored the affidavit attached to the three
5 complaints. At the September 6 hearing, the Court had informed Plaintiff's counsel that, although
6 Dr. Scissors had referenced the *curriculum vitae* as an exhibit to his affidavit, it was not in fact
7 attached. The Court, therefore, was unable to discern, on the basis of the affidavit, whether
8 Dr. Scissors practiced in a field "substantially similar" to that involved in this case.

9 Concerning the motion presently before the Court, Plaintiff's proposed Third Amended
10 Complaint contains the punitive damages request in the Fifth Claim for Relief that was in the
11 original Complaint but omitted from the next two complaints. It also contains, for the first time,
12 punitive damages allegations in the first four claims for relief.

13 In Defendant Garvey's opposition to the motion to amend, his counsel asserts that he sent
14 an email to Plaintiff's counsel on April 10, 2018, five months before Plaintiff filed her Motion to
15 Amend Complaint, stating that Defendant Garvey would be filing an answer to Plaintiff's
16 Amended Complaint, given that the Amended Complaint no longer sought punitive damages. An
17 email is attached to the opposition supporting this allegation. Plaintiff's counsel did not dispute
18 this. In its opposition, PHC-ELKO states that Plaintiff delayed seeking leave to amend for seven
19 months. At the September 6 hearing, Plaintiff's counsel had no explanation for the delay. She
20 blamed her paralegal for removing the punitive damages language. The delay is too great,
21 whether it was five months or seven months. Additionally, Plaintiff filed two amended
22 complaints, both times omitting any allegations or prayer for punitive damages. In the meantime,
23 several defendants filed answers, triggering the early case conference which occurred on May 9,
24 2018, and was attended by counsel for all parties except Defendants Crum et.al. The Joint Case
25 Conference Report was filed on June 28, 2018, signed by counsel for all parties except
26 Defendants Crum, et.al. Discovery then began. At the September 6, 2018, hearing, the three

1 appearing defendants did not argue their motions to dismiss because Plaintiff had filed her
2 Motion to Amend Complaint two days before the hearing.

3 Although several defendants have alleged that they have been prejudiced by the delay, it
4 is not necessary that this Court find any prejudice. The existence of prejudice is but one example
5 cited by the Foman and Adamson courts of reasons for which a trial court may deny a motion to
6 amend. Two of the other examples in those cases are "undue delay," and "repeated failure to cure
7 deficiencies by amendment previously allowed" Id. Plaintiff delayed seeking leave to
8 amend, after which she was or should have been aware of the problem, for at least five months,
9 and for possibly as many as seven months. Plaintiff amended two times after her original
10 complaint, both times excluding the issue of punitive damages. The amendment now sought by
11 Plaintiff not only includes punitive damages as sought in the original complaint, it now adds the
12 issue of punitive damages, where none existed before, to four claims for relief. Finally, the
13 proposed Third Amended Complaint does not even contain a prayer for punitive damages. This is
14 simply too much. The allegations made by Plaintiff are of the utmost seriousness. She alleges
15 that the actions of these defendants led to the death of her husband. Surely, Plaintiff's counsel
16 could have paid more attention to this case than she apparently has.

17 Plaintiff asks that any denial of her Motion to Amend be without prejudice so that she can
18 seek to amend at a later date. A denial without prejudice will not cure the problems caused by
19 Plaintiff's undue delay and previous failures to correct the deficiencies.

20 Therefore, IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint is
21 **DENIED** with prejudice.

22 SO ORDERED this 15 day of October, 2019.

23
24 
25 NANCY PORTER
26 DISTRICT JUDGE - DEPARTMENT 1

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 16th day of October, 2019, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a true file-stamped copy of the foregoing **ORDER DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT** addressed to:

Sean K. Claggett, Esq.
Jennifer Morales, Esq.
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107

Casey W. Tyler, Esq.
James W. Fox, Esq.
HALL PRANGLE & SCHOOVELD, LLC
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Keith A. Weaver, Esq.
Michael J. Lin, Esq.
Danielle Woodrum, Esq.
Bianca V. Gonzalez, Esq.
LEWIS BRISBOIS BISGAARD & SMITH, LLP
6385 S. Rainbow Blvd. Suite 600
Las Vegas, NV 89118

James T. Burton, Esq.
Matthew Clark Ballard, Esq.
Austin Westerberg, Esq.
KIRTON McCONKIE
36 S. State Street, Suite 1900
Salt Lake City, UT 84111

Todd L. Moody, Esq.
L. Kristopher Rath, Esq.
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Chelsea R. Hueth, Esq.
Robert C. McBride, Esq.
8329 W. Sunset Rd., Suite 260
Las Vegas, NV 89113