IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLAN J. STAHL, M.D. AND ALLAN J. STAHL, M.D., P.C.

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JOE HARDY, JR, DISTRICT JUDGE,

Respondents,

and

KRISTINA DANICA SCHRAGE, INDIVIDUALLY AND AS SPOUSE AND NATURAL HEIR OF JOSEPH PATRICK SCHRAGE, JR., AND OFBEHALF OF THE ESTATE OF JOSEPH PATRICK SCHRAGE, JR.; JOSEPH PATRICK SCHRAGE, III, AND MILA DANICA SCHRAGE, MINORS, EACH INDIVIDUALLY AND AS CHILDREN AND NATURAL HEIRS OF JOSEPH PATRICK SCHRAGE, JR., BY AND THROUGH THEIR NATURAL PARENT AND GUARDIAN, KRISTINA DANICA SCHRAGE;

Real Parties in Interest.

District Court No.:
A-17-762364-C

RELIEF REQUESTED BY JUNE 13, 2022, AS TRIAL STARTED JUNE 6, 2022

EMERGENCY PETITION FOR WRIT OF MANDAMUS

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ROUTING STATEMENT

This Petition raises as a principal issue a question of statewide public importance in compliance with NRAP 17(a)(14). As such, jurisdiction over this matter is retained by the Nevada Supreme Court. This matter does not fall within any of the categories presumptively assigned to the Court of Appeals pursuant to Nevada Rule of Appellate Procedure 17(b).

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are personas and parties as described in NRAP 26.1(a) and must be disclosed. These representations are made so that the justices of this Court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: none.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court) or are expected to appear in this Court: McBride Hall; Clark Newberry Law Firm; Mandelbaum, Ellerton & Associates; and Schuering, Zimmerman & Doyle, LLP.

3. If litigant is using a pseudonym, the litigant's true name: not applicable.

DATED this 7th day of June, 2022.

McBRIDEHALL

By: /s/ *T. Charlotte Buys*
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DECLARATION IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

I, T. Charlotte Buys, Esq., depose and state the following:

1. I am licensed to practice law in this court and I am an attorney with the law firm of McBRIDE HALL, attorneys for Petitioners, Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C., and provide this Declaration in support of their PETITION FOR WRIT OF MANDAMUS pursuant to Nev. R. App. P. 21(a)(5).

2. I certify that I have read this Petition, and to the best of my knowledge, information and belief, this Petition complies with the form requirements of Rule 21(d), and that it is not frivolous or interposed for any improper purpose such as to harass, cause unnecessary delay or needless increase in the cost of litigation.

3. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure; including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with requirements of the Nevada Rules of Appellate Procedure.

4. All documents contained in Petitioners' Appendix, filed herewith, are true and correct copies of the pleadings and documents they are represented to be

in the Petitioners' Appendix and as cited herein.

5. This Petition also complies with the requirements of NRAP 21(d) and 32(c)(2).

FURTHER YOUR DECLARANT SAYETH NAUGHT.

DATED this 7th day of June, 2022.

/s/ T. Charlotte Buys

_____

T. Charlotte Buys, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

Petitioners, Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C. are represented by Robert C. McBride, Esq. and T. Charlotte Buys, Esq. of the law firm of McBride Hall. Real Parties in Interest in this case are Kristina Danica Schrage, Individually and as spouse and natural heir of Joseph Patrick Schrage, Jr., and on behalf of the Estate of Joseph Patrick Schrage, III and Mila Danica Schrage, minors, each individually and as children and natural heirs of Joseph Patrick Schrage, Jr., by and through their natural parent and guardian, Kristina Danica Schrage. Real Parties in Interest are represented by Gerald I. Gillock, Esq. of the law firm Gerald I. Gillock & Associates and Timothy O'Reilly, Esq. of the law firm of Timothy O'Reilly, CHTD.

Petitioners, Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C., hereby petition this Court to issue a writ of mandamus pursuant to Nevada Rule of Appellate Procedure 21, and based on this Court's original jurisdiction set forth in Article 6 §4 of the Nevada Constitution, and NRS §34.160 and §34.320.

Petitioners respectfully petition this Court for a Writ of Mandamus directing Respondent to reverse his ruling denying Dr. Stahl and Allan J. Stahl, M.D., P.C.'s Motion to Exclude Any Evidence or Argument in Furtherance of Plaintiffs' Ordinary/ "Corporate" Negligence Claim and to Cap Hedonic Damages Pursuant

to NRS 41A.035[1] and Motion for Leave and Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages.[2] Because the uncontroverted facts alleged in the Complaint demonstrate that Plaintiffs' allegation of "Negligent Hiring, Training, and Supervision" is inherently linked to Plaintiffs' professional negligence claim and alleged medical injury of Plaintiffs' Decedent, such claim must be subject to the requirements and limitations of NRS Chapter 41A.

Moreover, the uncontroverted facts of this case show that Plaintiffs' Prayer for Punitive Damages rests solely upon their allegation that Plaintiffs' Decedent should have been referred to an additional interventional cardiologist and/or undergone additional testing but was not allegedly referred due to Plaintiffs' contention that Petitioners failed to appropriately interpret the results of a cardiac stress test as indicative of further treatment.

As a result, Petitioners are forced to continue defending these claims which cannot be maintained as a matter of law.

I. ISSUES PRESENTED

a. Whether the training of a medical assistant providing medical care in a medical office by running a medical machine is professional negligence.

[1] *See* PET APPX 030 – 69.

b. Whether the District Court must make a decision on the issue of applying law and determining whether a cause of action is for ordinary negligence or professional negligence prior to trial.

c. Whether the District Court should make a determination as to whether there has been an issue of material fact to justify punitive damages prior to the conclusion of Plaintiffs' case in chief.

II. INTRODUCTION

This Court's immediate action is necessary to prevent further prejudice as a result of the district court's failure to exercise its duty and decide an issue of law. Petitioners Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C., by and through their counsel of record, Robert C. McBride, Esq. and T. Charlotte Buys, Esq. of the law firm of McBride Hall, respectfully petition this Court for a Writ of Mandamus directing Respondent to enter an order dismissing Plaintiffs' Claims for "ordinary" and/or "corporate" negligence consistent with this Courts' recent decisions in the *Estate of Mary Curtis, et al., v. Life Care Center of So. Las Vegas, et. al*., 136 Nev. Adv. Op. 39, 466 P.3d 1263 (Nev. 2020); *Zhang, M.D. v. Barnes*, 832 P.3d 878 (Nev. 2016) (unpublished) (holding affirmed in the *Estate of Mary Curtis*, supra.); *Schwarts v. Univ. Med. Ctr. of S. Nevada*, 460 P.3d 25, No. 77554, No. 77666, 2020 WL 1531401 (Nev. 2020); and *Turner v. Renown Reg'l Med. Ctr*., 461 P.3d

[2] *See* PET APPX 070 – 79.

163 No. 77312, No. 77841, 2020 WL 1972790 (Nev. 2020).

Petitioners further respectfully request relief in the form of an Order granting Defendant's Motion for Partial Summary Judgment striking Plaintiffs' prayer for punitive damages as Defendant's alleged conduct does not exceed mere recklessness or even gross negligence to merit punitive damages.[3] *See Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (Nev. 2008). The only allegation made to support Real Parties in Interest's prayer for punitive damages is a claim for professional negligence, which does not show proof of a culpable state of mind to warrant punitive damages. Moreover, this issue must be resolved as a matter of law prior to trial because of the highly prejudicial danger that argument conflating allegations of professional negligence to automatic requests for punitive damages would be confusing to the jury and, respectfully, misapplication of clear Nevada case law. *Id*.; *see also Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (Nev. 2006).

III. FACTUAL AND PROCEDURAL HISTORY

On March 19, 2020, Plaintiffs, The Estate of Joseph Patrick Schrage, Jr., and its heirs filed their "Fourth Amended Complaint For Medical Malpractice and Wrongful Death" against Allan J. Stahl, M.D. and Allan J. Stahl, M.D., PC. The Complaint asserts claims for 1) Medical Malpractice / Professional Negligence /

[3] PET APPX 244 – 250.

Wrongful Death; 2) Vicarious Liability; 3) Negligent Infliction of Emotional Distress; and 4) Negligent Hiring, Training, and Supervision.[4] These claims are all supported by the facts as alleged in Plaintiffs' "General Allegations."[5] The Fourth Amended Complaint included a prayer for punitive damages despite the district court's prior order striking punitive damages from the Third Amended Complaint.[6]

The Fourth Amended Complaint is supported by a declaration from cardiology expert, Michael Moran, M.D. who opines regarding Dr. Stahl's alleged negligence, including the failure to train and supervise the staff monitoring Decedent's stress test.[7] On November 15, 2019, Plaintiffs served their Initial Expert Witness Disclosure designating Dr. Moran as a retained expert and serving his expert declaration, which reiterating his opinions surrounding the stress test. After discovery closed, Defendants filed a Motion in Limine seeking to exclude any evidence offered to further their improper ordinary negligence claim. [8] Rather than determine whether Plaintiffs claims were based on professional negligence or ordinary negligence prior to trial, the district court deferred ruling until the

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[4] PET APPX 001 – 29.

[5] PET APPX 004 – 8.

[6] PET APPX 072.

[7] PET APPX 0017 – 20.

[8] PET APPX 030 – 69.

evidence came in at trial.[9] Likewise, Defendants sought summary judgment on Plaintiffs prayer for punitive damages.[10] Again, the district court deferred ruling until after Plaintiffs' case-in-chief.[11]

IV. REASONS WHY WRIT SHOULD ISSUE

In 2020, this Court confirmed that claims against a provider of health care are either professional negligence ***or***, fall within the "extremely narrow" common knowledge exception that only applies in "rare situations". *Estate of Mary Curtis, et al., v. Life Care Center of So. Las Vegas, et. al*., 136 Nev. Adv. Op. 39 at *7, 466 P.3d 1263, 1266 (Nev. 2020). The same set of facts cannot give rise to both an ordinary negligence and professional negligence claim.

The legal issues presented here are well-suited for review because "resolution of the writ petition will mitigate or resolve related or future litigation" and thereby foster "the promotion of judicial economy." *Williams vs. Eighth Judicial District Ct*., 127 Nev. 518, 262 P.3d 360 (2011). Although an appeal is generally considered an adequate remedy precluding writ relief, where "an important issue of law needs clarification and public policy is served" this Court has recognized writ relief is appropriate. *Id*. at 525. Numerous professional negligence cases are currently pending in the district court where plaintiff

[9] PET APPX 174.

[10] PET APPX 070-79.

[11] PET APPX 245.

inappropriately asserts claims for ordinary negligence and professional negligence despite the amendments to NRS §41A.100. Defendants are aware of at least one other Writ Petition having recently been filed on this same issue. *See* Case No. 84006, *Nelson. v. Dist. Ct*. (Sabir, M.D.) and Case No. 83306, *Davis v. Dist. Ct*. (Jones, D.O.).

Writ relief is necessary as it will prevent future litigation regarding the applicability of NRS §41A in cases where a plaintiff attempts to bring claims for professional negligence that is subject to the requirements and limitations of NRS §41A, which includes an expert evidentiary support burden and cap on non-economic damages, and simultaneously attempts to "artfully" plead around the cap by claiming "ordinary" and/or "corporate" negligence for the same alleged acts and injury. Moreover, clarification that allegations of professional negligence do not automatically rise to the level of meriting automatic awards of punitive damages and pre-trial rulings regarding whether a Defendant's conduct merits punitive damages must also be clarified to preclude the inclusion of such claims for extraordinary relief when it is not warranted. As such the benefits of writ review expand beyond this case.

V. LEGAL ARGUMENT

A. Writ of Mandamus Standard

A writ of mandamus is an extraordinary remedy that may be issued to

compel an act that the law requires. *Cote v. Eighth Judicial District Court*, 175 P.3d 906, 907-08, 124 Nev. Adv. Rep. 3, 4 (Nev. 2008). A writ of mandamus may also issue to control or correct a manifest abuse of discretion. *Id.* A writ shall issue when there is no plain, speedy and adequate remedy in the ordinary course of law. NRS §34.170; *Sims v. Eighth Judicial District Court*, 206 P.3d 980, 982, 125 Nev. Adv. Rep. 13 (Nev. 2009). This Court has complete discretion to determine whether a writ will be considered. *Halverson v. Ross Miller*, 186 P.3d 893, 896, 124 Nev. Adv. Rep. 47 (Nev. 2008) ("the determination of whether to consider a petition is solely within this court's discretion."); *Sims*, 206 P.3d at 982 ("it is within the discretion of this court to determine whether these petitions will be considered.").

B. As a Matter of Law, Real Parties in Interest Cannot Maintain a Claim for "Negligent Hiring, Training, & Supervision" as One for "Ordinary" or "Corporate" Negligence.

Plaintiffs' claims for "Negligent Hiring, Training, & Supervision" cannot be pursued as a claim for "ordinary" negligence because the claim is inherently linked to Plaintiffs' underlying professional negligence action. This Court has already determined, clearly and unambiguously, that claims of negligent hiring, training, supervision, staffing and even budgeting, are claims of "professional negligence" and are inextricably linked to the underlying negligence when that underling

negligence caused the only physical injury claimed. *Estate of Mary Curtis, et al., v. Life Care Center of So. Las Vegas, et. al.*, 136 Nev. Adv. Op. 39, *6, 466 P.3d 1263, 1265 (Nev. 2020). Like the *Curtis* case, the only injury claimed by Plaintiffs is the death of Joseph Schrage. Plaintiffs have never alleged that some other injury was suffered as a result of allegations of negligent hiring, training and supervision and the claim for negligent hiring, training, and supervision specifically alleges that it led to his death.

This Court's decisions in *Curtis* and *Zhang* are directly on point. In *Curtis*, this Court stated that "[w]here the allegations underlying negligent hiring claims are inextricably linked to professional negligence, courts have determined that the negligent hiring claim is better categorized as vicarious liability **rather than an independent tort**..." *Id*. at *6. (Emphasis added).

In *Zhang*, this Court best described this principle as follows:

> "There would have been no injury in this case and no basis for the [plaintiffs'] lawsuit without the negligent rendering of professional medical treatment. Stated more specifically, **Erica's death could not have resulted from the negligent hiring, training, and supervision or from the negligent failure to institute adequate policies and procedures without the negligent**

> **rendering of professional medical services.** The negligent acts and omissions **were *not independent* and mutually exclusive**; rather, they were related and interdependent. Therefore, the professional services exclusion operated to exclude coverage not only for the claims of negligence in rendering the professional services but also for the related allegations of negligent hiring, training, and supervision....” *See Zhang, M.D. v. Barnes*, 832 P.3d 878, 2016 WL 4926325, at *6 (Nev. 2016) (unpublished) (citing to *Duncanville Diagnostic Ctr., Inc. v. Atl. Lloyd’s Ins. Co. of Tex*., 875 S.W.2d 788, 791 (Tex. Ct. App. 1994). (Emphasis added).

This Court made clear in *Zhang* that when a negligent hiring, training, and supervision claim is based upon the underlying negligent medical treatment and the liability is coextensive, then, the negligent hiring, training, and supervision claims sound in professional negligence and may not be used as a channel to avoid the statutory caps on such actions. *Id*. at *7. That is exactly the situation presented here.

Plaintiffs’ claim for Negligent Hiring, Training and Supervision is not one for “ordinary” negligence. Plaintiffs are attempting to do exactly what the Court in

Zhang and *Curtis* said should not be done (attempt to circumvent the "statutory caps on such actions"). Any argument that allegations of a medical assistant performing a medical test in a medical office is somehow "ordinary negligence" is without merit and contrary to Nevada law. As stated in *Zhang* and as adopted in *Curtis*, the medical injury could not have resulted from the negligent hiring training, supervision without the negligent rendering of professional medical services. Such claims of negligent acts and omissions were not independent and mutually exclusive. Rather, they are related, interdependent, and inextricably linked to the underlying professional negligence. A claim of negligent supervision is meaningless without an injury resulting from the negligent supervision. If the injury resulting from the negligent supervision occurred because the negligent supervision caused medical malpractice, which, in turn, caused the Plaintiffs' only medical injury, then the medical supervision sounds in and is, in fact, professional negligence.

Plaintiffs' claim for negligent supervision, hiring, and training is dependent upon Plaintiffs' underlying professional negligence claim. Without it, none of such claims could be maintained. They are not independent torts and cannot be maintained as independent claims.

C. THE NARROW "COMMON KNOWLEDGE" EXCEPTION DISCUSSED IN *CURTIS* DOES NOT APPLY HERE.

The "common knowledge" exception does not apply in this case. This Court has repeatedly held that the "common knowledge" exception is exceeding rare and only applies in "narrow" circumstances. Recently, in *Montanez v. Sparks Family Hospital*, the Court held:

> "When the duty owing to the plaintiff by the defendant arises from the physician-patient relationship or is substantially related to medical treatment, the breach thereof gives rise to an action sounding in medical malpractice as opposed to simple negligence." *See Montanez v. Sparks Family Hosp., Inc.*, 499 P.3d 1189, 1192 (Nev. 2021), citing *Papa v. Brunswick Gen. Hosp.*, 517 N.Y.S.2d 762, 132 A.D.2d 601, 603 (N.Y. App. Div. 1987), *cited with approval in Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (2017).

In *Montanez*, the Plaintiff attempted to argue that the "common knowledge" exception applied to her claim that she developed an infection because the hospital failed to keep its facilities clean, as separate from any form of medical malpractice since a business owner's failure to keep a facility clean does not require expert support. *Id*. at 1191. However, this Court clarified that the "common knowledge"

exception" did not apply to a claim that was "*inherently linked* to the provision of medical treatment." *See Montanez v. Sparks Family Hosp., Inc.*, 499 P.3d 1189, 1193 (Nev. 2021) ("We conclude, to the contrary, that the level of cleanliness that a medical provider must maintain is *inherently linked* to the provision of medical treatment"). (Emphasis in original).

Furthermore, in the *Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263, 1264 (2020), this Court was tasked with determining whether various claims of the Plaintiffs were subject to the expert affidavit requirement of NRS 41A.071.

The Plaintiff in *Curtis* was principally the Estate of Mary Curtis. Ms. Curtis was a patient of Life Care Center. As a patient, she was "accidentally" administered a prescription of morphine intended for another patient. Ms. Curtis eventually passed away with "morphine intoxication" listed as her cause of death.

From this scenario, the Plaintiff, Mary Curtis' Estate, made claims that Life Care Center would be liable for the accidental administration of the wrong medication. In addition, the Estate alleged that Life Care Center was also negligent for mismanagement, understaffing/budgeting, and operation of the nursing home, which the Estate claim led to the erroneous administration of morphine. In addition, the Plaintiff Estate also alleged that Life Care Center was negligent for

failing to properly train, supervise, and monitor its staff, and for failure to transfer Mary Curtis to a hospital with a higher level of acuity.

The Plaintiff Estate failed to attach any expert affidavits to its Complaint. Life Care Center moved for summary judgment contending that all of the complaints made by the Plaintiff Estate sounded in professional negligence and required compliance with NRS § 41A.071.

In analyzing whether expert affidavits per NRS § 41A.071 were needed, the Nevada Supreme Court stated that where the allegations underlying negligent hiring claims are inextricably linked to the professional negligence, such hiring claims are "...better categorized as vicarious liability rather than an independent tort....". *Id.* at 6. Such claims were better categorized as vicarious liability because the viability of the claims were dependent and linked to underlying claims of professional negligence. Stated otherwise, if a claim is inextricably linked to the underlying professional negligence, the claim is better categorized as vicarious liability and cannot be pled as an independent tort. Hence, Plaintiffs' claims, in *Curtis*, for negligent staffing, training, budgeting, and negligent monitoring, and for failure to transfer the patient to a higher level of acuity were not independent torts, but rather, were found by the Supreme Court to be dependent upon the underlying professional negligence claims, requiring compliance with Chapter NRS 41A.

In this case (Schrage v. Allan J. Stahl, M.D.), the claim for medical injury contained in Plaintiffs' claim of Negligent Hiring, Training and Supervision is a claim that is inherently linked and dependent upon Plaintiffs' underlying professional negligence claim arising from assertions of medical malpractice.

Hence, Plaintiffs' claims of negligent training, educating, supervising, are all claims which are inherently linked to Plaintiffs' professional negligence/medical malpractice claims set forth in their First Cause of Action. Negligent training, for example, cannot stand alone as an independent tort. It is dependent upon a finding, as herein, that the negligent training resulted in negligent care, medical malpractice, and the Plaintiffs' alleged injury from same. Where pled outside of Plaintiffs' claim for Professional Negligence, such claim must be subsumed into the First Cause of Action for "Medical Malpractice/Professional Negligence/Wrongful Death" and dismissed elsewhere.

The "common knowledge exception" adopted in *Curtis* applies only in the most restrictive of circumstances. In the *Curtis* decision, the Nevada Supreme Court states that such exceptions applies only in "extremely narrow" and "rare" situations. *Id.* at 8-13. Such must be situations of "blatant negligence." *Id.* The exception must be of such a nature that a lay juror could conclude that the act in question was negligent, even without the assistance of medical experts (because such claim cannot concern issues of professional judgment). *Id.*

Furthermore, in *Curtis*, the only time the "common knowledge exception" was applied was to the "accidental" administration of morphine to Ms. Curtis. *Id.* at 12. In the *Curtis* case, the Court went to lengths to point out that "...both..." the wrong medication "accidentally" administered and the failure to properly monitor led to Curtis' death. It would appear, then, perhaps, that the "accidental" administration of morphine to the wrong patient in *Curtis*, may have been pled as an independent tort without resort to the underlying professional negligence. None of Plaintiffs' dismissed claims here could so qualify for that very narrow exception.

As clarified in *Montanez v. Sparks Family Hospital*, the narrow "common knowledge" exception does not apply if the alleged duty arises from the physician-patient relationship or is "substantially related to medical treatment." *See Montanez v. Sparks Family Hosp., Inc.*, 499 P.3d 1189, 1192 (Nev. 2021), citing *Papa v. Brunswick Gen. Hosp.*, 517 N.Y.S.2d 762, 132 A.D.2d 601, 603 (N.Y. App. Div. 1987), *cited with approval in Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (2017).

Here, the alleged negligent hiring, training, and supervision of a medical assistant, performing a medical test in a medical office is "substantially related" to medical treatment. Indeed, even Plaintiffs in their own Complaint contend:

"Defendants breached the standard of care by failing to adequately

assess and treat Mr. Schrage in that:

a. Dr. Stahl should not have required Mr. Schrage to perform a treadmill test based upon his history, presenting symptoms, and abnormal ECG. In lieu of a treadmill test, Mr. Schrage should have been admitted to the catheterization laboratory for an angiogram which would have shown the arterial blockage causing the continued chest pain experienced by Mr. Schrage. Even after the stress test was performed, Dr. Stahl still had sufficient information to warrant sending Mr. Schrage immediately to the catheterization laboratory as set forth above. At the catheterization laboratory an adequate work up would have been performed identifying, diagnosing, and treating Mr. Schrage for atherosclerosis cardiovascular disease including thrombosis of the right coronary artery which caused Mr. Schrage's untimely death. *See* Declaration of Michael D. Moran, M.D., FACC, FSCAI, attached hereto as Exhibit 1.

b. The Stahl Corporation did not adequately train, hire, or supervise its employees and medical assistants enough to assist Dr. Stahl in meeting the required standard of care."

See PET APPX 007, paragraph 25.

It is axiomatic that whether a medical assistant "assisted Dr. Stahl" in meeting the required standard of care is professional negligence that requires medical expert testimony. There is no allegation in the entirety of Plaintiffs' Fourth Amended Complaint that the EKG tracings obtained by Josefina Rubio were inaccurate. The allegation is that the interpretation of the EKG tracings fell below the standard of care, which fails squarely within "medical judgment, treatment or diagnosis." *See Szymborski v. Spring Mt. Treatment Ctr.*, 133 Nev. 638, 644, 403 P.3d 1280, 1286 (Nev. 2017).

VI. CONCLUSION

In accordance with the above, Petitioners respectfully request that this Court grant their Petition for Writ of Mandamus and Order the Respondent to enter an Order dismissing Plaintiffs' claims for "ordinary" negligence and prayer for punitive damages.

DATED this 7th day of June, 2022.

McBRIDE HALL

By: /s/ *T. Charlotte Buys*
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this Petition complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

- ✓ proportionally spaced, has a typeface of 14 points or more and contains 3,652 words; and/or
- ✓ does not exceed 30 pages.

3. Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of June, 2022.

McBRIDEHALL

By: /s/ *T. Charlotte Buys*
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Attorneys for Petitioners
Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2022, I served the foregoing **PETITION FOR WRIT OF MANDAMUS** upon the following parties by:

__X__ VIA ELECTRONIC SERVICE: by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

__X__ VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada

Aaron Ford, Esq. Attorney General Nevada Department of Justice 100 North Carson Street Carson City, Nevada 89701 *Counsel for Respondent* *The Honorable Tierra Jones*	Gerald I. Gillock, Esq. GERALD I. GILLOCK & ASSOCIATES 428 South Fourth Street Las Vegas, NV 89101 *Attorneys for Real Parties in Interest*
Honorable Joe Hardy, Jr. Eighth Judicial District Court Department VX Regional Justice Center 200 Lewis Avenue Las Vegas, Nevada 89101 *Respondent*	Timothy O'Reilly, Esq. TIMOTHY R. O'REILLY, CHTD. 325 S. Maryland Parkway Las Vegas, NV 89101 Attorneys for Real Parties in Interest

/s/Madeline VanHeuvelen

_____

An employee of McBRIDE HALL