

**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 OF BEHALF  
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.

Electronically Filed  
June 08, 2022 09:55 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**RELIEF  
REQUESTED BY  
JUNE 13, 2022, AS  
TRIAL STARTS  
JUNE 6, 2022**

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**PETITIONERS' APPENDIX – Volume I**

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<b>APPENDIX</b>	<b>Bates No.</b>
Fourth Amended Complaint For Medical Malpractice and Wrongful Death	PET APPX 001 – 29
Defendants’ Motion in Limine No. 1 to Exclude Any Evidence or Argument in Furtherance of Plaintiffs’ Ordinary / “Corporate” Negligence Claim	PET APPX 030-069
Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs’ Claim for Punitive Damages	PET APPX 070-079
Opposition to Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs’ Claim for Punitive Damages	PET APPX 080-116
Opposition to Defendants’ Motion in Limine No. 1 to Exclude Any Evidence or Argument in Furtherance of Plaintiffs’ Ordinary / “Corporate” Negligence Claim	PET APPX 080-117-125
Reply in Support of Defendants’ Motion in Limine No. 1 to Exclude Any Evidence or Argument in Furtherance of Plaintiffs’ Ordinary / “Corporate” Negligence Claim	PET APPX 126-136
Reply in Support of Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs’ Claim for Punitive Damages	PET APPX 137-143
Hearing Transcript, All Pending Motions	PET APPX 144-229
Order Regarding Defendants Allen J. Stahl, M.D. and Allen Stahl, M.D., P.C.’s Motion in Limine (1-10)	PET APPX 230-243
Notice of Entry of Order Regarding Defendants Allen J. Stahl, M.D. and Allen Stahl, M.D., P.C.’s Motion in Limine (1-10)	PET APPX 251-267
Order on Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs’ Claim for Punitive Damages	PET APPX 244-250
Notice of Entry of Order on Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs’ Claim for Punitive Damages	PET APPX 268-277

**CERTIFICATE OF COMPLIANCE**

I hereby certify that on this appendix consists of true and correct copies of papers in the Clark County District Court file as required by NRAP 30(g).

McBRIDEHALL

By: /s/ T. Charlotte Buys

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*Allan J. Stahl, M.D. and Allan J. Stahl, M.D.,  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of June, 2022, I served the foregoing **PETITIONERS' APPENDIX – Volume I** 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

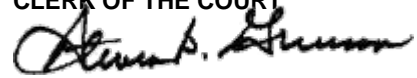
**X** VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada

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

*/s/Madeline VanHeuvelen*

\_\_\_\_\_  
An employee of McBRIDE HALL





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13 Attorneys for Plaintiffs

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 KRISTINA DANICA SCHRAGE,  
17 Individually and as spouse and natural heir of  
18 JOSEPH PATRICK SCHRAGE, JR., and on  
19 behalf of the ESTATE OF JOSEPH  
20 PATRICK SCHRAGE, JR.; JOSEPH  
21 PATRICK SCHRAGE, III, and MILA  
22 DANICA SCHRAGE, minors, each  
23 individually and as children and natural heirs  
24 of JOSEPH PATRICK SCHRAGE, JR., by  
25 and through their Natural Parent and  
26 Guardian, KRISTINA DANICA SCHRAGE;

27 Plaintiff,

28 v.

29 ALLAN J. STAHL, M.D.; an individual;  
30 ALLAN J. STAHL, M.D., P.C., a Nevada  
31 Professional Corporation; DOES 1 through  
32 10, inclusive; ROE ENTITIES 1 through 10,  
33 inclusive,

34 Defendants.

CASE NO.: A-17-762364-C  
DEPT. NO.: XV

**FOURTH AMENDED COMPLAINT**  
**FOR MEDICAL MALPRACTICE AND**  
**WRONGFUL DEATH**

**ARBITRATION EXEMPTION**  
**CLAIMED: MEDICAL MALPRACTICE**

**JURY TRIAL DEMANDED**

...

**FOURTH AMENDED COMPLAINT FOR MEDICAL MALPRACTICE  
AND WRONGFUL DEATH**

Plaintiffs, by and through their attorneys of record, GERALD I. GILLOCK, ESQ., of the law firm of GERALD I. GILLOCK & ASSOCIATES, P.C., and TIMOTHY R. O'REILLY, ESQ., of the law firm of TIMOTHY R. O'REILLY, CHTD., hereby allege and complain as follows:

1. JOSEPH PATRICK SCHRAGE, JR. died on October 3, 2016, in Clark County, Nevada, and at all relevant times herein, was a resident of Clark County, Nevada.

2. At all times relevant hereto, Mr. Schrage was married to Plaintiff KRISTINA DANICA SCHRAGE.

3. Plaintiff 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, JR., is a resident of Cook County, Illinois but at the time of Mr. Schrage's death was a resident of Clark County, Nevada.

4. Plaintiff JOSEPH PATRICK SCHRAGE, III is a resident of Cook County, Illinois and the minor child and natural heir of JOSEPH PATRICK SCHRAGE, JR. At the time of Mr. Schrage's death JOSEPH PATRICK SCHRAGE, III, was a resident of Clark County, Nevada.

5. Plaintiff MILA DANICA SCHRAGE is a resident of Cook County, Illinois and the minor child and natural heir of JOSEPH PATRICK SCHRAGE, JR. At the time of Mr. Schrage's death MILA DANICA SCHRAGE was a resident of Clark County, Nevada.

6. Defendant, ALLAN J. STAHL, M.D. individually, is, and was at all times relevant hereto, a physician/resident licensed to practice medicine in the State of Nevada pursuant to N.R.S. Chapters 630 and 449.

7. Upon information and belief, Defendant ALLAN J. STAHL, M.D., P.C., is and was doing business as ALLAN J. STAHL, M.D., P.C. (hereinafter the "Stahl Corporation"), located at

1 653 N. Town Center Dr., #400, Las Vegas, Nevada 89144, and is a Nevada Business Entity  
2 authorized to do business as a medical facility provider pursuant to NRS Chapter 449 and a medical  
3 facility pursuant to NRS 449.0151 providing health care to the public and is vicariously liable for  
4 its employees, doctors, nurses, agents and/or servants and their actions, include DOE employees  
5 and/or contractors, who provided services to Mr. Schrage and are being sued under the theory of  
6 vicarious liability and ostensible agency, for the negligence of its employees, agents, contractors,  
7 and subcontractors. The Stahl Corporation is also being sued under the theory of ostensible agency,  
8 for the negligence of its doctors, nurses, and employees and corporation negligence of the Stahl  
9 Corporation and its employee doctors.  
10

11 8. Plaintiffs are informed and believe and thereon allege that Defendants and each of  
12 them, at all times herein mentioned, were and now are residents of the County of Clark, State of  
13 Nevada.  
14

15 9. At all relevant times the Defendants, Does I through X, inclusive, were and are now  
16 physicians, surgeons, residents, registered nurses, licensed occasional nurses, practical nurses,  
17 registered technicians, aides, technicians, attendants, and/or physician assistants holding themselves  
18 out as duly licensed to practice their professions under and by virtue of laws of the State of Nevada  
19 and are now engaged in the practice of their professions in the State of Nevada; the true names and  
20 capacities, whether individual, corporate, associate, or otherwise of Defendants DOES I through X,  
21 inclusive, are presently unknown to the Plaintiffs, who therefore sues those Defendants by such  
22 fictitious names, the Plaintiffs are informed and do believe, and thereupon allege that each of the  
23 Defendants sued herein as DOES I through X are responsible in some manner for the events and  
24 happenings herein referred to, which thereby proximately caused the injuries and damages to the  
25 Plaintiffs as alleged herein; that when the true names and capacities of such Defendants become  
26  
27  
28

10. At all relevant times, Defendants, ROE CORPORATIONS, I through X, were and now are corporations, firms, partnerships, associations, employers, and other legal entities involving the care, treatment, diagnosis, surgery and/or other provision of medical care to the Plaintiffs herein; that the true names, identities or capacities whether individual, corporate, associate or otherwise of the Defendants, ROE CORPORATIONS I through X, inclusive are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names; that the Plaintiffs are informed and do believe and thereupon allege that each of the Defendants sued herein as ROE CORPORATIONS I through X are responsible in some manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to the Plaintiffs alleged herein; that when their true names and capacities of such Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names, identities and capacities, together with proper charges and allegations.

11. At all relevant times, Defendants, and each of them, were the agents, ostensible agents, servants, employees, employers, partners, co-owners and/or joint venturers of each other and of their co-defendants, and were acting within the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by reason of such relationships the Defendants, and each of them, are vicariously and jointly and severally responsible and liable for the acts and/or omissions of their co-Defendants.

12. Plaintiffs hereby adopt and incorporate by reference all prior paragraphs as through full set forth herein.

17. Upon the arrival of Emergency Medical Technicians, Mrs. Schrage watched helplessly as the EMTs continued CPR and attempted electrical cardioversion; a process she

1 describes as far more violent and traumatic than “what is portrayed on TV.” She then escorted the  
2 EMT’s to the ambulance as they continued efforts to save Mr. Schrage’s life.

3 18. Further adding to her distress, her request to accompany her husband to the hospital  
4 in the ambulance was refused and she was left to find her way to the Hospital in the family  
5 automobile.

6  
7 19. On October 3, 2016, Mr. Schrage ultimately passed away after Plaintiffs found and  
8 witnessed Mr. Schrage suffering from cardiac arrest. As further set forth in the autopsy report of  
9 November 8, 2016 from the Clark County Coroner Mr. Schrage passed away from acute myocardial  
10 infarct due to thrombosis of right coronary artery and arteriosclerotic cardiovascular disease.

11 20. As a result of witnessing her husband’s cardiac arrest and her own role through  
12 ineffective efforts to rescue him through CPR and her witnessing of the EMT’s continued efforts at  
13 CPR and electrical cardioversion, Mrs. Schrage experienced extreme shock and emotional distress;  
14 as did the couple’s minor children.

15  
16 21. The physical and mental impacts to Mrs. Schrage and the minor children have been  
17 substantial and continuing.

18 22. Mrs. Schrage has experienced mental and physical pain and suffering including,  
19 extreme feelings of guilt that she was unable to save her husband’s life, anger at her husband’s  
20 completely preventable death, terror at the sound of sirens, feelings of isolation and detachment  
21 from family and friends, insomnia, changes in appetite, constant irritability, muscle aches, chest  
22 pains and feelings of herself experiencing a heart attack, as well as other pain and suffering that  
23 Mrs. Schrage describes as “Post Traumatic Stress Disorder-like” symptoms.

24  
25 23. Mr. Schrage’s son, Joseph Patrick Schrage III continues to experience nightmares  
26 and night terrors, complains that his heart hurts and that he feels sick, confuses death and sleep, re-  
27

1 enacts witnessing his father's death, fear his Mother will now die, and other on-going, traumatic  
2 mental and physical symptoms.

3 24. Mrs. Schrage continues in twice monthly therapy in addition to group grief  
4 counseling therapy with her young children; all as a result of Defendant's negligence and her  
5 unwarranted assumption of a mantle of guilt for her own role in being unable to save her Husband's  
6 life by the administration of effective CPR.

7 25. Defendants breached the standard of care by failing to adequately assess and treat  
8 Mr. Schrage in that:

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

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

22 26. The Declaration of Michael D. Moran, M.D., FACC, FSCAI, is attached hereto as  
23 Exhibit 1 supporting the allegations of the Fourth Amended Complaint as required by NRS  
24 41A.071, are hereby adopted and incorporated as though set forth fully herein.

## II.

**(Medical Malpractice/Professional Negligence/Wrongful Death – As To All Defendants)**

32. Defendants were negligent in their failure to adequately interpret EKG test results, negligent administration of a stress test (Defendant Dr. Stahl, Defendant Stahl Corporation; and Doe and Roe Defendants), negligent failure to refer Mr. Schrage to for complete cardiac work up including an angiogram (Defendant Dr. Stahl and the Doe and Roe Defendants), and negligent



1 failure to provide safe and proper medical diagnosis, medical attention, care and treatment (Dr.  
2 Stahl).

3         33. Defendants, and each of them, breached their duties and fell below the standard of  
4 care for health care providers who possess the degree of professional learning, skill and ability of  
5 other similar health care providers in failing to timely diagnose and/or treat Mr. Schrage for  
6 atherosclerosis cardiovascular disease including thrombosis of the right coronary artery and in  
7 failing to refer Mr. Schrage to a catheterization laboratory for an angiogram which would have  
8 shown the arterial blockage causing the continued chest pain experienced by Mr. Schrage, all of  
9 which resulted in injury and damages to Plaintiffs and the wrongful death of Mr. Schrage. See,  
10 Exhibit 1.

11         34. Defendants' acts and omissions were conducted with such wanton and reckless  
12 disregard for the well-being of Mr. Schrage so as to constitute malice, gross negligence and  
13 oppression. As such, Plaintiffs are entitled to punitive and exemplary damages.

14         35. The direct and proximate result of the negligence and carelessness of Defendants in  
15 treating and/or failing to treat Mr. Schrage was the wrongful death of decedent.

16         36. As a proximate result of the negligence of the Defendants, Plaintiffs incurred  
17 medical, hospital and funeral expenses, the full extent of said expenses are not presently known to  
18 Plaintiffs and leave is requested of this Court to amend this Complaint to conform to proof at time  
19 of trial; Plaintiffs have suffered general and special damages both in an individual amount that is in  
20 excess of Fifteen Thousand dollars (\$15,000.00).

21         37. As a direct and proximate result of the conduct of Defendants, Plaintiffs have  
22 suffered special damages, including loss of wages both past, present and future, and loss of support  
23 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

24 . . .

39. As a further proximate result of Defendants' negligent acts and/or omissions, Plaintiffs were forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys' fees and costs.

40. Plaintiffs hereby adopt and incorporate by reference each and every allegation contained in Paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Defendants' employees, agents and/or servants, including but not limited to, administrators, managers, supervisors, and caregivers, were acting in the scope of their employment, under Defendants' control, and in furtherance of Defendants' interest at the time their actions caused injuries and untimely death of Mr. Schrage.

42. STAHL CORPORATION and ROE CORPORATIONS are vicariously liable for damages resulting from its agents' and/or employees' and/or servants' negligent actions and omissions regarding the injuries to Plaintiffs, during the scope of their employment.

43. Defendants, and each of them, by and through their employees, agents and/or servants breached their duty of care to Plaintiffs as set forth above.

44. Defendants' acts and omissions were conducted with such wanton and reckless disregard for the well-being of Mr. Schrage so as to constitute malice, gross negligence and oppression. As such, Plaintiffs are entitled to punitive and exemplary damages.

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48. As a further proximate result of Defendants' negligence, Plaintiffs have suffered general damages including, but not limited to, loss of consortium, society, love, support and companionship, emotional distress and pain and suffering as a result of the untimely death of their husband and family member in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

50. Defendants, had a duty to provide for the protection and safety of Mr. Schrage, while he was in their care, by ensuring that safe and proper medical attention, treatment, and care was provided to Mr. Schrage at all times, both pre-treatment and post treatment. This duty included the duty of a proper evaluation and adequate follow-up care.

• • •

54. As a further proximate result of Defendant's negligent acts and/or omissions, Plaintiffs were forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys' fees and costs.

56. Defendant STAHL CORPORATION (and ROE CORPORATIONS) is vicariously liable for damages resulting from its employees, doctors, nurses, agents and/or servants' negligent actions against Plaintiffs during the course and scope of their employment and is ostensibly liable for the negligent hiring, training, and supervision of those individuals.

61. As a further proximate result of Defendant's negligent acts and/or omissions, Plaintiffs were forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys' fees and costs.

### **PRAYER FOR RELIEF**

6. For such and further relief as this Court may deem just and equitable in the premises.

PET APPX 013

VII.  
**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: March 19, 2020

**TIMOTHY R. O'REILLY, CHTD.**

By: /s/ Timothy R. O'Reilly

Timothy R. O'Reilly, Esq.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the law offices of TIMOTHY R. O'REILLY, CHTD. and that, on this 19<sup>th</sup> day of March, 2020, served the above and foregoing FOURTH AMENDED COMPLAINT FOR MEDICAL MALPRACTICE AND WRONGFUL DEATH pursuant to N.R.C.P. 5(b) by:

☒ Electronic transmission through E-Service (EFS) of the Eighth Judicial District Court to the email address(es) of the parties listed below:

☐ U.S. Mail by placing a copy of same in a sealed envelope, with postage fully prepaid thereon, to the parties listed below:

☐ Facsimile transmission to the fax number(s) of the parties listed below:

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An Employee of TIMOTHY R. O'REILLY, CHTD.

# EXHIBIT 1



**EXPERT DECLARATION OF MICHAEL DOUGLAS MORAN, M.D., F.A.C.C.,  
F.S.C.A.I. IN REGARD TO JOSEPH SCHRAGE**

I, Michael D. Moran, M.D., F.A.C.C., F.S.C.A.I., being duly sworn, under oath, hereby swear that the following assertions are true to the best of my personal knowledge, training, experience, and belief:

1. I am a board certified physician and surgeon with a subspecialty certification in interventional cardiology and cardiovascular disease.
2. My current area of practice includes cardiology, and I am currently an active medical staff member at various medical centers throughout California while also being the President and C.E.O of Coastal Cardiovascular Institute. In addition, and among other professional memberships, I am a fellow of the American College of Cardiology and Society of Cardiovascular Angiographers and Interventionists.
3. My licenses are on file with the appropriate authorities in the State of California.
4. My additional qualifications to serve as an expert and training are set forth in my Curriculum Vitae, attached hereto as Exhibit A.
5. Based upon my training, background, knowledge and experience, I am familiar with the applicable standards of care required of a physician for a patient presenting to a cardiologist for a treadmill work up with a history of chest pain and has an abnormal ECG which includes an inferior infarct with an undetermined age. I have practiced and continue to practice in this area of medicine.
6. I am qualified on the basis of my training, background, knowledge and experience to offer an expert medical opinion regarding those accepted standards of medical care, the breaches thereof in this case, and any resulting injuries and damages arising therefrom.
7. In preparation for my opinions in this case, I have reviewed medical records from Michael Jacobs, M.D., Allan J. Stahl, M.D., PC, Brent Burnette, M.D. of Gastroenterology Associates, and the Autopsy Report from the Clark County Coroner dated October 4, 2016. In addition, I have also reviewed the deposition transcripts of Michael Jacobs, M.D. (July 20, 2018), Alan Stahl, M.D. (June 28, 2019), and Josefina Rubio, M.A. (September 26, 2019).
8. I anticipate reviewing additional information as this matter progresses and reserve the right to supplement my opinions based upon information not yet available or received.
9. I am competent to testify as to the assertions contained herein.

10. Based upon my review of the records stated herein, it is my understanding that Joseph Schrage was examined by his primary care physician, Dr. Jacobs, on August 1, 2016. Dr. Jacobs referred him to cardiologist Allan J. Stahl, M.D. for a stress test. He had a history of chest pain and pain in the posterior forearm along with an abnormal ECG. The ECG was performed by Dr. Jacobs on August 1, 2016, and Dr. Stahl has confirmed he had access to it. Dr. Stahl delegated the responsibility of performing a stress test to an untrained and unsupervised medical assistant. He, in error, assessed the stress test as follows: (1) negative for ischemia; (2) excellent exercise tolerance for patient's age; (3) normal blood pressure response to exercise; (4) normal heart rate response to exercise; and (5) no arrhythmias were present during exercise. Dr. Stahl did not do any further cardiac work up and did not grant Dr. Jacob's access to the treadmill work sheet that reflects, among other things, the patient's blood pressure during a treadmill test. Specifically, he did not refer Mr. Schrage to the catheterization laboratory for an angiogram. He only had his untrained and unsupervised staff member perform a cardiovascular stress test via treadmill on August 10, 2016. Mr. Schrage ultimately passed away on October 3, 2016 from acute myocardial infarct due to thrombosis of right coronary artery and arteriosclerotic cardiovascular disease.

11. Based upon my experience, training, and education, and in light of the information provided and available to date, it is my opinion, to a reasonable degree of medical certainty, that the care and/or lack of care provided to Mr. Schrage by Dr. Stahl and his staff fell below the standard of care in multiple areas and, in certain areas, Dr. Stahl and his staff grossly fell below the standard of care.

12. As an initial matter, Dr. Stahl should not have permitted Mr. Schrage to perform a treadmill test with his presenting conditions. Just because a treadmill test is requested by a general practitioner does not mean one should be performed. A cardiologist should conduct their own independent work up to determine the cause of the chest pains with an individual presenting with a medical history such as Mr. Schrage. Dr. Stahl made no such effort. Based upon a review of Dr. Stahl's deposition, if he would have seen Mr. Schrage (which he has no recollection of doing) prior to the treadmill test being performed and performed an adequate health history of the patient or even reviewed the information available to him in regard to Mr. Schrage and his health history prior to the treadmill test, then a treadmill test should not have been performed. More specifically, Mr. Schrage presented with an abnormal ECG (i.e. Inferior Infarct), a history of chest pains, and a father who appears to have had a heart attack prior to the age of 55. These risk factors were not all identified on the treadmill worksheet. As a cardiologist, in lieu of a treadmill test, Mr. Schrage should have been admitted to the catheterization laboratory for an angiogram. The angiogram would have shown the arterial blockage causing the continued chest pain experienced by Mr. Schrage.

13. Dr. Stahl claims he formed an opinion prior to the stress test that Mr. Schrage's abnormal ECG was in fact not abnormal and not determinative of a prior myocardial infarction. This opinion is not only confusing as to when he developed it, but it is also wrong. Dr. Stahl testified on page 18 of his deposition that he only saw Mr. Schrage during the treadmill test, although Ms. Rubio confirmed he did not. In any event, Dr. Stahl's interpretation of the ECG is not accurate. The ECG in Dr. Stahl's possession, prior to the performing the treadmill test, is determinative of a prior myocardial infarction. However, even if it was indeterminate if the ECG

was normal (which it was not), Dr. Stahl still should have acted in Mr. Schrage's best interest and taken him to the catheterization lab.

14. In addition, Dr. Stahl failed to adequately monitor the treadmill test or adequately train his staff to monitor the treadmill test. Ms. Rubio was the medical assistant who monitored the treadmill test. She is not qualified to monitor a treadmill test, and Dr. Stahl knew or should have known this information. She confirmed Dr. Stahl, despite his testimony, is not in the room when a treadmill test is being conducted. She also confirmed she has no formal training in conducting the treadmill test. She was merely trained years ago for a day or so by a co-worker. She had no training on the protocols that you are supposed to follow in administering the stress test. She has no training as to know whether blood pressure is increasing the way it is supposed to be increasing during a treadmill test. She claims that Dr. Stahl is in the room next door in case she needs anything. However, she is not adequately trained to know whether she needs anything or not during a treadmill test. So, Dr. Stahl being in the room next door is of no help. Her lack of ability to conduct a treadmill test is further evident by the fact she did not even know the term blunting. This is basic terminology that is used when conducting a treadmill examination and is present on the treadmill worksheet she filled out during Mr. Schrage's treadmill test. Blunting generally means the patient's blood pressure does not continue to rise as the work load increases during the course of the test. This is one indication that a treadmill test should be aborted. Signs of blunting are clearly present on Mr. Schrage's treadmill test as his blood pressure stayed at 160/100 for at least 6 minutes while the heart rate pulse increased 52 beats per minute. Unfortunately, the blunting response was not transmitted to Dr. Jacobs. Instead the assessment of the treadmill stress test, sent to Dr. Jacobs, was in error on multiple areas, including the reference that the blood pressure response to exercise was normal and the exercise tolerance was excellent.

15. In reality, even after the stress test was performed, Dr. Stahl still had sufficient information to warrant sending or suggesting Mr. Schrage be immediately sent 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.

16. So, if Mr. Schrage would have underwent a more cautious work up, including an angiogram as required by the standard of care, and he would have been treated accordingly and he would not have passed away on October 3, 2016.

17. In addition, as indicated above, if Mr. Schrage would have been properly monitored in the treadmill stress test, then the blunting nature of his blood pressure would have been identified and given the opportunity to be adequately addressed.

18. As a result, it is my opinion, to a reasonable degree of medical probability, that the failures to meet the appropriate standard of care by Dr. Stahl and his staff were the proximate and legal cause of Mr. Schrage's untimely death on October 3, 2016.

19. I reserve the right to supplement these opinions as stated above.

20. This declaration is signed under penalty of perjury, and all statements contained herein are true and correct.

A handwritten signature in blue ink, appearing to read "Michael Moran", is written over a horizontal line.

MICHAEL DOUGLAS MORAN, M.D., F.A.C.C., F.S.C.A.I.

# EXHIBIT A



# **Curriculum Vitae**

**Michael Douglas Moran, M.D., F.A.C.C., F.S.C.A.I.**

*Diplomate, American Board of Internal Medicine  
Fellow of the American College of Cardiology  
Fellow, Society of Cardiovascular Angiographers and Interventionalists*

25301 Cabot Road, Suite 104  
Laguna Hills, California 92653-5511

## **PERSONAL**

*Nationality: United States of America  
Born: July 5, 1960, California*

**BOARD CERTIFIED** by A.B.I.M., candidate #144428

*Interventional Cardiology, 1999, Current to 2020  
Cardiovascular Diseases, 1997, Current to 2020  
Internal Medicine, 1994-2004*

## **CURRENT POSITION**

*President and C.E.O., Coastal Cardiovascular Institute, Inc. 8/26/2014-present.*

*President and C.E.O., Michael D. Moran, M.D., Inc. 4/1/1998-present.*

*Interventional, preventative, clinical and non-invasive cardiologist. Proficient in angiography, angioplasty, stents, cutting balloon, laser atherectomy, directional atherectomy including SilverHawk, Diamond Back, Rotablator, IVUS, valvuloplasty, AAA and carotid arterial disease diagnosis and treatment, peripheral arterial disease diagnosis and management with expertise in endovascular intervention, specializing in complex limb salvage and chronic wound healing, Level 3 echocardiographer including 2-D echo., TEE and stress-echo, permanent pacemaker and ICD implantation and nuclear cardiology (NRC license eligible)*

*Volunteer Varsity Tennis Assistant Head Coach, Men's and Women's teams, JSerra Catholic High School, San Juan Capistrano, CA. January 2012-present.*

## **CURRENT MEDICAL STAFF**

*El Camino Medical Center, Mountain View, California (Courtesy) 2001-present  
Mission Regional Medical Center, Mission Viejo, California (Active) 1997-3/2013  
Saddleback Memorial Medical Center, Laguna Hills, California (Active) 1997-present  
Saddleback San Clemente Campus, San Clemente, California (Active) 1997-2016  
Scripp's Memorial Green Clinic, La Jolla, California (Courtesy) 2000-present  
Mission Laguna Beach Campus, Laguna Beach, California (Active) 1997-3/2013  
Catalina Island Medical Center, Avalon, California (Consulting) 2003-present*



## **PAST POSITIONS**

*Designer and Director, Cardiovascular Catheterization and Intervention Laboratory, South Coast Medical Center, Laguna Beach, California. Diagnostic cardiac and peripheral angiography, peripheral interventional laboratory 2003-2006*

*Fourth year chief interventional cardiology fellow, Beth Israel Deaconess Medical Center, West Campus, Harvard medical school, Boston, Massachusetts, 7/96-7/97*

*Medical Director, Cardiac Rehabilitation and Risk Factor Modification Program, Beth Israel Deaconess Medical Center, West Campus, Division of Behavioral Medicine, Harvard medical school, Boston, Massachusetts, 7/96-7/97*

## **POSTGRADUATE TRAINING**

**FELLOWSHIP**      *Chief interventional cardiology fellow, Beth Israel Deaconess Medical Center, West Campus, Harvard medical school, Boston, Massachusetts, 7/96-7/97. Dedicated year of training in interventional cardiology, including PTCA, stents, IVUS, PTRCA, DCA, valvuloplasty and permanent pacemaker implantation, interrogation and follow-up (Intermedics, Pacesetter, Guidant/CPI, Medtronic and Telectronics)*

*Non-invasive cardiology, Baystate Medical Center, Tufts University school of medicine, Springfield, Massachusetts 7/95-7/96. Dedicated year of level 3 echocardiography and nuclear training, including TTE, TEE, epicardial, stress-echo and dobutamine echocardiography. NRC license eligible.*

*General cardiology, Providence hospital, Wayne State University school of medicine, Southfield, Michigan, 7/93-7/95*

**CHIEF RESIDENT**      *Internal medicine, Deaconess hospital, St. Louis University (Faculty) school of medicine, St. Louis, Missouri, 7/92-7/93*

**RESIDENCY**      *Internal medicine, Deaconess hospital, St. Louis, Missouri, St. Louis University school of medicine, 7/88-7/91*

## **PREVIOUS POSITIONS**

**7/95-7/97**      *Emergency room trauma physician, Providence and Holyoke hospitals, Holyoke, Massachusetts, Mercy Hospital, Springfield, Massachusetts*

**7/96-7/97**      *Critical Care and Medical House Officer, New England Baptist Hospital, Boston, Massachusetts*

**9/93-6/95**      *Cardiac Critical Care House Officer, Oakwood Medical Center, Dearborn, Michigan*

**8/91-7/95**      *Critical care physician, Deaconess hospital, St. Louis, Missouri*



8/91-7/93                      *Critical care physician, DePaul hospital, St. Louis, Missouri*

8/91-7/92                      *Emergency room physician, Deaconess hospital (central and west)*

6/90-7/91                      *Emergency room physician, Fort Madison hospital, Fort Madison, Iowa*

## **EDUCATION**

### **HIGH SCHOOL**

*Foothill high school, Tustin, California 9/74-6/78, Diploma*

### **COLLEGE**

*Whittier College, Whittier, California 9/81-6/84, B.A. degree in biology, minor in chemistry*

*University of California, Irvine, 9/78-6/81*

### **MEDICAL SCHOOL**

*American University of the Caribbean, Plymouth, Montserrat, M.D. degree June 11, 1988*

## **LICENSES HELD**

*State of California, number A062602 (current)*  
*Commonwealth of Massachusetts, number 81451 (inactive)*  
*State of Michigan, number 4301060877 (inactive)*  
*State of Missouri, number MD R6P94 (inactive)*  
*State of Iowa, number 27361 (inactive)*

## **CERTIFICATES HELD**

*Diplomate, ABIM, Subspecialty Board of Interventional Cardiology, re-certified and valid until 2020*  
*Diplomate, ABIM, Subspecialty Board of Cardiology, re-certified and valid until 2020*  
*Diplomate, American Board of Internal Medicine, 1994-2004*  
*Interventional cardiology fellowship, Harvard, 1997*  
*Noninvasive cardiology fellowship, Tufts, 1996*  
*Cardiology fellowship, Wayne State, 1995*  
*Internal medicine residency certificate, St. Louis University, 6/26/1991*  
*Nuclear medicine certificate of completion and competency, I.N.M.E. 6/96*  
*E.C.F.M.G., number 407-436-5, valid indefinitely*  
*F.L.E.X., number 600705010*  
*American College of Surgeons, A.T.L.S. Provider, 1996-2001*  
*American Heart Association, Healthcare Provider, exp. 08/2016*  
*American Heart Association, A.C.L.S. Provider, exp. 08/2016*



## **PROFESSIONAL MEMBERSHIPS**

*Fellow, American College of Cardiology*  
*Fellow, Society of Cardiovascular Anigographers and Interventionalists*  
*American Heart Association*  
*California Chapter of the American College of Cardiology*  
*California Medical Association*  
*Massachusetts Medical Society (past)*  
*American College of Physicians (past)*  
*Society of Critical Care Medicine (past)*  
*American Medical Association (past)*  
*American Society of Internal Medicine (past)*

## **SPECIAL SKILLS**

### **LANGUAGES**

*Reading, writing and speaking knowledge of French and German,  
conversational knowledge of Spanish.*

### **COMPUTING**

*Familiar with and able to assemble most IBM compatible computers, with some  
experience in programming in Basic, Pascal, Windows 3.1 to Windows 8,  
Server 2008, SQL Server and DOS. Familiar with and have used EMR  
programs including ECHO, EPIC, MediTech, CompuMedics, MDSuite, PACS,  
Synapse, and Syngo, with Limited experience with Apple Power PC.*

## **AWARDS/HONORS/ACHIEVEMENTS**

*MDLinx, top 50 Cardiologists in the United States, August 2012 through November  
2014*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, January 2017*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, January 2016*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, January 2013*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, Sepember 2012*

*Eagle Scout, Boy Scouts of America, Troop 235, Tustin, California, 12/76, with  
additional Bronze and Gold Palms.*

*California delegate, Freedom's Foundation at Valley Forge, 1978*

*Honor Citizen, Chamber of Commerce, Orange County, California, 1976*

*Who's Who in Rising Young Americans, 1991*

*Excellence in research, Oakland Health Education Program, Michigan, 1995*



## **SPORTS/HOBBIES/INTERESTS**

*Tennis, golf, skiing (water and snow), ice hockey, computing, coin collecting, fine woodworking, antiques, music, hunting and fishing*

## **PUBLICATIONS**

*Just say 'No' to Soy lent Green medicine-you'll be glad you did;* Moran MD. *American Heart Hospital Journal*. 2009 Winter;7(2):E106-8.

*Clinical outcomes of catheter substrate ablation for high-risk patients with atrial fibrillation;* Nademanee K, Schwab MC, Kosar EM, Karwecki M, Moran MD, Visessook N, Michael AD, Ngarmukos T. *Journal of the American College of Cardiology* 2008, Feb. 26;51(8):843-9.

*Transesophageal Echocardiographic Diagnosis of Recurrent Right Ventricular Myxoma Two Years After Excision of Right Atrial Myxoma;* Fagan LF, Castello R, Barner H, Moran MD, Labovitz AJ. *American Heart Journal*, 120:6(part I); 1456-1458, December, 1990

*Noninvasive Methods in Cardiology;* Moran MD, Karamali A, Zainea M, Khan A, Kanukunta J, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume I, Part 4, June, 1995*

*Valvular Disorders;* Karamali A, Zainea M, Khan A, Kanukunta J, Moran MD, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume 2, Part 1, September, 1995*

*Electrocardiography Case Studies: A Self-Assessment Test;* Moran MD, Saba S, Zainea M, Karamali A, Cassavar D, Kanukunta J, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume 2, Part 2, December, 1995*

*Lipid Disorders;* Moran MD, Farkas P, Kanukunta J, Cassavar D, Saba S, Karamali AM, Khan A, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume 2, Part 3, March, 1996*

*Electromagnetic interference (EMI) caused by electrocautery during surgical procedures.* Moran MD, Cassavar D, Kirchhoffer J, Green H. *P.A.C.E.*, June, 1996, 19(6): 1009.

*"Diverticula" of Anterior Mitral Valve Leaflet as a Cause of Subvalvular Aortic Stenosis;* Agathos EA, Moran MD, Mangion J, Lovell A, Engleman RM, Rousou JA. *Journal of Valvular Heart Disease*, 5:3; 309-311, May, 1996

## **ABSTRACTS/PRESENTATIONS**

*Optimizing Outcomes: New Therapies For Peripheral Vascular Disease and Critical Limb Ischemia.* Grand Rounds, San Clemente Medical Center, July 17, 2003.



Prevention of End-Stage Renal Disease in Diabetes and Hypertension. Grand Rounds, Saddleback Memorial Medical Center, October 15, 2002.

Insulin Resistance and Cardiovascular Disease from the "Endo-Cardiologist's" Perspective. Grand rounds, South Coast Medical Center, Laguna Beach, CA. 2002.

Neurocardiogenic Syncope is associated with Insulin Resistance. Moran, MD, Marcus, A. Moderated Poster Presentation, (accepted, unable to be present). Third International Conference on Insulin Resistance, March, 2003, New Orleans, LA.

Update on Need for Emergent CABG in the Stent Era. Moran MD, Shubrooks SJ. Moderated Poster Presentation. American Heart Association National Meeting, 1996.

Q Fever Endocarditis. Michael D. Moran, M.D. Unknown Case Presentation. American College of Cardiology, Michigan Chapter Annual Meeting, Traverse City, Michigan, October 9, 1994.

Central Venous Pressure Measurement via the Femoral Vein Approach. Karamali A, Cassavar D, Kanukunta J, Zainea M, Moran MD, Khan A, David S, Duvernoy W. Poster Presentation. American College of Cardiology, Michigan Chapter Annual Meeting, Traverse City, Michigan, October, 1994.

## **CURRENT RESEARCH PROTOCOLS**

The MARVEL Study. Cardiac Stem Cell therapy for refractory, end-stage ischemic cardiomyopathy, sub-investigator. Richard Schatz, MD, chief investigator, Scripps's Green Clinic, La Jolla, California. 6/2008 to present.

The EVEREST trial, a long term, multicenter, double-blinded, placebo controlled trial of the oral vasopressin inhibitor Tolvaptan in subjects hospitalized with worsening congestive heart failure. George Ponce, M.D., Cardiovascular Clinical Studies, Boston, Massachusetts. 4/2005. Sponsor: Otsuka Pharmaceuticals. Primary investigator, South Coast Medical Center.

Carotid Revascularization with ev3 Arterial Technology Evolution, the CREATE trial. Drs. Gary Ansel and Robert Safian. Sponsor: ev3. Primary investigator, South Coast Medical Center.

Acute Decompensated Heart Failure Registry, the ADHERE registry. Sponsor: Scios, Inc. Primary investigator at South Coast Medical Center. 2003-present

Global Utilization Registry for Acute Coronary Events. - The GRACE trial, University Of Massachusetts, Worcester. Primary investigator at South Coast Medical Center, Saddleback Memorial, and Mission Regional Medical Center. 2002-present

## **RESEARCH INTERESTS**

Novel interventional techniques for coronary and peripheral vascular diseases  
Non-embryonic stem-cell therapy  
Minimally invasive treatment of carotid artery disease  
Endovascular treatment of abdominal aortic aneurysms



*Patent foramen ovale and stroke, diagnosis and treatment*  
*New treatment strategies for congestive heart failure*  
*Aggressive treatment of acute coronary syndromes*  
*Insulin resistance and cardiovascular diseases*  
*Atrial fibrillation prevention and treatment*  
*Syncope and neurocardiogenic mechanisms*

## **INVITED FACULTY**

*Vascular InterVentional Advances (VIVA!), Las Vegas, Nevada, 10/2003, Dr. James Joye, Director (Featured Interventionalist)*

*Scripp's Annual Advanced Coronary Management and Techniques, Scripp's Memorial Green Clinic, Dr. Paul Teirstein, Director, La Jolla, California, 10/2003 (Featured Interventionalist)*

*Hoag Memorial Peripheral and Interventional meeting, Hoag Memorial Hospital and University of California, Irvine, November 7-10, 2002 (Featured Interventionalist)*

*Scripp's Annual Advanced Coronary Management and Techniques, Scripp's Memorial Green Clinic, Dr. Paul Teirstein, Director, La Jolla, California, 10/2002 (Featured Interventionalist)*

*Third Annual Peripheral Interventional Techniques and Management, El Camino Medical Center and Stanford University, Dr. James Joye, Director, Mountain View, California, 9/2002 (Featured Interventionalist)*

*Second Annual Peripheral Interventional Techniques and Management, El Camino Medical Center and Stanford University, Dr. James Joye, Director, Mountain View, California, 9/2001 (Featured Interventionalist)*

## **COURSES GIVEN**

*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. November 9 and 10, 2005. South Coast Medical Center, Laguna Beach, California.*

*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. July 27 and 28, 2005. South Coast Medical Center, Laguna Beach, California.*

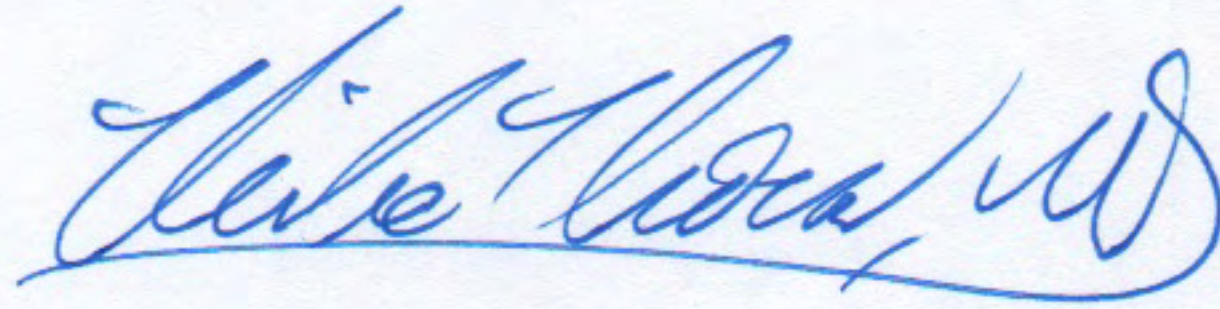
*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. July 14 and 15, 2004. South Coast Medical Center, Laguna Beach, California.*

*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. September 3 & 4, 2003. South Coast Medical Center, Laguna Beach, California.*



***Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors:  
James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. June 25 & 26, 2003.  
South Coast Medical Center, Laguna Beach, California.***

**REFERENCES:** *Furnished upon request.*

A handwritten signature in blue ink, appearing to read "Mike Moran MD", written over a horizontal line.

***Michael D. Moran, M.D., F.A.C.C., F.S.C.A.I.***

3/23/2017

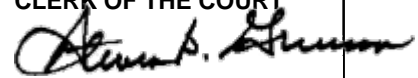
***Date***

**PHONE**

***(949) 499-8080 Laguna Hills Office  
(949) 499-8082 FAX***

**E-MAIL: [DRMORAN@HEARTREPAIR.COM](mailto:DRMORAN@HEARTREPAIR.COM)**





1 **MLIM**  
2 ROBERT C. McBRIDE, ESQ.  
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4 T. CHARLOTTE BUYS, ESQ.  
5 Nevada Bar No.: 14845  
6 McBRIDE HALL  
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8 Las Vegas, Nevada 89113  
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12 E-mail: [tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)  
13 Attorneys for Defendants  
14 *Allan J. Stahl, M.D.*  
15 *and Allan J. Stahl, M.D., P.C.*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

13 KRISTINA DANICA SCHRAGE,  
14 Individually and as spouse and natural heir of  
15 JOSEPH PATRICK SCHRAGE, JR., and on  
16 behalf of the ESTATE OF JOSEPH  
17 PATRICK SCHRAGE, JR.; JOSEPH  
18 PATRICK SCHRAGE, III, and MILA  
19 DANICA SCHRAGE, minors, each  
20 individually and as children and natural heirs  
21 of JOSEPH PATRICK SCHRAGE, JR., by  
22 and through their Natural Parent and  
23 Guardian, KRISTINA DANICA SCHRAGE;

24 Plaintiff,

25 vs.

26 ALLAN J. STAHL, M.D.; an individual;  
27 ALLAN J. STAHL, M.D., P.C., a Nevada  
28 Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C**  
**DEPT NO.: XV**

**MOTION IN LIMINE NO. 1 TO EXCLUDE**  
**ANY EVIDENCE OR ARGUMENT IN**  
**FURTHERANCE OF PLAINTIFFS'**  
**ORDINARY/ "CORPORATE"**  
**NEGLIGENCE CLAIM AND TO CAP**  
**HEDONIC DAMAGES PURSUANT TO**  
**NRS 41A.035**

**HEARING REQUESTED**

27 COME NOW, Defendants, ALLAN J. STAHL, M.D. and ALLAN J. STAHL, M.D., P.C.,  
28 by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and T. CHARLOTTE

1 BUYS, ESQ. of the law firm of McBRIDE HALL, and hereby files this Motion in Limine No. 1  
2 to Seek Exclusion of Any Evidence in Furtherance of any Ordinary/ "Corporate" Negligence  
3 Claim and to Cap Hedonic Damages Pursuant to NRS 41A.035.

4 This Motion is made and based upon the papers and pleadings on file herein, the  
5 Memorandum of Points and Authorities set out below, the exhibits attached hereto, any argument  
6 of counsel which may be adduced at the time of the hearing of the motion, and any other evidence  
7 the Court deems just and proper.

8  
9 DATED this 29<sup>th</sup> day of November, 2021. McBRIDE HALL

10  
11 /s/ T. Charlotte Buys

12 ROBERT C. McBRIDE, ESQ.  
13 Nevada Bar No.: 7082  
14 T. CHARLOTTE BUYS, ESQ.  
15 Nevada Bar No.: 14845  
16 8329 W. Sunset Road, Suite 260  
17 Las Vegas, Nevada 89113  
18 Attorneys for Defendants  
19 *Allen J. Stahl, M.D.*  
20 *and Allen J. Stahl, M.D., P.C.*  
21  
22  
23  
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26  
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1. I am an attorney licensed to practice law in the State of Nevada and I am employed by the law firm of McBride Hall, counsel of record for Defendants Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C. This Declaration is made and based upon my personal knowledge and I am competent to testify to the matters contained herein.

3. One of the proposed defense motions in limine, was a motion to seek exclusion of any evidence or argument in furtherance of any Ordinary/ "Corporate" Negligence Claim and to Cap Hedonic Damages Pursuant to NRS 41A.035.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

*harlotte*  
T. CHARLOTTE BUYS



1 **POINTS AND AUTHORITIES**

2 **I.**

3 **PREFATORY NOTE**

4 Plaintiffs have brought a 61-paragraph Complaint contending that Defendants Allan J.  
5 Stahl, M.D., and Allan J. Stahl, M.D., P.C. were “professionally negligent” and “breached the  
6 standard of care.” Specifically, Plaintiffs contend that the Defendants fell below the standard of  
7 care in rendering medical care and treatment to Plaintiffs’ Decedent, Joseph Schrage, by  
8 negligently interpreting a cardiac stress test and failing to refer Mr. Schrage to the catherization  
9 laboratory for an angiogram, which could have possibly prevented his subsequent death several  
10 weeks later. *See* Paragraph 25 of Plaintiffs’ Amended Complaint, attached hereto as “**Exhibit A.**”

11 Apparently unsatisfied with the pursuit of this action as a “professional negligence” case,  
12 Plaintiffs have attempted to embellish their Complaint with additional claims for “Negligent  
13 Hiring, Training, & Supervision;” “Negligent Infliction of Emotional Distress” and punitive  
14 damages. However, such additional claims rely upon the same set of facts, the same actions, the  
15 same breaches, and the exact same injury as the professional negligence claim.

16 Under these circumstances, the Nevada Supreme Court has again, and again, and again,  
17 and again rejected the additional claims which are offered to circumvent the limitation of actions  
18 for professional negligence claims set forth in NRS 41A.035. *See* (1) *Estate of Mary Curtis, et al.*,  
19 *v. Life Care Center of So. Las Vegas, et. al.*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (Nev. 2020);  
20 (2) *Zhang, M.D. v. Barnes*, 832 P.3d 878 (Nev. 2016) (unpublished) (holding affirmed in the *Estate*  
21 *of Mary Curtis, supra.*); (3) *Schwarts v. Univ. Med. Ctr. of S. Nevada*, 460 P.3d 25, No. 77554,  
22 No. 77666, 2020 WL 1531401 (Nev. 2020); and (4) *Turner v. Renown Reg’l Med. Ctr.*, 461 P.3d  
23 163 No. 77312, No. 77841, 2020 WL 1972790 (Nev. 2020).

24 **II.**

25 **FACTS**

26 In Plaintiffs’ Fourth Amended Complaint, Plaintiffs first assert (Paragraphs 12 through 27)  
27 a “General Allegations” section. Those verbatim “General Allegations” are then incorporated by  
28 reference into all four (“4”) of Plaintiffs’ Causes of Action. Moreover, on the face of the Fourth

1 Amended Complaint, Plaintiffs have sought exemption from Arbitration as this is a "Medical  
2 Malpractice" action. *See* "**Exhibit A.**"

3 Throughout Plaintiffs' Fourth Amended Complaint, and in each and every cause of action,  
4 and in the attached medical expert declaration, Plaintiffs assert and incorporate by reference that  
5 the Defendant health care providers breached the standard of care resulting in Mr. Schrage's death.

6 The definition in Nevada, by statute, of "professional negligence" is "...the failure of a  
7 provider of health care, in rendering services, to use the reasonable care, skill or knowledge  
8 ordinarily used under similar circumstances by similarly trained and experienced providers of  
9 health care." *See* NRS 41A.015.

10 Further, and as the case law from the Nevada Supreme Court repeatedly demonstrates, if  
11 the injury suffered by a plaintiff in a professional negligence action is the same injury relied upon  
12 to support a claim for "ordinary" negligence, then the claims are inextricably intertwined and  
13 deemed professional negligence. Here, there is a single ("1") injury. The single injury claimed in  
14 this case (in all claims for relief) is for the death of Mr. Joseph Schrage due to an alleged breach  
15 in the standard of care in deciding to not refer Mr. Schrage to the catheterization lab for an  
16 angiogram and instead performing an exercise stress test, allegedly preventing the possible  
17 discovery of arterial blockage which Plaintiff contends could have possibly prevented Mr.  
18 Schrage's death. There is no other injury asserted which does not arise from this very same claim.

19 Plaintiffs' claims of Professional Negligence and Negligent Hiring, Training, &  
20 Supervision/ "Corporate" Negligence are duplicative. Where the crux of a Negligent Hiring,  
21 Training, & Supervision claim is medical malpractice, the Negligent Hiring, Training, &  
22 Supervision claim should not be allowed to proceed as a separate Cause of Action for Ordinary  
23 Negligence. Plaintiffs' claims fall squarely under NRS 41A, as they are allegations of professional  
24 negligence. Thus, Plaintiffs must be precluded from offering any evidence or argument in  
25 furtherance of any Ordinary/ "Corporate" Negligence Claim and this matter must be subject to the  
26 cap on non-economic damages set forth under NRS 41A.035.

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III.

LEGAL ARGUMENT

**A. THE SPECIFIC PURPOSE OF NRS 41A.035 IS TO REDUCE THE SIZE OF PROFESSIONAL NEGLIGENCE ACTIONS.**

In 2004, the voters of the State of Nevada via a ballot initiative entitled “Keep Our Doctors in Nevada” (KODIN) approved a series of statutes designed to reduce jury verdicts in professional negligence (medical malpractice) actions. *See Segovia v. Eighth Judicial Dist. Ct.*, 133 Nev. 910, 911, 407 P.3d 783, 785 (Nev. 2017). The Nevada citizenry and a unanimous legislature found that there was a statewide emergency resulting from the loss of physicians and healthcare providers in Nevada. Even today, Nevada ranks in the bottom 2 or 3 states for per capita physicians to citizens. The Nevada Supreme Court in *Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. 792, 798 358 P.3d 234, 239 (2015), determined that the \$350,000 “cap” or limitation on non-economic damages for professional negligence actions is a “hard cap.” By such decision, the Nevada Supreme Court stated in pertinent part:

“Based on the foregoing, we conclude that the noneconomic damages cap in NRS 41A.035 applies per incident, **regardless of how many** plaintiffs, defendants, or **claims are involved.**” *Id.* at 800. (Emphasis added).

“[T]he right of malpractice plaintiffs to sue for damages caused by medical professionals does not involve a fundamental constitutional right.” *Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. 792, 798, 358 P.3d 234, 239 (2015), citing *Baird v. Barrett*, 111 Nev. at 1507, 908 P.2d at 697. Further a statutory limit on damages does not infringe upon a Plaintiff’s constitutional right. *Id.* As such, limiting cases to a \$350,000 non-economic damage cap is legal and constitutional (even if it prejudices a plaintiff’s case by reducing a potential verdict). Moreover, such reflects the will and intent of the people of the State of Nevada.

This case is a professional negligence action arising in a medical malpractice context. Dr. Stahl and his professional corporation are statutory providers of healthcare per NRS 41A.017. Claims that a physician and his professional corporation breached the standard of care causing injury regarding care rendered to a patient are subject to the “hard cap” set forth in NRS 41A.035

1 and recognized in *Tam*. Every claim against these Defendants in Plaintiff's Complaint asserts a  
2 breach of the standard of care. As "Argument B" below demonstrates, the Nevada Supreme Court  
3 has become increasingly aggressive in refusing to allow Plaintiffs to plead around the "hard cap"  
4 and have regularly rejected such efforts in a wave of recent decisions.

5 **B. PLAINTIFFS' ORDINARY/ "CORPORATE" NEGLIGENCE CLAIM CANNOT BE USED TO**  
6 **ESCAPE THE "CAP" SET FORTH IN NRS 41A.035.**

7 The decision as to whether a claim is for "professional" negligence or "ordinary"  
8 negligence is a legal determination for the Court. *See Zhang, M.D. v. Barnes*, 832 P.3d 878 (Nev.  
9 2016) (unpublished) at \*5. What is also abundantly clear from recent Nevada cases directly on  
10 point, is that a claim of "ordinary negligence" cannot utilize the same facts and injury as are used  
11 as a basis for a claim of "professional negligence" to escape the "cap" set forth in NRS 41A.035.

12 For example, in the *Estate of Mary Curtis, et al., v. Life Care Center of So. Las Vegas, et.*  
13 *al.*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (Nev. 2020), the Nevada Supreme Court stated that a  
14 Plaintiff's claims for **negligent staffing, training**, budgeting, and monitoring, although pled as  
15 ordinary negligence, were in fact claims sounding in professional negligence requiring compliance  
16 with the limitations set forth in NRS Chapter 41A (which would then include NRS 41A.035).  
17 Similarly, in *Zhang, M.D. v. Barnes*, 832 P.3d 878 (Nev. 2016) (unpublished) (holding affirmed  
18 in the *Estate of Mary Curtis, et al., v. Life Care Center of So. Las Vegas, et. al*), the Nevada  
19 Supreme Court again stated that when negligent hiring, training, and supervision claims are  
20 inextricably linked to the underlying professional negligence, such claims "...cannot be used as a  
21 channel to allege professional negligence against a provider of healthcare to avoid the statutory  
22 caps on such actions...". *Id.* at \*7.

23 In this case, Plaintiff has alleged in her First Cause of Action for "Medical  
24 Malpractice/Professional Negligence/Wrongful Death" that the Defendant providers of healthcare  
25 breached the standard of care in their treatment and medical judgment during Mr. Schrage's  
26 cardiac care and treatment. Plaintiffs then, somehow, argue that Defendants are also liable for  
27 Negligent Hiring, Training, & Supervision/ Ordinary/ "Corporate" Negligence due to the  
28 Defendant providers of healthcare allegedly breaching the standard of care in their treatment and

1 medical judgment during Mr. Schrage's care and treatment. Such appears to be an attempt to in-  
2 artfully plead additional, duplicative causes of action to avoid the requirements and limitations of  
3 NRS Chapter 41A.

4 Here, Plaintiff's claims for Negligent Hiring, Training, & Supervision/Ordinary  
5 Negligence assert the same injury arising from the underlying, alleged professional negligence.  
6 Such claims are "inextricably linked to the underlying negligence." *See Estate of Mary Curtis, et*  
7 *al., v. Life Care Center of So. Las Vegas, et. al.*, 136 Nev. Adv. Op. 39 at \*7, 466 P.3d 1263, 1266  
8 (Nev. 2020). Based on clear Nevada law, repleading the professional negligence claim under  
9 Negligent Hiring, Training, & Supervision/ Ordinary/ "Corporate" Negligence does not create  
10 additional uncapped causes of action upon which recovery can be made. There is no independent  
11 contention that the claims are anything other than professional negligence in nature.

12 In *Curtis*, the Nevada Supreme Court stated that in determining whether a claim sounds in  
13 ordinary or professional negligence the Court "...must look to the gravamen or substantial point  
14 or essence of each claim rather than its form." *Id.* at 1266. The claims, as made, involve "judgment"  
15 issues pertinent to licensed physicians and a physicians' professional corporation and its  
16 employees, who are rendering care and/or treatment to Plaintiffs' Decedent.

17 For the reasons stated herein, Defendants respectfully requests that there be no reference  
18 placed in evidence to Ordinary/ "Corporate" negligence claims since there has been no basis even  
19 alleged for same. Moreover, Defendants respectfully request that the cap on Non-Economic  
20 Damages Pursuant to NRS 41A.035 be applied to this professional negligence action.

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1 IV.

2 CONCLUSION

3 Based upon the foregoing, Defendant Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C.  
4 respectfully requests that this Court enter an Order granting Defendants' Motion in Limine No. 1  
5 to Seek Exclusion of Any Evidence in Furtherance of any Ordinary/ "Corporate" Negligence  
6 Claim and to Cap Hedonic Damages Pursuant to NRS 41A.035.

7  
8 DATED this 29<sup>th</sup> day of November, 2021. McBRIDE HALL

9  
10 /s/ T. Charlotte Buys

11 ROBERT C. McBRIDE, ESQ.  
12 Nevada Bar No.: 7082  
13 T. CHARLOTTE BUYS, ESQ.  
14 Nevada Bar No.: 14845  
15 8329 W. Sunset Road, Suite 260  
16 Las Vegas, Nevada 89113  
17 Attorneys for Defendants.  
18 *Allen J. Stahl, M.D.*  
19 *and Allen J. Stahl, M.D., P.C.*  
20  
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 29<sup>th</sup> day of November, 2021, I served a true and correct  
3 copy of the foregoing **MOTION IN LIMINE NO. 1 TO EXCLUDE ANY EVIDENCE OR**  
4 **ARGUMENT IN FURTHERANCE OF PLAINTIFFS' ORDINARY/"CORPORATE"**  
5 **NEGLIGENCE CLAIM AND TO CAP HEDONIC DAMAGES PURSUANT TO NRS**  
6 **41A.035** addressed to the following counsel of record at the following address(es):

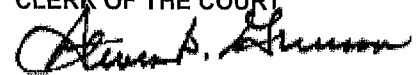
- 7 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
8 service attached to any copy filed with the Court; or
- 9 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
10 postage thereon fully prepaid, addressed as indicated on the service list below in the United  
11 States mail at Las Vegas, Nevada; or
- 12 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
13 indicated on the service list below.

14 Timothy R. O'Reilly, Esq.  
15 TIMOTHY R. O'REILLY, CHTD.  
16 325 S. Maryland Parkway  
17 Las Vegas, Nevada 89101  
18 -and-  
19 Gerald I. Gillock, Esq.  
20 GERALD I. GILLOCK & ASSOCIATES  
21 428 South Fourth Street  
22 Las Vegas, Nevada 89101  
23 *Attorneys for Plaintiffs*

24 /s/ Natalie Jones  
25 An Employee of *McBRIDE HALL*

# **EXHIBIT “A”**





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10 Attorneys for Plaintiffs

11  
12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 KRISTINA DANICA SCHRAGE,  
Individually and as spouse and natural heir of  
15 JOSEPH PATRICK SCHRAGE, JR., and on  
behalf of the ESTATE OF JOSEPH  
16 PATRICK SCHRAGE, JR.; JOSEPH  
PATRICK SCHRAGE, III, and MILA  
17 DANICA SCHRAGE, minors, each  
individually and as children and natural heirs  
18 of JOSEPH PATRICK SCHRAGE, JR., by  
and through their Natural Parent and  
19 Guardian, KRISTINA DANICA SCHRAGE;

20 Plaintiff,

21 v.

22 ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
23 Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
24 inclusive,

25 Defendants.

CASE NO.: A-17-762364-C  
DEPT. NO.: XV

**FOURTH AMENDED COMPLAINT**  
**FOR MEDICAL MALPRACTICE AND**  
**WRONGFUL DEATH**

**ARBITRATION EXEMPTION**  
**CLAIMED: MEDICAL MALPRACTICE**

**JURY TRIAL DEMANDED**

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**FOURTH AMENDED COMPLAINT FOR MEDICAL MALPRACTICE  
AND WRONGFUL DEATH**

Plaintiffs, by and through their attorneys of record, GERALD I. GILLOCK, ESQ., of the law firm of GERALD I. GILLOCK & ASSOCIATES, P.C., and TIMOTHY R. O'REILLY, ESQ., of the law firm of TIMOTHY R. O'REILLY, CHTD., hereby allege and complain as follows:

1. JOSEPH PATRICK SCHRAGE, JR. died on October 3, 2016, in Clark County, Nevada, and at all relevant times herein, was a resident of Clark County, Nevada.

2. At all times relevant hereto, Mr. Schrage was married to Plaintiff KRISTINA DANICA SCHRAGE.

3. Plaintiff 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, JR., is a resident of Cook County, Illinois but at the time of Mr. Schrage's death was a resident of Clark County, Nevada.

4. Plaintiff JOSEPH PATRICK SCHRAGE, III is a resident of Cook County, Illinois and the minor child and natural heir of JOSEPH PATRICK SCHRAGE, JR. At the time of Mr. Schrage's death JOSEPH PATRICK SCHRAGE, III, was a resident of Clark County, Nevada.

5. Plaintiff MILA DANICA SCHRAGE is a resident of Cook County, Illinois and the minor child and natural heir of JOSEPH PATRICK SCHRAGE, JR. At the time of Mr. Schrage's death MILA DANICA SCHRAGE was a resident of Clark County, Nevada.

6. Defendant, ALLAN J. STAHL, M.D. individually, is, and was at all times relevant hereto, a physician/resident licensed to practice medicine in the State of Nevada pursuant to N.R.S. Chapters 630 and 449.

7. Upon information and belief, Defendant ALLAN J. STAHL, M.D., P.C., is and was doing business as ALLAN J. STAHL, M.D., P.C. (hereinafter the "Stahl Corporation"), located at

1 653 N. Town Center Dr., #400, Las Vegas, Nevada 89144, and is a Nevada Business Entity  
2 authorized to do business as a medical facility provider pursuant to NRS Chapter 449 and a medical  
3 facility pursuant to NRS 449.0151 providing health care to the public and is vicariously liable for  
4 its employees, doctors, nurses, agents and/or servants and their actions, include DOE employees  
5 and/or contractors, who provided services to Mr. Schrage and are being sued under the theory of  
6 vicarious liability and ostensible agency, for the negligence of its employees, agents, contractors,  
7 and subcontractors. The Stahl Corporation is also being sued under the theory of ostensible agency,  
8 for the negligence of its doctors, nurses, and employees and corporation negligence of the Stahl  
9 Corporation and its employee doctors.  
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11 8. Plaintiffs are informed and believe and thereon allege that Defendants and each of  
12 them, at all times herein mentioned, were and now are residents of the County of Clark, State of  
13 Nevada.  
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15 9. At all relevant times the Defendants, Does I through X, inclusive, were and are now  
16 physicians, surgeons, residents, registered nurses, licensed occasional nurses, practical nurses,  
17 registered technicians, aides, technicians, attendants, and/or physician assistants holding themselves  
18 out as duly licensed to practice their professions under and by virtue of laws of the State of Nevada  
19 and are now engaged in the practice of their professions in the State of Nevada; the true names and  
20 capacities, whether individual, corporate, associate, or otherwise of Defendants DOES I through X,  
21 inclusive, are presently unknown to the Plaintiffs, who therefore sues those Defendants by such  
22 fictitious names, the Plaintiffs are informed and do believe, and thereupon allege that each of the  
23 Defendants sued herein as DOES I through X are responsible in some manner for the events and  
24 happenings herein referred to, which thereby proximately caused the injuries and damages to the  
25 Plaintiffs as alleged herein; that when the true names and capacities of such Defendants become  
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10. At all relevant times, Defendants, ROE CORPORATIONS, I through X, were and now are corporations, firms, partnerships, associations, employers, and other legal entities involving the care, treatment, diagnosis, surgery and/or other provision of medical care to the Plaintiffs herein; that the true names, identities or capacities whether individual, corporate, associate or otherwise of the Defendants, ROE CORPORATIONS I through X, inclusive are presently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names; that the Plaintiffs are informed and do believe and thereupon allege that each of the Defendants sued herein as ROE CORPORATIONS I through X are responsible in some manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to the Plaintiffs alleged herein; that when their true names and capacities of such Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names, identities and capacities, together with proper charges and allegations.

11. At all relevant times, Defendants, and each of them, were the agents, ostensible agents, servants, employees, employers, partners, co-owners and/or joint venturers of each other and of their co-defendants, and were acting within the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by reason of such relationships the Defendants, and each of them, are vicariously and jointly and severally responsible and liable for the acts and/or omissions of their co-Defendants.

12. Plaintiffs hereby adopt and incorporate by reference all prior paragraphs as through full set forth herein.

1           13.     On August 1, 2016, Mr. Schrage was examined by Dr. Jacobs, his primary care  
2 physician. Dr. Jacobs referred him to cardiologist Allan J. Stahl, MD for a stress test and  
3 cardiovascular evaluation for chest pains. Joseph Schrage, Jr. had a history of chest pain, and pain  
4 in the posterior forearm along with an abnormal ECG. The ECG was performed by Dr. Jacobs on  
5 August 1, 2016, and Dr. Stahl had access to it.  
6

7           14.     On August 10, 2016, a medical assistant, Josephine Rubio, of the Stahl Corporation  
8 conducted a cardiovascular stress test via treadmill and transcribed Mr. Schrage's heart rate and  
9 blood pressure during the testing procedure. Dr. Stahl assessed the transcribed information as  
10 follows: 1) negative for ischemia; 2) excellent exercise tolerance for patient's age; 3) normal blood  
11 pressure response to exercise; 4) normal heart rate response to exercise; 5) no arrhythmias were  
12 present during exercise. Dr. Stahl did not do any further cardiac work up. Specifically, he did not  
13 refer Mr. Schrage to the catheterization laboratory for an angiogram.  
14

15           15.     Mr. and Mrs. Schrage were incorrectly lulled into a sense of relief that Mr. Schrage's  
16 symptoms were not related to a heart issue. Faced with this false reassurance, and the belief that  
17 heart related issues had been eliminated, Mrs. Schrage participated in her husband's care with efforts  
18 to treat on-going, continuing symptoms that they now incorrectly believed to be gastric related only  
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20           16.     On October 3, 2016, Mrs. Schrage and the couple's minor children, after receiving  
21 a text message from Mr. Schrage that he was not feeling well, returned to the their family home to  
22 discovery Mr. Schrage sitting on the living room floor with his head resting on the sofa apparently  
23 in the midst of cardiac arrest. Mrs. Schrage called 911 and began efforts to revive her husband  
24 through the administration of CPR as she awaited the arrival of first responders.

25           17.     Upon the arrival of Emergency Medical Technicians, Mrs. Schrage watched  
26 helplessly as the EMTs continued CPR and attempted electrical cardioversion; a process she  
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1 describes as far more violent and traumatic than “what is portrayed on TV.” She then escorted the  
2 EMT’s to the ambulance as they continued efforts to save Mr. Schrage’s life.

3 18. Further adding to her distress, her request to accompany her husband to the hospital  
4 in the ambulance was refused and she was left to find her way to the Hospital in the family  
5 automobile.  
6

7 19. On October 3, 2016, Mr. Schrage ultimately passed away after Plaintiffs found and  
8 witnessed Mr. Schrage suffering from cardiac arrest. As further set forth in the autopsy report of  
9 November 8, 2016 from the Clark County Coroner Mr. Schrage passed away from acute myocardial  
10 infarct due to thrombosis of right coronary artery and arteriosclerotic cardiovascular disease.

11 20. As a result of witnessing her husband’s cardiac arrest and her own role through  
12 ineffective efforts to rescue him through CPR and her witnessing of the EMT’s continued efforts at  
13 CPR and electrical cardioversion, Mrs. Schrage experienced extreme shock and emotional distress;  
14 as did the couple’s minor children.  
15

16 21. The physical and mental impacts to Mrs. Schrage and the minor children have been  
17 substantial and continuing.

18 22. Mrs. Schrage has experienced mental and physical pain and suffering including,  
19 extreme feelings of guilt that she was unable to save her husband’s life, anger at her husband’s  
20 completely preventable death, terror at the sound of sirens, feelings of isolation and detachment  
21 from family and friends, insomnia, changes in appetite, constant irritability, muscle aches, chest  
22 pains and feelings of herself experiencing a heart attack, as well as other pain and suffering that  
23 Mrs. Schrage describes as “Post Traumatic Stress Disorder-like” symptoms.  
24

25 23. Mr. Schrage’s son, Joseph Patrick Schrage III continues to experience nightmares  
26 and night terrors, complains that his heart hurts and that he feels sick, confuses death and sleep, re-  
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1 enacts witnessing his father's death, fear his Mother will now die, and other on-going, traumatic  
2 mental and physical symptoms.

3         24. Mrs. Schrage continues in twice monthly therapy in addition to group grief  
4 counseling therapy with her young children; all as a result of Defendant's negligence and her  
5 unwarranted assumption of a mantle of guilt for her own role in being unable to save her Husband's  
6 life by the administration of effective CPR.

7  
8         25. Defendants breached the standard of care by failing to adequately assess and treat  
9 Mr. Schrage in that:

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

21  
22         b. The Stahl Corporation did not adequately train, hire, or supervise its employees and  
23 medical assistants enough to assist Dr. Stahl in meeting the required standard of care.

24  
25         26. The Declaration of Michael D. Moran, M.D., FACC, FSCAI, is attached hereto as  
26 Exhibit 1 supporting the allegations of the Fourth Amended Complaint as required by NRS  
27 41A.071, are hereby adopted and incorporated as though set forth fully herein.

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### FIRST CAUSE OF ACTION

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1 failure to provide safe and proper medical diagnosis, medical attention, care and treatment (Dr.  
2 Stahl).

3           33. Defendants, and each of them, breached their duties and fell below the standard of  
4 care for health care providers who possess the degree of professional learning, skill and ability of  
5 other similar health care providers in failing to timely diagnose and/or treat Mr. Schrage for  
6 atherosclerosis cardiovascular disease including thrombosis of the right coronary artery and in  
7 failing to refer Mr. Schrage to a catheterization laboratory for an angiogram which would have  
8 shown the arterial blockage causing the continued chest pain experienced by Mr. Schrage, all of  
9 which resulted in injury and damages to Plaintiffs and the wrongful death of Mr. Schrage. See,  
10 Exhibit 1.

11           34. Defendants' acts and omissions were conducted with such wanton and reckless  
12 disregard for the well-being of Mr. Schrage so as to constitute malice, gross negligence and  
13 oppression. As such, Plaintiffs are entitled to punitive and exemplary damages.

14           35. The direct and proximate result of the negligence and carelessness of Defendants in  
15 treating and/or failing to treat Mr. Schrage was the wrongful death of decedent.

16           36. As a proximate result of the negligence of the Defendants, Plaintiffs incurred  
17 medical, hospital and funeral expenses, the full extent of said expenses are not presently known to  
18 Plaintiffs and leave is requested of this Court to amend this Complaint to conform to proof at time  
19 of trial; Plaintiffs have suffered general and special damages both in an individual amount that is in  
20 excess of Fifteen Thousand dollars (\$15,000.00).

21           37. As a direct and proximate result of the conduct of Defendants, Plaintiffs have  
22 suffered special damages, including loss of wages both past, present and future, and loss of support  
23 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

24 ...

39. As a further proximate result of Defendants' negligent acts and/or omissions, Plaintiffs were forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys' fees and costs.

40. Plaintiffs hereby adopt and incorporate by reference each and every allegation contained in Paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Defendants' employees, agents and/or servants, including but not limited to, administrators, managers, supervisors, and caregivers, were acting in the scope of their employment, under Defendants' control, and in furtherance of Defendants' interest at the time their actions caused injuries and untimely death of Mr. Schrage.

42. STAHL CORPORATION and ROE CORPORATIONS are vicariously liable for damages resulting from its agents' and/or employees' and/or servants' negligent actions and omissions regarding the injuries to Plaintiffs, during the scope of their employment.

43. Defendants, and each of them, by and through their employees, agents and/or servants breached their duty of care to Plaintiffs as set forth above.

44. Defendants' acts and omissions were conducted with such wanton and reckless disregard for the well-being of Mr. Schrage so as to constitute malice, gross negligence and oppression. As such, Plaintiffs are entitled to punitive and exemplary damages.

• • •

48. As a further proximate result of Defendants' negligence, Plaintiffs have suffered general damages including, but not limited to, loss of consortium, society, love, support and companionship, emotional distress and pain and suffering as a result of the untimely death of their husband and family member in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

• • •

52. Plaintiffs allege that the aforementioned acts and omissions of the Defendants, and each of them, constitute infliction of emotional distress as Plaintiffs, including KRISTINA DANICA SCHRAGE, JOSEPH PATRICK SCHRAGE, III, and MILA DANICA SCHRAGE witnessed, among other things, Mr. Schrage being in cardiac arrest. Plaintiffs were emotionally and physically injured as a result of experiencing, and/or observing the injury to Mr. Schrage, including without limitation, the facts set forth in Paragraphs 14-28 above.

54. As a further proximate result of Defendant's negligent acts and/or omissions, Plaintiffs were forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys' fees and costs.

**V.**  
**FOURTH CAUSE OF ACTION**  
**(Negligent Hiring, Training, & Supervision)**

56. Defendant STAHL CORPORATION (and ROE CORPORATIONS) is vicariously liable for damages resulting from its employees, doctors, nurses, agents and/or servants' negligent actions against Plaintiffs during the course and scope of their employment and is ostensibly liable for the negligent hiring, training, and supervision of those individuals.

61. As a further proximate result of Defendant's negligent acts and/or omissions, Plaintiffs were forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys' fees and costs.

### PRAYER FOR RELIEF

• • •

VII.  
**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: March 19, 2020

**TIMOTHY R. O'REILLY, CHTD.**

By: /s/ Timothy R. O'Reilly

Timothy R. O'Reilly, Esq.

Nevada Bar No. 8866

325 South Maryland Parkway

Las Vegas, Nevada 89101

Gerald I. Gillock, Esq.

Nevada Bar No. 0051

**GERALD I. GILLOCK & ASSOCIATES**

428 South Fourth Street

Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the law offices of TIMOTHY R. O'REILLY, CHTD. and that, on this 19<sup>th</sup> day of March, 2020, served the above and foregoing FOURTH AMENDED COMPLAINT FOR MEDICAL MALPRACTICE AND WRONGFUL DEATH pursuant to N.R.C.P. 5(b) by:

- ☒ Electronic transmission through E-Service (EFS) of the Eighth Judicial District Court to the email address(es) of the parties listed below:
- ☐ U.S. Mail by placing a copy of same in a sealed envelope, with postage fully prepaid thereon, to the parties listed below:
- ☐ Facsimile transmission to the fax number(s) of the parties listed below:

SCHUERING ZIMMERMAN & DOYLE, LLP

Thomas J. Doyle, Esq. - calendar@szs.com; tjd@szs.com

Aimee Clark Newberry, Esq. - calendar@szs.com; al@szs.com

400 University Avenue

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Co-Counsel for Defendant ALLAN J. STAHL, M.D.

MANDELBAUM CLARK NEWBERRY & ASSOCIATES

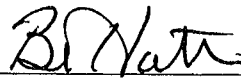
Kim Irene Mandelbaum, Esq. - kim@meklaw.net

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Co-Counsel for Defendant ALLAN J. STAHL, M.D.



An Employee of TIMOTHY R. O'REILLY, CHTD.

# EXHIBIT 1



**EXPERT DECLARATION OF MICHAEL DOUGLAS MORAN, M.D., F.A.C.C.,  
F.S.C.A.I. IN REGARD TO JOSEPH SCHRAGE**

I, Michael D. Moran, M.D., F.A.C.C., F.S.C.A.I., being duly sworn, under oath, hereby swear that the following assertions are true to the best of my personal knowledge, training, experience, and belief:

1. I am a board certified physician and surgeon with a subspecialty certification in interventional cardiology and cardiovascular disease.
2. My current area of practice includes cardiology, and I am currently an active medical staff member at various medical centers throughout California while also being the President and C.E.O of Coastal Cardiovascular Institute. In addition, and among other professional memberships, I am a fellow of the American College of Cardiology and Society of Cardiovascular Angiographers and Interventionists.
3. My licenses are on file with the appropriate authorities in the State of California.
4. My additional qualifications to serve as an expert and training are set forth in my Curriculum Vitae, attached hereto as Exhibit A.
5. Based upon my training, background, knowledge and experience, I am familiar with the applicable standards of care required of a physician for a patient presenting to a cardiologist for a treadmill work up with a history of chest pain and has an abnormal ECG which includes an inferior infarct with an undetermined age. I have practiced and continue to practice in this area of medicine.
6. I am qualified on the basis of my training, background, knowledge and experience to offer an expert medical opinion regarding those accepted standards of medical care, the breaches thereof in this case, and any resulting injuries and damages arising therefrom.
7. In preparation for my opinions in this case, I have reviewed medical records from Michael Jacobs, M.D., Allan J. Stahl, M.D., PC, Brent Burnette, M.D. of Gastroenterology Associates, and the Autopsy Report from the Clark County Coroner dated October 4, 2016. In addition, I have also reviewed the deposition transcripts of Michael Jacobs, M.D. (July 20, 2018), Alan Stahl, M.D. (June 28, 2019), and Josefina Rubio, M.A. (September 26, 2019).
8. I anticipate reviewing additional information as this matter progresses and reserve the right to supplement my opinions based upon information not yet available or received.
9. I am competent to testify as to the assertions contained herein.

10. Based upon my review of the records stated herein, it is my understanding that Joseph Schrage was examined by his primary care physician, Dr. Jacobs, on August 1, 2016. Dr. Jacobs referred him to cardiologist Allan J. Stahl, M.D. for a stress test. He had a history of chest pain and pain in the posterior forearm along with an abnormal ECG. The ECG was performed by Dr. Jacobs on August 1, 2016, and Dr. Stahl has confirmed he had access to it. Dr. Stahl delegated the responsibility of performing a stress test to an untrained and unsupervised medical assistant. He, in error, assessed the stress test as follows: (1) negative for ischemia; (2) excellent exercise tolerance for patient's age; (3) normal blood pressure response to exercise; (4) normal heart rate response to exercise; and (5) no arrhythmias were present during exercise. Dr. Stahl did not do any further cardiac work up and did not grant Dr. Jacob's access to the treadmill work sheet that reflects, among other things, the patient's blood pressure during a treadmill test. Specifically, he did not refer Mr. Schrage to the catheterization laboratory for an angiogram. He only had his untrained and unsupervised staff member perform a cardiovascular stress test via treadmill on August 10, 2016. Mr. Schrage ultimately passed away on October 3, 2016 from acute myocardial infarct due to thrombosis of right coronary artery and arteriosclerotic cardiovascular disease.

11. Based upon my experience, training, and education, and in light of the information provided and available to date, it is my opinion, to a reasonable degree of medical certainty, that the care and/or lack of care provided to Mr. Schrage by Dr. Stahl and his staff fell below the standard of care in multiple areas and, in certain areas, Dr. Stahl and his staff grossly fell below the standard of care.

12. As an initial matter, Dr. Stahl should not have permitted Mr. Schrage to perform a treadmill test with his presenting conditions. Just because a treadmill test is requested by a general practitioner does not mean one should be performed. A cardiologist should conduct their own independent work up to determine the cause of the chest pains with an individual presenting with a medical history such as Mr. Schrage. Dr. Stahl made no such effort. Based upon a review of Dr. Stahl's deposition, if he would have seen Mr. Schrage (which he has no recollection of doing) prior to the treadmill test being performed and performed an adequate health history of the patient or even reviewed the information available to him in regard to Mr. Schrage and his health history prior to the treadmill test, then a treadmill test should not have been performed. More specifically, Mr. Schrage presented with an abnormal ECG (i.e. Inferior Infarct), a history of chest pains, and a father who appears to have had a heart attack prior to the age of 55. These risk factors were not all identified on the treadmill worksheet. As a cardiologist, in lieu of a treadmill test, Mr. Schrage should have been admitted to the catheterization laboratory for an angiogram. The angiogram would have shown the arterial blockage causing the continued chest pain experienced by Mr. Schrage.

13. Dr. Stahl claims he formed an opinion prior to the stress test that Mr. Schrage's abnormal ECG was in fact not abnormal and not determinative of a prior myocardial infarction. This opinion is not only confusing as to when he developed it, but it is also wrong. Dr. Stahl testified on page 18 of his deposition that he only saw Mr. Schrage during the treadmill test, although Ms. Rubio confirmed he did not. In any event, Dr. Stahl's interpretation of the ECG is not accurate. The ECG in Dr. Stahl's possession, prior to the performing the treadmill test, is determinative of a prior myocardial infarction. However, even if it was indeterminate if the ECG

was normal (which it was not), Dr. Stahl still should have acted in Mr. Schrage's best interest and taken him to the catheterization lab.

14. In addition, Dr. Stahl failed to adequately monitor the treadmill test or adequately train his staff to monitor the treadmill test. Ms. Rubio was the medical assistant who monitored the treadmill test. She is not qualified to monitor a treadmill test, and Dr. Stahl knew or should have known this information. She confirmed Dr. Stahl, despite his testimony, is not in the room when a treadmill test is being conducted. She also confirmed she has no formal training in conducting the treadmill test. She was merely trained years ago for a day or so by a co-worker. She had no training on the protocols that you are supposed to follow in administering the stress test. She has no training as to know whether blood pressure is increasing the way it is supposed to be increasing during a treadmill test. She claims that Dr. Stahl is in the room next door in case she needs anything. However, she is not adequately trained to know whether she needs anything or not during a treadmill test. So, Dr. Stahl being in the room next door is of no help. Her lack of ability to conduct a treadmill test is further evident by the fact she did not even know the term blunting. This is basic terminology that is used when conducting a treadmill examination and is present on the treadmill worksheet she filled out during Mr. Schrage's treadmill test. Blunting generally means the patient's blood pressure does not continue to rise as the work load increases during the course of the test. This is one indication that a treadmill test should be aborted. Signs of blunting are clearly present on Mr. Schrage's treadmill test as his blood pressure stayed at 160/100 for at least 6 minutes while the heart rate pulse increased 52 beats per minute. Unfortunately, the blunting response was not transmitted to Dr. Jacobs. Instead the assessment of the treadmill stress test, sent to Dr. Jacobs, was in error on multiple areas, including the reference that the blood pressure response to exercise was normal and the exercise tolerance was excellent.

15. In reality, even after the stress test was performed, Dr. Stahl still had sufficient information to warrant sending or suggesting Mr. Schrage be immediately sent 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.

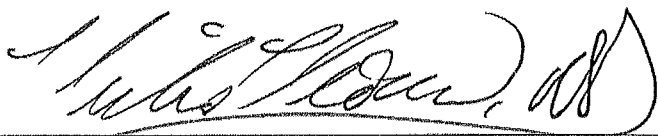
16. So, if Mr. Schrage would have underwent a more cautious work up, including an angiogram as required by the standard of care, and he would have been treated accordingly and he would not have passed away on October 3, 2016.

17. In addition, as indicated above, if Mr. Schrage would have been properly monitored in the treadmill stress test, then the blunting nature of his blood pressure would have been identified and given the opportunity to be adequately addressed.

18. As a result, it is my opinion, to a reasonable degree of medical probability, that the failures to meet the appropriate standard of care by Dr. Stahl and his staff were the proximate and legal cause of Mr. Schrage's untimely death on October 3, 2016.

19. I reserve the right to supplement these opinions as stated above.

20. This declaration is signed under penalty of perjury, and all statements contained herein are true and correct.



---

MICHAEL DOUGLAS MORAN, M.D., F.A.C.C., F.S.C.A.I.

# EXHIBIT A



# **Curriculum Vitae**

**Michael Douglas Moran, M.D., F.A.C.C., F.S.C.A.I.**

*Diplomate, American Board of Internal Medicine  
Fellow of the American College of Cardiology  
Fellow, Society of Cardiovascular Angiographers and Interventionalists*

25301 Cabot Road, Suite 104  
Laguna Hills, California 92653-5511

## **PERSONAL**

*Nationality: United States of America  
Born: July 5, 1960, California*

**BOARD CERTIFIED** by A.B.I.M., candidate #144428

*Interventional Cardiology, 1999, Current to 2020  
Cardiovascular Diseases, 1997, Current to 2020  
Internal Medicine, 1994-2004*

## **CURRENT POSITION**

*President and C.E.O., Coastal Cardiovascular Institute, Inc. 8/26/2014-present.*

*President and C.E.O., Michael D. Moran, M.D., Inc. 4/1/1998-present.*

*Interventional, preventative, clinical and non-invasive cardiologist. Proficient in angiography, angioplasty, stents, cutting balloon, laser atherectomy, directional atherectomy including SilverHawk, Diamond Back, Rotablator, IVUS, valvuloplasty, AAA and carotid arterial disease diagnosis and treatment, peripheral arterial disease diagnosis and management with expertise in endovascular intervention, specializing in complex limb salvage and chronic wound healing, Level 3 echocardiographer including 2-D echo., TEE and stress-echo, permanent pacemaker and ICD implantation and nuclear cardiology (NRC license eligible)*

*Volunteer Varsity Tennis Assistant Head Coach, Men's and Women's teams, JSerra Catholic High School, San Juan Capistrano, CA. January 2012-present.*

## **CURRENT MEDICAL STAFF**

*El Camino Medical Center, Mountain View, California (Courtesy) 2001-present  
Mission Regional Medical Center, Mission Viejo, California (Active) 1997-3/2013  
Saddleback Memorial Medical Center, Laguna Hills, California (Active) 1997-present  
Saddleback San Clemente Campus, San Clemente, California (Active) 1997-2016  
Scripp's Memorial Green Clinic, La Jolla, California (Courtesy) 2000-present  
Mission Laguna Beach Campus, Laguna Beach, California (Active) 1997-3/2013  
Catalina Island Medical Center, Avalon, California (Consulting) 2003-present*



## **PAST POSITIONS**

*Designer and Director, Cardiovascular Catheterization and Intervention Laboratory, South Coast Medical Center, Laguna Beach, California. Diagnostic cardiac and peripheral angiography, peripheral interventional laboratory 2003-2006*

*Fourth year chief interventional cardiology fellow, Beth Israel Deaconess Medical Center, West Campus, Harvard medical school, Boston, Massachusetts, 7/96-7/97*

*Medical Director, Cardiac Rehabilitation and Risk Factor Modification Program, Beth Israel Deaconess Medical Center, West Campus, Division of Behavioral Medicine, Harvard medical school, Boston, Massachusetts, 7/96-7/97*

## **POSTGRADUATE TRAINING**

**FELLOWSHIP** *Chief interventional cardiology fellow, Beth Israel Deaconess Medical Center, West Campus, Harvard medical school, Boston, Massachusetts, 7/96-7/97. Dedicated year of training in interventional cardiology, including PTCA, stents, IVUS, PTRCA, DCA, valvuloplasty and permanent pacemaker implantation, interrogation and follow-up (Intermedics, Pacesetter, Guidant/CPI, Medtronic and Telectronics)*

*Non-invasive cardiology, Baystate Medical Center, Tufts University school of medicine, Springfield, Massachusetts 7/95-7/96. Dedicated year of level 3 echocardiography and nuclear training, including TTE, TEE, epicardial, stress-echo and dobutamine echocardiography. NRC license eligible.*

*General cardiology, Providence hospital, Wayne State University school of medicine, Southfield, Michigan, 7/93-7/95*

**CHIEF RESIDENT (Faculty)** *Internal medicine, Deaconess hospital, St. Louis University school of medicine, St. Louis, Missouri, 7/92-7/93*

**RESIDENCY** *Internal medicine, Deaconess hospital, St. Louis, Missouri, St. Louis University school of medicine, 7/88-7/91*

## **PREVIOUS POSITIONS**

**7/95-7/97** *Emergency room trauma physician, Providence and Holyoke hospitals, Holyoke, Massachusetts, Mercy Hospital, Springfield, Massachusetts*

**7/96-7/97** *Critical Care and Medical House Officer, New England Baptist Hospital, Boston, Massachusetts*

**9/93-6/95** *Cardiac Critical Care House Officer, Oakwood Medical Center, Dearborn, Michigan*

**8/91-7/95** *Critical care physician, Deaconess hospital, St. Louis, Missouri*



<b>8/91-7/93</b>	<b><i>Critical care physician, DePaul hospital, St. Louis, Missouri</i></b>
<b>8/91-7/92</b>	<b><i>Emergency room physician, Deaconess hospital (central and west)</i></b>
<b>6/90-7/91</b>	<b><i>Emergency room physician, Fort Madison hospital, Fort Madison, Iowa</i></b>

## **EDUCATION**

### **HIGH SCHOOL**

***Foothill high school, Tustin, California 9/74-6/78, Diploma***

### **COLLEGE**

***Whittier College, Whittier, California 9/81-6/84, B.A. degree in biology, minor in chemistry***

***University of California, Irvine, 9/78-6/81***

### **MEDICAL SCHOOL**

***American University of the Caribbean, Plymouth, Montserrat, M.D. degree June 11, 1988***

## **LICENSES HELD**

***State of California, number A062602 (current)***  
***Commonwealth of Massachusetts, number 81451 (inactive)***  
***State of Michigan, number 4301060877 (inactive)***  
***State of Missouri, number MD R6P94 (inactive)***  
***State of Iowa, number 27361 (inactive)***

## **CERTIFICATES HELD**

***Diplomate, ABIM, Subspecialty Board of Interventional Cardiology, re-certified and valid until 2020***  
***Diplomate, ABIM, Subspecialty Board of Cardiology, re-certified and valid until 2020***  
***Diplomate, American Board of Internal Medicine, 1994-2004***  
***Interventional cardiology fellowship, Harvard, 1997***  
***Noninvasive cardiology fellowship, Tufts, 1996***  
***Cardiology fellowship, Wayne State, 1995***  
***Internal medicine residency certificate, St. Louis University, 6/26/1991***  
***Nuclear medicine certificate of completion and competency, I.N.M.E. 6/96***  
***E.C.F.M.G., number 407-436-5, valid indefinitely***  
***F.L.E.X., number 600705010***  
***American College of Surgeons, A.T.L.S. Provider, 1996-2001***  
***American Heart Association, Healthcare Provider, exp. 08/2016***  
***American Heart Association, A.C.L.S. Provider, exp. 08/2016***



## **PROFESSIONAL MEMBERSHIPS**

*Fellow, American College of Cardiology*  
*Fellow, Society of Cardiovascular Anigographers and Interventionalists*  
*American Heart Association*  
*California Chapter of the American College of Cardiology*  
*California Medical Association*  
*Massachusetts Medical Society (past)*  
*American College of Physicians (past)*  
*Society of Critical Care Medicine (past)*  
*American Medical Association (past)*  
*American Society of Internal Medicine (past)*

## **SPECIAL SKILLS**

### **LANGUAGES**

*Reading, writing and speaking knowledge of French and German,  
conversational knowledge of Spanish.*

### **COMPUTING**

*Familiar with and able to assemble most IBM compatible computers, with some  
experience in programming in Basic, Pascal, Windows 3.1 to Windows 8,  
Server 2008, SQL Server and DOS. Familiar with and have used EMR  
programs including ECHO, EPIC, MediTech, CompuMedics, MDSuite, PACS,  
Synapse, and Syngo, with Limited experience with Apple Power PC.*

## **AWARDS/HONORS/ACHIEVEMENTS**

*MDLinx, top 50 Cardiologists in the United States, August 2012 through November  
2014*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, January 2017*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, January 2016*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, January 2013*

*Castle Connelly, "Top Doctors", Cardiovascular Disease, Sepember 2012*

*Eagle Scout, Boy Scouts of America, Troop 235, Tustin, California, 12/76, with  
additional Bronze and Gold Palms.*

*California delegate, Freedom's Foundation at Valley Forge, 1978*

*Honor Citizen, Chamber of Commerce, Orange County, California, 1976*

*Who's Who in Rising Young Americans, 1991*

*Excellence in research, Oakland Health Education Program, Michigan, 1995*



## **SPORTS/HOBBIES/INTERESTS**

*Tennis, golf, skiing (water and snow), ice hockey, computing, coin collecting, fine woodworking, antiques, music, hunting and fishing*

## **PUBLICATIONS**

*Just say 'No' to Soy lent Green medicine-you'll be glad you did;* Moran MD. *American Heart Hospital Journal*. 2009 Winter;7(2):E106-8.

*Clinical outcomes of catheter substrate ablation for high-risk patients with atrial fibrillation;* Nademanee K, Schwab MC, Kosar EM, Karwecki M, Moran MD, Visessook N, Michael AD, Ngarmukos T. *Journal of the American College of Cardiology* 2008, Feb. 26;51(8):843-9.

*Transesophageal Echocardiographic Diagnosis of Recurrent Right Ventricular Myxoma Two Years After Excision of Right Atrial Myxoma;* Fagan LF, Castello R, Barner H, Moran MD, Labovitz AJ. *American Heart Journal*, 120:6(part I); 1456-1458, December, 1990

*Noninvasive Methods in Cardiology;* Moran MD, Karamali A, Zainea M, Khan A, Kanukunta J, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume I, Part 4, June, 1995*

*Valvular Disorders;* Karamali A, Zainea M, Khan A, Kanukunta J, Moran MD, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume 2, Part 1, September, 1995*

*Electrocardiography Case Studies: A Self-Assessment Test;* Moran MD, Saba S, Zainea M, Karamali A, Cassavar D, Kanukunta J, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume 2, Part 2, December, 1995*

*Lipid Disorders;* Moran MD, Farkas P, Kanukunta J, Cassavar D, Saba S, Karamali AM, Khan A, Zaks JM. *Hospital Physician: Supplement; Cardiology Board Review Manual, Volume 2, Part 3, March, 1996*

*Electromagnetic interference (EMI) caused by electrocautery during surgical procedures.* Moran MD, Cassavar D, Kirchhoffer J, Green H. *P.A.C.E.*, June, 1996, 19(6): 1009.

*"Diverticula" of Anterior Mitral Valve Leaflet as a Cause of Subvalvular Aortic Stenosis;* Agathos EA, Moran MD, Mangion J, Lovell A, Engleman RM, Rousou JA. *Journal of Valvular Heart Disease*, 5:3; 309-311, May, 1996

## **ABSTRACTS/PRESENTATIONS**

*Optimizing Outcomes: New Therapies For Peripheral Vascular Disease and Critical Limb Ischemia.* Grand Rounds, San Clemente Medical Center, July 17, 2003.



Prevention of End-Stage Renal Disease in Diabetes and Hypertension. Grand Rounds, Saddleback Memorial Medical Center, October 15, 2002.

Insulin Resistance and Cardiovascular Disease from the "Endo-Cardiologist's" Perspective. Grand rounds, South Coast Medical Center, Laguna Beach, CA. 2002.

Neurocardiogenic Syncope is associated with Insulin Resistance. Moran, MD, Marcus, A. Moderated Poster Presentation, (accepted, unable to be present). Third International Conference on Insulin Resistance, March, 2003, New Orleans, LA.

Update on Need for Emergent CABG in the Stent Era. Moran MD, Shubrooks SJ. Moderated Poster Presentation. American Heart Association National Meeting, 1996.

Q Fever Endocarditis. Michael D. Moran, M.D. Unknown Case Presentation. American College of Cardiology, Michigan Chapter Annual Meeting, Traverse City, Michigan, October 9, 1994.

Central Venous Pressure Measurement via the Femoral Vein Approach. Karamali A, Cassavar D, Kanukunta J, Zainea M, Moran MD, Khan A, David S, Duvernoy W. Poster Presentation. American College of Cardiology, Michigan Chapter Annual Meeting, Traverse City, Michigan, October, 1994.

## **CURRENT RESEARCH PROTOCOLS**

The MARVEL Study. Cardiac Stem Cell therapy for refractory, end-stage ischemic cardiomyopathy, sub-investigator. Richard Schatz, MD, chief investigator, Scripps's Green Clinic, La Jolla, California. 6/2008 to present.

The EVEREST trial, a long term, multicenter, double-blinded, placebo controlled trial of the oral vasopressin inhibitor Tolvaptan in subjects hospitalized with worsening congestive heart failure. George Ponce, M.D., Cardiovascular Clinical Studies, Boston, Massachusetts. 4/2005. Sponsor: Otsuka Pharmaceuticals. Primary investigator, South Coast Medical Center.

Carotid Revascularization with ev3 Arterial Technology Evolution, the CREATE trial. Drs. Gary Ansel and Robert Safian. Sponsor: ev3. Primary investigator, South Coast Medical Center.

Acute Decompensated Heart Failure Registry, the ADHERE registry. Sponsor: Scios, Inc. Primary investigator at South Coast Medical Center. 2003-present

Global Utilization Registry for Acute Coronary Events. - The GRACE trial, University Of Massachusetts, Worcester. Primary investigator at South Coast Medical Center, Saddleback Memorial, and Mission Regional Medical Center. 2002-present

## **RESEARCH INTERESTS**

Novel interventional techniques for coronary and peripheral vascular diseases  
Non-embryonic stem-cell therapy  
Minimally invasive treatment of carotid artery disease  
Endovascular treatment of abdominal aortic aneurysms



*Patent foramen ovale and stroke, diagnosis and treatment*  
*New treatment strategies for congestive heart failure*  
*Aggressive treatment of acute coronary syndromes*  
*Insulin resistance and cardiovascular diseases*  
*Atrial fibrillation prevention and treatment*  
*Syncope and neurocardiogenic mechanisms*

## **INVITED FACULTY**

*Vascular InterVentional Advances (VIVA!), Las Vegas, Nevada, 10/2003, Dr. James Joye, Director (Featured Interventionalist)*

*Scripp's Annual Advanced Coronary Management and Techniques, Scripp's Memorial Green Clinic, Dr. Paul Teirstein, Director, La Jolla, California, 10/2003 (Featured Interventionalist)*

*Hoag Memorial Peripheral and Interventional meeting, Hoag Memorial Hospital and University of California, Irvine, November 7-10, 2002 (Featured Interventionalist)*

*Scripp's Annual Advanced Coronary Management and Techniques, Scripp's Memorial Green Clinic, Dr. Paul Teirstein, Director, La Jolla, California, 10/2002 (Featured Interventionalist)*

*Third Annual Peripheral Interventional Techniques and Management, El Camino Medical Center and Stanford University, Dr. James Joye, Director, Mountain View, California, 9/2002 (Featured Interventionalist)*

*Second Annual Peripheral Interventional Techniques and Management, El Camino Medical Center and Stanford University, Dr. James Joye, Director, Mountain View, California, 9/2001 (Featured Interventionalist)*

## **COURSES GIVEN**

*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. November 9 and 10, 2005. South Coast Medical Center, Laguna Beach, California.*

*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. July 27 and 28, 2005. South Coast Medical Center, Laguna Beach, California.*

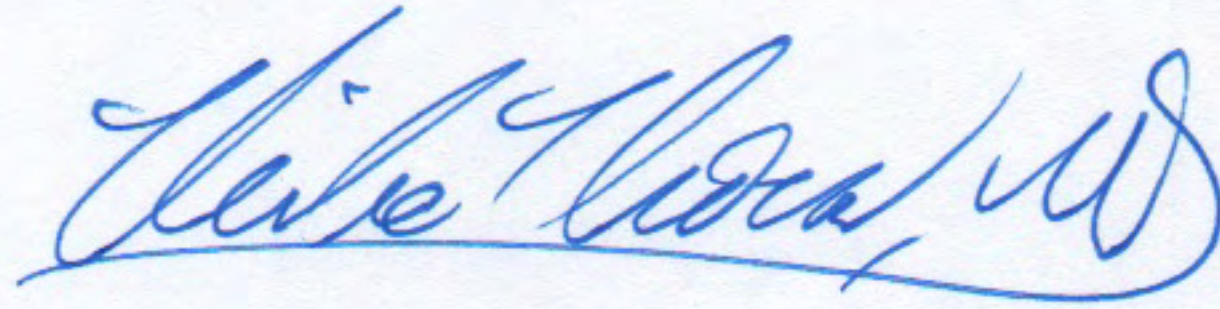
*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. July 14 and 15, 2004. South Coast Medical Center, Laguna Beach, California.*

*Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors: James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. September 3 & 4, 2003. South Coast Medical Center, Laguna Beach, California.*



***Interventional Insights: a Hands-on Preceptorship Program in PVD. Directors:  
James Joye, D.O., FACC and Michael D. Moran, M.D., FACC. June 25 & 26, 2003.  
South Coast Medical Center, Laguna Beach, California.***

**REFERENCES:** *Furnished upon request.*

A handwritten signature in blue ink, reading "Mike Moran MD".

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***Michael D. Moran, M.D., F.A.C.C., F.S.C.A.I.***

3/23/2017

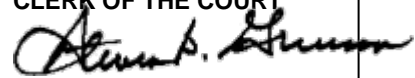
*Date*

**PHONE**

***(949) 499-8080 Laguna Hills Office  
(949) 499-8082 FAX***

**E-MAIL:** [DRMORAN@HEARTREPAIR.COM](mailto:DRMORAN@HEARTREPAIR.COM)





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E-mail: [tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)  
Attorneys for Defendants  
*Allan J. Stahl, M.D.*  
*and Allan J. Stahl, M.D., P.C.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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, 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;

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C**  
**DEPT NO.: XV**

**DEFENDANTS (1) MOTION FOR LEAVE**  
**AND (2) MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT TO DISMISS**  
**PLAINTIFFS' CLAIM FOR PUNITIVE**  
**DAMAGES**

**HEARING REQUESTED**

COME NOW, Defendants, ALLAN J. STAHL, M.D. and ALLAN J. STAHL, M.D., P.C.,  
by and through their counsel, ROBERT C. McBRIDE, ESQ. and T. CHARLOTTE BUYS, ESQ.

1 of the law firm of McBRIDE HALL, and respectfully requests leave of this Honorable Court per  
2 EDCR 2.24 to files its “Renewed” Motion for Partial Summary Judgment (which was denied  
3 without prejudice) seeking dismissal of Plaintiff’s Punitive Damages claim.

4 This Motion is made and based upon the papers and pleadings on file herein, the  
5 Memorandum of Points and Authorities set out below, the exhibits attached hereto, any argument  
6 of counsel which may be adduced at the time of the hearing of the motion, and any other evidence  
7 the Court deems just and proper.

8  
9 DATED this 29<sup>th</sup> day of November, 2021. McBRIDE HALL

10  
11 /s/ T. Charlotte Buys

12 ROBERT C. McBRIDE, ESQ.  
13 Nevada Bar No.: 7082  
14 T. CHARLOTTE BUYS, ESQ.  
15 Nevada Bar No.: 14845  
16 8329 W. Sunset Road, Suite 260  
17 Las Vegas, Nevada 89113  
18 Attorneys for Defendants,  
19 *Allen J. Stahl, M.D.*  
20 *and Allen J. Stahl, M.D., P.C.*  
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1  
2 **MOTION FOR LEAVE**

3 Because of trial continuances, discovery in this case, seemed to start and stop on a number  
4 of occasions. However, discovery in this matter ultimately concluded on October 23, 2020.  
5 Defendants Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C. filed a substitution of counsel on  
6 September 1, 2021.

7 Earlier, Defendants Dr. Stahl and his professional corporation filed a Motion to Dismiss  
8 seeking dismissal of Plaintiffs' punitive damages claim from Plaintiffs' Fourth Amended  
9 Complaint after this Honorable Court had earlier granted such a Motion to Dismiss. However, the  
10 Court denied the Motion **without prejudice** on May 4, 2020 and the Court's Order was entered  
11 on January 25, 2021. Among the arguments made by Plaintiff in Opposition to Defendant's  
12 Motion, was the contention that the argument was premature to be heard as a Motion to Dismiss.

13 At this point, discovery has concluded, and this case is scheduled for trial to commence on  
14 January 10, 2022. Since Defendant's initial Motion to Dismiss Plaintiffs' Punitive Damages claim  
15 was denied "...without prejudice..." it is Defendant's belief that the Motion was not decided on  
16 its merits, and, based upon the facts currently available (as discovery has concluded) this  
17 Defendant seeks leave of this Court to renew the Motion.<sup>1</sup>

18 In light of the final conclusion of discovery in this matter, determination of this matter is  
19 now ripe for judicial decision. Although this is not a Motion for Rehearing or Reconsideration,  
20 Defendant has attached this Motion for Leave in order to comply in good faith with the  
21 requirements of EDCR 2.24, if applicable.

22  
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27  
28 <sup>1</sup> In an abundance of caution, Defendant now files this Motions for Leave, although such leave may not be necessary since the initial Motion was denied "without prejudice."



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION/FACTS**

4

5 The sole purpose of this Motion is to dismiss Plaintiffs' punitive damages claim. This is a

6 medical malpractice/professional negligence action. Plaintiffs contend that Mr. Joseph Schrage

7 was referred to Dr. Allan Stahl by his primary care physician, Dr. Jacobs, to undergo a treadmill

8 stress test after he complained of epigastric pain not associated with exercise and periodic arm

9 sensations. Mr. Schrage had a past history of gastrointestinal problems and had gastric biopsies in

10 2011 that showed mild chronic gastritis. A treadmill stress test was performed on August 10, 2016

11 at Allan J. Stahl, P.C. Dr. Stahl assessed and interpreted Mr. Schrage's stress test results as

12 negative for ischemia, excellent exercise for the patient's age, normal blood pressure in response

13 to exercise, normal heart rate in response to exercise and no arrhythmia's present during exercise.

14 Subsequently, Mr. Schrage passed away on October 3, 2016 from thrombotic occlusion of

15 the coronary artery resulting from an acute atherosclerotic plaque erosion in the setting of mild

16 chronic coronary atherosclerosis. Plaintiff contends that Defendants fell below the standard of

17 care by not admitting Mr. Schrage to the catheterization laboratory for an angiogram and instead

18 performing the stress test that was ordered by Mr. Schrage's primary care physician. These

19 Defendants, Dr. Allan J. Stahl and Allan J. Stahl, M.D., P.C., deny all allegations of negligence.

20 The basis for Plaintiffs' punitive damages claim is the alleged failure to refer Mr. Schrage

21 for an angiogram at a cardiac catheterization laboratory in hopes that it could have possibly shown

22 an arterial blockage and possibly prevented Mr. Schrage's death if his arterial blockage had been

23 discovered and treated rather than following the order of Mr. Schrage's primary care physician

24 and providing an exercise stress test to provide further diagnostic assistance. There is no testimony

25 in the case that this occurrence amounts to anything other than a claim for professional negligence.

26 As the case law below will demonstrate, while a "mistake" may support a claim for medical

27 malpractice (which Plaintiff is making), it will not support a claim for punitive damages. There is

28 no ill will, evil motive, depraved heart, or intent to injury.

1  
2 **II.**

3 **LEGAL ARGUMENT**

4  
5 **A. PUNITIVE DAMAGES NOT ONLY REQUIRES WILLFUL CONDUCT, BUT ALSO**  
6 **REQUIRES AGGRAVATING CIRCUMSTANCES AMOUNTING TO MALICE.**

7 In every medical malpractice case, there is always a claim(s) that a defendant was  
8 negligent, inattentive, or acted in a manner which constitutes mistake. However, not every medical  
9 malpractice case automatically includes a punitive damage claim. *See Bongiovi v. Sullivan*, 122  
10 Nev. 556, 138 P.3d 433 (Nev. 2006) (stating “A plaintiff is not automatically entitled to punitive  
11 damages.”).

12 In Nevada, in order to maintain an action for punitive damages, the Plaintiff must satisfy a  
13 higher evidentiary burden to provide “clear and convincing” evidence. *See* NRS § 42.005(1). In  
14 addition, Nevada’s punitive damages statute requires that a defendant be guilty of oppression,  
15 fraud, or malice, express or implied. *See* NRS § 42.005(1). There is no claim in this case that  
16 Defendants acted with “fraud” or “malice.” There is no contention that Dr. Stahl or his professional  
17 corporation, by and through its employees, “intended” to injure the Plaintiff.

18 Further, the term “oppression” is specifically defined by NRS § 42.001(4) with regard to  
19 the imposition of punitive damages, to mean, in pertinent part, “...despicable conduct...”. The  
20 statute further defines conscious disregard to mean knowledge of the probable harmful  
21 consequences of a wrongful act **and** a willful and deliberate failure to act to avoid those  
22 consequences. *See* NRS § 42.001(1).

23 The Nevada Supreme Court recently confirmed that in order to be awarded punitive  
24 damages, a defendant must have acted with a culpable state of mind. *Garcia v. Awerbach*, 463  
25 P.3d 461, 465 (Nev. 2020). The *Garcia* Court stated:

26 “A plaintiff is not automatically entitled to punitive damages.” *Bongiovi v. Sullivan*,  
27 122 Nev. 556, 581, 138 P.3d 433, 450 (2006). “[P]unitive damages may be awarded  
28 when the plaintiff proves by clear and convincing evidence that the defendant is  
guilty of oppression, fraud or malice, express or implied.” *Id.* at 581, 138 P.3d at  
450-51 (internal quotations omitted); see also NRS 42.005(1). “ ‘Oppression’

1 means despicable conduct that subjects a person to cruel and unjust hardship with  
2 conscious disregard of the rights of the person.” NRS 42.001(4). “ ‘Fraud’ means  
3 an intentional misrepresentation, deception or concealment of a material fact  
4 known to the person with the intent to deprive another person of his or her rights or  
5 property or to otherwise injure another person.” NRS 42.001(2). Express malice is  
6 conduct intended to injure a person, while implied malice is despicable conduct that  
7 a person engages in with conscious disregard of another's rights. *Bongiovi*, 122  
8 Nev. at 581, 138 P.3d at 451; see also NRS 42.001(3). A defendant acts with  
9 conscious disregard when he or she has “knowledge of the probable harmful  
10 consequences of a wrongful act and . . . willful[ly] and deliberate[ly] fail[s] to act  
11 to avoid those consequences.” NRS 42.001(1). “In other words, under NRS  
12 42.001(1), to justify punitive damages, the defendant's conduct must have exceeded  
13 mere recklessness or gross negligence.” *Wyeth v. Rowatt*, 126 Nev. 446, 473, 244  
14 P.3d 765, 783 (2010) (emphasis added) (internal quotation omitted). *Garcia, supra*  
15 at 464.

16 In *Garcia*, the plaintiff argued that the defendant negligently entrusted her car to her minor  
17 son. The elements of a negligent entrust claim are 1) that an entrustment occurred, (2) that the  
18 entrustment was negligent. *Id.* at 464 (internal citation omitted). The district court issued a  
19 discovery sanction whereby a finding was entered against the defendant that established  
20 permissive use as a matter of law. *Id.* at 463. The case was then transferred to another judge who  
21 lifted the sanction because the judge determined that the sanction precluded the defendant from  
22 defending against the plaintiff's request for punitive damages because the sanction “not only  
23 established "permission" by [the defendant] to [her minor son], but *it also essentially established*  
24 *an element of [the plaintiff's]] claim for punitive damages* against [the defendant], without  
25 allowing [the defendant] the opportunity to explain herself. *Id.* at 463-464. (emphasis in original).

26 The Court held that the district court erred in finding that permissive use, established as a  
27 matter of law, prevented the defendant from defending against the punitive damages claim. *Id.* at  
28 464. First, the Court explained that the plaintiff still had to prove that the entrustment was negligent  
in order to make a prima facie case of negligence. However, even if the plaintiff were able prove  
negligent entrustment that would be insufficient to justify punitive damages. The Court explained,  
“Because the tort of negligent entrustment does not require proof of a culpable state of mind, a  
finding of negligent entrustment is not by itself sufficient to justify punitive damages. Negligent  
entrustment requires a showing that the entrustment was negligent, but a punitive damages award

requires a showing that the defendant's conduct exceeded mere recklessness or gross negligence.” *Id.* at 465. The Court went on to find that, “In the instant case, the original sanction establishing permissive use as a matter of law did not necessarily establish the culpable state of mind required to prove a punitive damages claim.” *Id.*

The *Garcia* case makes clear that a culpable state of mind is required to prove punitive damages. The *Garcia* case also makes clear that allegations that amount to nothing more than simple negligence are insufficient to support a punitive damages award.

Plaintiffs contend that Dr. Stahl and his professional corporation’s care and treatment of Mr. Schrage fell below the standard of care. However, that alone is insufficient to sustain a claim of punitive damages. Here, Plaintiffs only contend that it was negligent for Dr. Stahl to follow the orders of another physician and with hindsight they contend it was a mistake to perform an exercise stress test rather than an angiogram.

None of the allegations against these Defendants support Plaintiff’s bare allegation that they acted with “conscious disregard” for the health and safety of Decedent, nor that they constitute “recklessness and reckless disregard for the safety of the public.” Rather, at best, Plaintiffs’ allegations are allegations of a deviation from the standard of care.

**B. MERE NEGLIGENCE, EVEN GROSS NEGLIGENCE, DOES NOT FORM A BASIS FOR PUNITIVE DAMAGES.**

In *Leslie v. Jones Chemical Co.*, 92 Nev. 391, 5521 P.2d 234 (Nev. 1976), the Court expressly referenced a California punitive damage decision rendered in *Ebaugh v. Rabkin*, 22 Cal. App. 3d 892 (Ct. of App. 1<sup>st</sup> Dist. Calif. 1972). The *Ebaugh* Court stated in pertinent part as follows:

“...The cases interpreting section 3294 make it clear that in order to warrant the allowance of punitive damages the act complained of must not only be willful in the sense of intentional, but it must also be accompanied by aggravating circumstances, amounting to malice. The **malice required implies an act conceived in a spirit of mischief or with criminal indifference** towards the obligations owed to others. There must be an intent to vex, annoy or injure. **Mere spite or ill will is not sufficient; and mere negligence, even**

1                    **gross negligence is not sufficient to justify an award of punitive**  
2                    **damages...**. See *Ebaugh v. Rabkin*, 22 Cal. App. 3d 892 (Ct. of  
3                    App. 1<sup>st</sup> Dist. Calif. 1972) (emphasis added).

4                    Similarly, in *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P3d. 243  
5                    (Nev. 2008), Nevada Supreme Court construed the term “conscious disregard” requirement of  
6                    NRS § 42.005 as follows:

7                    “Rather than rely on past cases that pre-dated NRS 42.001(1), in defining what  
8                    conduct would amount to conscious disregard, we look no further than the statute's  
9                    language. Since its language plainly requires evidence that a defendant acted with  
10                    a **culpable state of mind**, we conclude that NRS 42.001(1) **denotes conduct that,**  
11                    **at a minimum, must exceed mere recklessness or gross negligence.**” See  
12                    *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P3d. 243 (Nev.  
13                    2008). (emphasis added).

14                    In addition, in *Taylor v. Aria Resort and Casino*, (WL751360) U.S. Dist. Ct. D. Nev.  
15                    (2015), the District Court, once again, reiterated the principle that conduct which is “reckless or  
16                    grossly negligent” is “...not enough...” to award punitive damages.

17                    Since the Nevada Supreme Court has repeatedly stated that a defendant’s conduct, must at  
18                    a minimum, exceed mere recklessness or gross negligence, at some point, a decision has to be  
19                    made whether the case at bar satisfies that standard. Such decision should be made prior to trial.  
20                    Perhaps that is why, in *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (Nev. 2006), the Nevada  
21                    Supreme Court stated that the “...district Court has discretion to determine whether defendant’s  
22                    conduct merits punitive damages **as a matter of law**...” *Id.* at 581. (emphasis added).

23                    Furthermore, the alleged unfortunate outcome cannot justify the allegation of punitive  
24                    damages. The level of harm suffered by a plaintiff, however unfortunate, does not dictate whether  
25                    punitive damages are warranted. Otherwise, every medical malpractice case involving a death or  
26                    serious injury would result in an award of punitive damages. In the absence of any allegations to  
27                    support a claim for punitive damages (rather than simply alleging the conclusion that they are  
28                    warranted) in this medical malpractice case, Plaintiffs’ request for punitive damages should be  
                     stricken.

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## CONCLUSION

The actions of Dr. Allan Stahl and Allan J. Stahl, M.D., P.C.'s, at most, constitute professional negligence. There is no proof of fraud, malice, ill will, or intent to injure. Absent such evidence, Defendant's Motion for Leave should, respectfully, be granted and Plaintiff's punitive damage claim dismissed.

DATED this 29<sup>th</sup> day of November, 2021.      McBRIDE HALL

10

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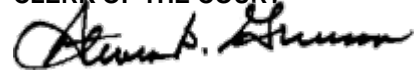
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 29<sup>th</sup> day of November, 2021, I served a true and correct  
3 copy of the foregoing **DEFENDANTS (1) MOTION FOR LEAVE AND (2) MOTION FOR**  
4 **PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' CLAIM FOR**  
5 **PUNITIVE DAMAGES** addressed to the following counsel of record at the following  
6 address(es):

- 7 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
8 service attached to any copy filed with the Court; or
- 9 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
10 postage thereon fully prepaid, addressed as indicated on the service list below in the United  
11 States mail at Las Vegas, Nevada; or
- 12 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
13 indicated on the service list below.

14 Timothy R. O'Reilly, Esq.  
15 TIMOTHY R. O'REILLY, CHTD.  
16 325 S. Maryland Parkway  
17 Las Vegas, Nevada 89101  
18 -and-  
19 Gerald I. Gillock, Esq.  
20 GERALD I. GILLOCK & ASSOCIATES  
21 428 South Fourth Street  
22 Las Vegas, Nevada 89101  
23 *Attorneys for Plaintiffs*

24 */s/ Natalie Jones*  
25 \_\_\_\_\_  
26 An Employee of McBRIDE HALL  
27  
28



**OPPM**

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Attorneys for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KRISTINA DANICA SCHRAGE,  
Individually and as spouse as natural heir of  
JOSEPH PATRICK SCHRAGE, JR., and on  
behalf 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,

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
DOES 1 through 10, inclusive; ROE  
ENTITIES 1 through 10, inclusive,

Defendants.

CASE NO.: A-17-762364-C  
DEPT. NO.: XV

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS (1) MOTION FOR LEAVE  
AND (2) MOTION FOR PARTIAL  
SUMMARY JUDGMENT TO DISMISS  
PLAINTIFFS' CLAIM FOR PUNITIVE  
DAMAGES**

**Hearing Date: January 5, 2022**  
**Hearing Time: 9:00 a.m.**

Plaintiffs, 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, JR.; JOSEPH PATRICK SCHRAGE, III, and MILA DANICA SCHRAGE, minors,

1 each individually and as children and natural heirs of JOSEPH PATRICK SCHRAGE, JR., by and  
2 through their Natural Parent and Guardian, KRISTINA DANICA SCHRAGE, by and through their  
3 counsel of record, Timothy R. O'Reilly, Esq. and Gerald I. Gillock, Esq., hereby submit their  
4 Opposition to Defendants (1) Motion for Leave and (2) Motion for Partial Summary Judgment to  
5 Dismiss Plaintiffs' Claim for Punitive Damages.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I.**

8 **INTRODUCTION**

9 Defendants confusingly file their untimely Motion for Partial Summary Judgment requesting  
10 this Court to dismiss Plaintiffs' "Claim" for Punitive Damages. Nonetheless, Defendants' Motion is  
11 void of any request to this Court to dismiss any underlying causes of action. As a rule,  
12 "punitive damages is not a cause of action, but a remedy, and as a remedy, such damages may still  
13 be available on any remaining causes of action." *Massi v. Nobis*, 132 Nev. 1004 (2016). Plaintiffs  
14 are entitled to request relief on their claims in the form of punitive damages. None of the four causes  
15 of action in Plaintiffs' Fourth Amended Complaint is a "claim" for punitive damages. Nor could such  
16 a cause of action even be asserted because punitive damages is not a claim for relief or a cause of  
17 action.

18 Moreover, pursuant to the Third Amended Order Setting Civil Jury Trial, Pre-Trial  
19 Conference and Calendar Call, the deadline to file dispositive motions closed on November 5, 2021.<sup>1</sup>  
20 Defendants filed their Motion for Partial Summary Judgment on November 29, 2021, twenty-four  
21 days after the deadline set by this honorable Court. Defendants include a Motion for Leave on the  
22 basis of "rehearing of motions" pursuant to EDCR 2.24, yet the Motion for Partial Summary  
23 Judgment and Motion for Leave are devoid of a request for an extension to file their dispositive  
24 Motion, or any mention of its untimeliness. Therefore, Plaintiffs respectfully request this honorable  
25 Court deny Defendants' Motion on the basis that it is untimely. Nevertheless, Plaintiffs herein oppose  
26

27  
28 <sup>1</sup> See Third Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call,  
attached hereto as **Exhibit 1**.

1 the Motion for Partial Summary Judgment if, by chance, this Court finds it appropriate to make a  
2 determination based upon the merits of Defendants' untimely dispositive Motion.

3  
4 **II.**

5 **LEGAL BASIS FOR AN AWARD OF PUNITIVE DAMAGES**

6 Punitive damages are not a disfavored remedy but serve a valuable function in deterring  
7 egregious, culpable behavior in order to deter others from such behavior. There is nothing sacred  
8 about a physician's practice that precludes an award of punitive damages where supported by Nevada  
9 law. Nevada allows punitive damages to be awarded where a defendant is "guilty of oppression,  
10 fraud or malice, express or implied." NRS 42.005(1). These damages are awarded in addition to  
11 those for compensation for the sake of example and for the purpose of punishing the wrongdoer.  
12 NRS 42.005(1); *Austin v. C & L Trucking, Inc.*, 610 F. Supp. 465, 471 (D. Nev. 1985); *see also*  
13 *Summa Corp. v. Greenspun*, 96 Nev. 247, 256, 607 P.2d 569 (1980).

14 Punitive damages are based on a "defendant's degree of culpability, maliciousness,  
15 oppressiveness and fault, and awarded in an amount sufficient to punish that particular defendant"  
16 and deter similar behavior. *Austin*, 610 F. Supp. at 470.

17 Malice sufficient to support a finding of punitive damages may be implied. "In 1995, the  
18 Legislature enacted NRS 42.001, which defines implied malice as a distinct basis for punitive  
19 damages in Nevada and establishes a common mental element for implied malice and oppression  
20 based on conscious disregard." *Countrywide Home Loans v. Thitchener*, 124 Nev. 725, 729, 192  
21 P.3d 243, 246 (2008).

22 Under NRS 42.001:

- 23 1. 'Conscious disregard' means the knowledge of the probable harmful  
24 consequences of a wrongful act and a willful and deliberate failure to act to  
25 avoid those consequences.  
26 ...  
27 3. 'Malice, express or implied' means conduct which is intended to injure a  
28 person or despicable conduct which is engaged in with a conscious  
disregard of the rights or safety of others.  
4. 'Oppression' means despicable conduct that subjects a person to cruel and  
unjust hardship with conscious disregard of the rights of the person.

1 “Conscious disregard requires a showing that the tortfeasor acted ‘with a culpable state of  
2 mind.’ ” *Terrell v. Central Washington Asphalt, Inc.*, 168 F. Supp. 3d 1302, 1318 (D. Nev. 2016)  
3 (citing *Countrywide*). In *Countrywide*, the Nevada Supreme Court ruled that given Countrywide’s  
4 “willful and deliberate” failure to avoid harming the plaintiff, “reasonable inferences” by the jury  
5 were sufficient to support punitive damages. *Countrywide*, 124 Nev. at 745.

6 Likewise, in *Terrell*, the U.S. District Court of Nevada stated:

7 A reasonable jury could find punitive damages are warranted if it finds [the  
8 defendant] acted in conscious disregard of the rights and safety of other[s]. [The  
9 defendant] knew he was subject to hours-of-service [federal safety] regulations  
10 and he knew the reason those regulations were in place was to prevent fatigued  
11 driving and to protect other drivers on the road. He nevertheless started driving  
12 at Ely even though he knew he had been driving a long time that day and had  
13 not taken a sufficient break to reset his hours-of-service. ***In this face of this***  
14 ***knowledge***, Hannon planned to drive for several more hours to get to Las Vegas  
15 and thus he knew he would exceed the hours-of-service limit in the [federal  
16 safety] regulations.

17 *Id.* at 1318 (emphasis added).

18 The same conclusion can be reached in the present case with regard to a physician who knew  
19 that failure to adequately assess whether his patient was a viable candidate for treadmill stress testing  
20 was below the standard of care for a cardiac physician. In the face of his knowledge of the applicable  
21 standard of care for assessing a patient for stress testing, combined with knowledge that a primary  
22 care physician is not qualified to make a determination as to whether a patient should be put on a  
23 treadmill for stress testing, Dr. Stahl made a conscious decision to not even adequately assess Mr.  
24 Schrage and ordered his assistant to conduct a treadmill stress test of Mr. Schrage. Additionally, Dr.  
25 Stahl knew of the probable harmful consequences that could result by putting someone such as Mr.  
26 Schrage on the treadmill. As a result, Mr. Schrage was not referred to the catheterization laboratory  
27 for an angiogram and ultimately suffered an untimely and premature death at the age of thirty-six  
28 years leaving behind a wife and two children as a result of Dr. Stahl’s conscious disregard for his  
health and safety. As set forth in greater detail below, Dr. Stahl’s behavior, or lack thereof, in  
providing adequate care and treatment shows a conscious disregard for the safety of Mr. Schrage and

1 a willingness to injure such that the requisite malice in fact exists for an award of punitive damages  
2 under NRS 42.005.

### 3 III.

#### 4 STANDARD FOR SUMMARY JUDGMENT

5 Defendants title their Motion as a request for partial summary judgment. Despite that the only  
6 request therein is for a “dismissal” of punitive damages claim – which is not a claim in Plaintiffs’  
7 Fourth Amended Complaint, Plaintiffs nevertheless set forth the standard for summary judgment.

8 Summary judgment is only proper if the pleadings, depositions, answers to interrogatories,  
9 and admissions on file, together with affidavits, if any, show that there is no genuine dispute as to  
10 any material fact and the moving party is entitled to judgment as a matter of law. NRCP 56(a), (c);  
11 *see also Jaramillo v. Ramos*, 136 Nev. 134, 135, 460 P.3d 460, 463 (2020).

12 The movant bears the burden to demonstrate by reference to the materials on file that there  
13 are no genuine disputes of material fact for determination at trial. In opposition, the non-moving  
14 party may set forth specific facts demonstrating the existence of a genuine dispute for trial. *See Bird*  
15 *v. Casa Royale W.*, 97 Nev. 67 (1981). A “material” fact is one tending to affect the outcome of the  
16 lawsuit. “A factual dispute is genuine when the evidence is such that a rational trier of fact could  
17 return a verdict for the nonmoving party.” *Jaramillo*, 136 Nev. at 135 (internal citations omitted);  
18 *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

19 In deciding the motion, the Court must give the non-moving party the benefit of the doubt  
20 and view the evidence in the light most favorable to the non-moving party, drawing all reasonable  
21 inferences and resolving all reasonable doubts in its favor. *Oak Grove Inc. v. Bell & Gosset Co.*, 99  
22 Nev. 616, 623 (1983); *see also Anderson*, 477 U.S. at 248. As stated by the Nevada Supreme Court,  
23 “After drawing inferences favorable to the [non-moving party], summary judgment will be granted  
24 only if all reasonable inferences defeat the [non-movant’s] claims.” *Eldorado Drive v. City of*  
25 *Mesquite*, 863 F. Supp. 1252, 1255 (D. Nev. 1994).

26 A genuine dispute of material fact exists here as to whether Dr. Stahl acted with implied  
27 malice and conscious disregard of Mr. Schrage’s rights and safety, and that determination will affect  
28



1 the outcome of this case at trial. The standard for summary judgment is in no manner reduced or  
2 eased with respect to a motion seeking to prematurely eliminate the remedy of punitive damages.  
3 Because all doubts must be resolved in favor of the non-moving parties, summary judgment for  
4 Defendant is not appropriate under the standards set forth above, as Dr. Stahl has failed to meet his  
5 burden of providing there are no genuine disputes of material fact for determination at trial.

#### 6 IV.

#### 7 ARGUMENT

8 Punitive damages is merely a form of relief or remedy. As a rule, “punitive damages is not a  
9 cause of action, but a remedy, and as a remedy, such damages may still be available on any remaining  
10 causes of action.” *Massi v. Nobis*, 132 Nev. 1004 (2016). As stated in *Dowdy v. Coleman Co.*, No.  
11 1:11CV45DAK, 2011 U.S. Dist. LEXIS 120004, at \*9 (D. Utah Oct. 17, 2011) “Plaintiff’s punitive  
12 damages request can only be dismissed at the motion stage if Plaintiff’s underlying tort claims are  
13 dismissed.” Here, the Defendants present no argument for dismissal of any of Plaintiffs’ underlying  
14 tort claims.

15 The *Dowdy* court went on to quote from *Guillen v. Kuykendall*, 470 F.2d 745, 748 (5th Cir.  
16 1972) for the unassailable proposition that a plaintiff is entitled to punitive damages if supported by  
17 the evidence even if the complaint includes no request for such relief. “[I]t is not necessary to claim  
18 exemplary [i.e., punitive] damages by specific denomination if the facts show that the wrong  
19 complained of was ‘inflicted with malice, oppression, or other like circumstances of aggravation.’ ”  
20 *Id.* (brackets in original). Based on this reasoning, the *Dowdy* court refused to dismiss the request  
21 for punitive damages because, “these claims are not independent causes of action, but rather,  
22 are remedies and therefore there is nothing for the Court to dismiss at this stage in the proceedings.”  
23 *Id.*

24 *Dowdy* is not an outlier or an exception to the rule. Rather it is sound and widely recognized  
25 jurisprudence. See *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 93 (D.D.C.  
26 2009) (punitive damages are dependent entirely on the underlying cause of action and cannot exist  
27 independently of an underlying claim); *Burke v. Deere & Co.*, 6 F.3d 497, 511 (8th Cir. 1993) (There  
28 is no separate cause of action for punitive damages.); *Schmidt v. C.R. Bard, Inc.*, No. 6:14-cv-62,

1 2014 U.S. Dist. LEXIS 146459, at \*16-19 (S.D. Ga. Oct. 14, 2014) (a request for punitive damages  
2 is not a 'claim' it is only part of the relief prayed for in a claim).

3 As stated in *Tennis v. Ford Motor Co.*, 730 F. Supp. 2d 437, 451 (W.D. Pa. 2010):

4 Here, Plaintiffs improperly pleaded punitive damages as a separate count from their  
5 underlying causes of action. The Court concludes that punitive damages are merely an  
6 element of damages, and, therefore Plaintiffs are unable to plead punitive damages as an  
independent cause of action.

7 The majority of courts are in accord. See *Rototherm Corp. v. Penn Linen & Unif. Serv.*,  
8 CIVIL ACTION NO. 96-6544, 1997 U.S. Dist. LEXIS 10057, at \*1 (E.D. Pa. July 3, 1997) (The law  
9 does not recognize punitive damages as an independent cause of action. Punitive damages are a  
10 remedy, not a cause of action.); *McMahon v. Synthron, Inc.*, No. 1:05cv324, 2005 U.S. Dist. LEXIS  
11 39681, at \*13 (W.D.N.C. Dec. 16, 2005) (dismissing a cause of action for punitive damages and  
12 holding it instead be a prayer for relief.)

13 “[A] demand for relief is not part of a plaintiff's statement of the claim.” *Alexander v. Se.*  
14 *Wholesale Corp.*, 978 F.Supp.2d 615, 624 n. 7, 2013 WL 5673311, at\*8 n. 7 (E.D.Va.2013) (citing  
15 *Bontkowski v. Smith*, 305 F.3d 757, 762 (7th Cir.2002)).

16 Rule 54(c) directs courts to “grant the relief to which each party is entitled, even if the party  
17 has not demanded that relief in its pleadings.” *Charles v. Front Royal Volunteer Fire & Rescue Dep't,*  
18 *Inc.*, 21 F. Supp. 3d 620, 631–32 (W.D. Va. 2014). “[W]e note that the district court is not bound to  
19 consider only the form of relief requested in the prayer, ... .” *Humboldt Basin Newspapers, Inc. v.*  
20 *Sunderland*, 95 Nev. 794, 797, 603 P.2d 278, 280 (1979). Accordingly, even if Plaintiffs' Fourth  
21 Amended Complaint were entirely silent as to the issue of punitive damages and Defendants were  
22 accordingly not placed on notice of Plaintiffs' intention to seek such damages, they would still be  
23 entitle to recover such damages if supported by the evidence.

24 Defendants offer the proposition that punitive damages cannot be awarded in a claim the  
25 gravamen of which is medical malpractice. Defendants fail to support this proposition with either  
26 logic or law. There is nothing within the passage of NRS 41A.035 that so much as hints at the notion  
27 that the cap on non-economic damages was intended to preclude the remedy of punitive damages.

1 In passing NRS 41A.035 the legislature had the opportunity to specifically include punitive damages  
2 within the cap and did not do so.

3 If Defendants' argument were meritorious, punitive damages could never be assessed against  
4 a health care provider if the aggregate exceeded the cap. Such is simply not the law. Even if some  
5 twisted version were the law, it would at best result in a finding that brings punitive damages within  
6 the cap and would thus not support dismissal as Defendants request. Defendants' argument is just  
7 that – argument and nothing more. *See Meyer v. Health Plan of Nev.*, 2013 Nev. Dist. LEXIS 3858,  
8 \*11 denying Defendants' Motion for Remittitur with Regard to Punitive Damages; *Cantrell v. Valley*  
9 *Health Sys. LLC*, 2014 Nev. Dist. LEXIS 2287, \*10 (confirming award of punitive damages based  
10 in part on physician's lack of documentation).

11 While the decision in *Meyer* 2013 Nev. Dist. LEXIS 3858, \*1, provides no detail as the  
12 extent or effect of the physician's failure to adequately document the plaintiff's care, that failure  
13 finds a parallel in Dr. Stahl's failures. Even Dr. Stahl's own expert witness acknowledged the lack  
14 of documentation by Dr. Stahl. In his deposition taken on February 25, 2020, Kim A. Klancke, M.D.  
15 was asked the following questions and gave the following responses.

16 Q: Did he do enough evaluation and screening to determine that the stress test  
17 was prudent?

18 A: I believe so.

19 Q: Tell me what he did.

20 A: I don't have a written record of what he did.

21 Deposition of Kim A. Klancke, M.D., at 56:6-10<sup>2</sup>

22 Without characterizing Dr. Klancke's testimony as either forthcoming or evasive, Dr.  
23 Klancke agreed that it would be below the standard of care to proceed with a treadmill stress test  
24 without an adequate understanding of whether the patient is a reasonable candidate to undergo stress  
25 testing.<sup>3</sup> Then, he continued: "I'm going to testify that I don't know exactly what [Dr. Stahl] did to  
26 determine the patient was a reasonable patient for stress testing."<sup>4</sup> The reason Dr. Stahl's own expert

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27 <sup>2</sup> Attached as **Exhibit 2**.

28 <sup>3</sup> **Exhibit 2** at 58:20-25.

<sup>4</sup> *Id.* at 59:3-5.

1 has no idea whether Dr. Stahl appropriately screened Mr. Schrage prior to the stress test is simply  
2 because Dr. Stahl himself does not know. He acknowledges that the doctor who administers the  
3 stress test is responsible for determining if the patient is a safe candidate.<sup>5</sup> He has no recollection of  
4 doing so and his records include no document establishing that he did so. Dr. Stahl admits he failed  
5 to document seeing Mr. Schrage before commencing the test.<sup>6</sup> In the absence of any documentation  
6 whatsoever, and because he has no recollection of doing so, he can only “assume” that he even spoke  
7 to Mr. Schrage before the test.<sup>7</sup>

8 Without attempting an unnecessary medical discourse, the issue of blood pressure blunting  
9 during a treadmill stress test is a significant issue in this case.<sup>8</sup> Yet, Dr. Stahl assigned a medical  
10 technician to administer Mr. Schrage’s treadmill stress test who had never even heard of blunting.  
11 The assistant who administered the test was Josefina Rubio. In a deposition taken September 26,  
12 2019, the following transpired:

13 Q: Now, what training did you have to determine what blood pressures you’re  
14 supposed to see develop while a stress test is going on?

15 A: Like I said, my co-workers trained me on that.

16 Q: Did your co-workers train you on blunting? Do you know what blunting is?

17 A: No.

18 Q: You don’t know what blunting is; is that right?

19 A: You mean, like, being, like, blind?

20 Q: Do you know -- have you ever heard the term blunting?

21 A: No.

22 Deposition of Josefina Rubio, M.A. 19:14-20:2.<sup>9</sup> When earlier in her deposition in reference to her  
23 training she was asked the following question she gave the following response:

24 Q: What training have you had? What formal training have you had in  
25 conducting stress tests?

26 A: My co-workers trained me when I started working with Dr. Stahl.<sup>10</sup>

27 <sup>5</sup> Deposition of Allan J. Stahl at 28:1-8, attached as **Exhibit 3**.

28 <sup>6</sup> *Id.* at 27:2-8.

<sup>7</sup> *Id.* at 20:17-19.

<sup>8</sup> In his deposition, Exhibit 3, at 37:15-20, Defendant Stahl defined blunting occurring when the heart rate is going up but the blood pressure was not increasing.

<sup>9</sup> Attached as **Exhibit 4**.

<sup>10</sup> *Id.* at 12:18-22.

1 As with Dr. Stahl's failure to document, when all of the evidence is before the Court the  
2 evidence may or may not weigh in favor of punitive damages. However, Plaintiffs respectfully  
3 submit the totality of the evidence will establish a degree of reprehensible conduct sufficient to justify  
4 punitive damages. *See Wyeth v. Rowatt*, 126 Nev. 446, 474, 244 P.3d 765, 784 (2010) (In reviewing  
5 punitive damages awards, one guidepost is the degree of reprehensibility of the defendant's conduct.).

6 Defendants' provide a cursory and incomplete analysis of the standard for entitlement to the  
7 remedy of punitive damages. Punitive damages provide a means by which the community can  
8 express outrage or distaste at misconduct as a message to others that such conduct will not be  
9 tolerated as a deterrent to such conduct. *Ace Truck & Equip. Rentals v. Kahn*, 103 Nev. 503, 506,  
10 746 P.2d 132, 134 (1987). Here, an element of oppression may readily be found and the community  
11 may be justifiably outraged. Oppression means nothing more than despicable conduct that subjects  
12 a person to cruel and unjust hardship with conscious disregard of the rights of the person. *Bongiovi*  
13 *v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 450-51 (2006). Express malice is conduct intended to  
14 injure a person and implied malice is despicable conduct that is engaged in with a conscious disregard  
15 of the rights of others. *Id.* When the full fabric of the narrative is woven, Plaintiffs submit that a  
16 cardiac physician is guilty of despicable conduct that violates community standards and disregards  
17 the rights of his patient when he does only what a general practitioner tells him to do without any  
18 evidence that before he turned the patient over to an undertrained assistant to administer the test, he  
19 determined the patient could safely undergo the stress test.

20 Defendant's expert, Dr. Michael Moran, M.D., F.A.C.C., F.S.C.A.J., confirms that medical  
21 assistant Rubio had not been adequately trained and was not qualified to administer the treadmill  
22 stress test.<sup>11</sup> Dr. Moran further confirmed that Dr. Stahl had neither any record nor any recollection  
23 of qualifying Mr. Schrage as a safe candidate for a treadmill stress test. Had Dr. Stahl done so, he  
24 would not have allowed the test to proceed.<sup>12</sup> This combination of inexperience and inattention leads  
25 Dr. Moran to conclude that Dr. Stahl and his staff were "grossly" negligent.<sup>13</sup> From this and other  
26

27 <sup>11</sup> Expert Report of Michael D. Moran, M.D., F.A.C.C., F.S.C.A.J., **Exhibit 5** at Paragraph 14.

28 <sup>12</sup> *Id.* at Paragraph 12.

<sup>13</sup> *Id.* at Paragraph 11.

1 evidence to be adduced at trial, a finding that Dr. Stahl was guilty of oppression supporting an award  
2 of punitive damages would be entirely supportable.

3 Irrespective, of the extent of reprehensibility that may be established at trial, no basis exists  
4 for a predetermination; even if Defendants' motion had a proper procedural foundation; which it  
5 does not.

6 Defendants admit the "sole purpose of [their] Motion is to dismiss Plaintiffs' punitive  
7 damages claim." Defs.' Mot., at 4:5. When the above briefly summarized evidence and other  
8 evidence the Plaintiffs are entitled to present at trial is duly considered, the determination at the close  
9 of the evidence may or may not be that they have met their burden of establishing a right to the  
10 remedy of punitive damages. However, whether or not they will be able to adduce sufficient  
11 evidence is not properly before the Court on Defendants' Motion for Partial Summary Judgment  
12 requesting this Court to *dismiss* their so-called "claim" of punitive damages.

13 It is reasonable to conclude from the summary of evidence identified above, that Dr. Stahl  
14 consciously disregarded the health and safety of his patient, Mr. Schrage. From this and other  
15 evidence presented at trial, a reasonable jury would be justified in finding malice in fact or implied.  
16 Dr. Stahl was clearly unconcerned with assessing Mr. Schrage for whether he was a candidate for  
17 stress testing on a treadmill. As a result of his failure to meet the applicable standard of care for a  
18 cardiac physician, and his conscious disregard for the health and safety of Mr. Schrage, Mr. Schrage  
19 died an untimely and preventable death.

20 At trial on this matter, the jury would be entirely justified in concluding that Dr. Stahl's  
21 conduct exhibited a conscious disregard for Mr. Schrage's health and safety. Such a conclusion  
22 establishes the requisite malice in fact for an award of punitive damages under NRS 42.005.

23 This summary of evidence establishes the type of behavior the Nevada legislature has  
24 determined is deserving of an award of punitive damages to punish the offender and send a warning  
25 signal that such behavior will not be tolerated. Physicians simply cannot be allowed to consciously  
26 disregard the well-being of their patients and the inevitable harm that will befall them, such as Mr.  
27 Schrage's untimely and preventable death.

28 . . .



V.

**CONCLUSION**

There is ample and sufficient evidence supporting a finding of punitive damages to preclude summary judgment. For the foregoing reasons, Plaintiffs' respectfully request this Court deny Defendants (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages.

DATED: December 13, 2021

**TIMOTHY R. O'REILLY, CHTD.**

By: /s/ Timothy R. O'Reilly

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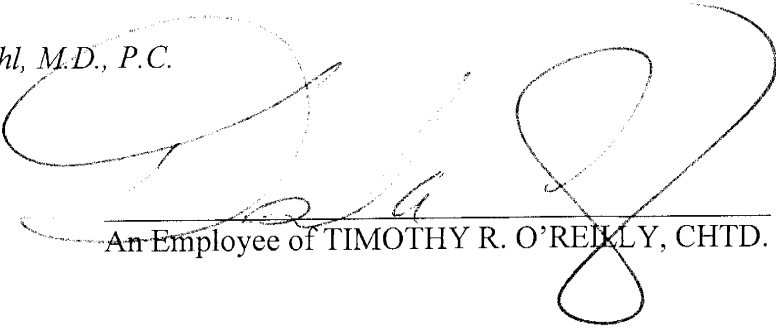
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the law offices of TIMOTHY R. O'REILLY, CHTD. and that, on this 13<sup>th</sup> day of December, 2021, I served the above and foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS (1) MOTION FOR LEAVE AND (2) MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES** pursuant to N.R.C.P. 5(b) by:

- ☒ Electronic transmission through E-Service (EFS) of the Eighth Judicial District Court to the email address(es) of the parties listed below:
- ☐ U.S. Mail by placing a copy of same in a sealed envelope, with postage fully prepaid thereon, to the parties listed below:
- ☐ Facsimile transmission to the fax number(s) of the parties listed below:

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An Employee of TIMOTHY R. O'REILLY, CHTD.

# EXHIBIT “1”

OSCJ

DISTRICT COURT  
CLARK COUNTY, NEVADA

KRISTINA SCHRAGE,

Plaintiff(s),

v.

ALLAN STAHL, M.D., et al.,

Defendant(s),

CASE NO.: A-17-762364-C

DEPT NO.: XV

**THIRD AMENDED ORDER**  
**SETTING CIVIL JURY TRIAL,**  
**PRE-TRIAL CONFERENCE AND**  
**CALENDAR CALL**

IT IS HEREBY ORDERED that:

A. The above entitled case is set to be tried with a FIRM date beginning **Monday, January 10, 2022, at 10:30 a.m. through January 21, 2021.**

B. A Pre-Trial Conference and a Calendar Call with the designated trial attorney and/or parties in proper person will be held on **Wednesday, December 13, 2021, at 8:30 a.m.** Parties must bring to calendar call all items listed in EDCR 2.69. At the time of the calendar call, counsel will set an appointment with the Court Clerk. The appointment must be at least one day before the first day of trial.

C. Parties are to appear on **Monday, November 8, 2021, at 9:30 a.m.,** for a Status Check on the matter.

D. The Pre-Trial Memorandum must be filed no later than **Friday, December 10, 2021, at 4:00 p.m.,** with a courtesy copy delivered to Department XV. All parties (attorneys and parties in proper person), **MUST** comply with **ALL REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69.

E. All pre-trial motions must be in writing and filed no later than **Monday, November 5, 2021,** and motions in limine must comply with all the requirements set forth in EDCR 2.47, particularly EDCR 2.47(b), which requires the lawyers to personally consult with one another by way of face-to-face meeting or via telephone conference before a motion in limine can be filed. If a



1 personal or telephone conference was not possible, the attorney's declaration and/or affidavit  
2 attached to the pre-trial motion shall set forth the reasons. Should a party and/or his or her attorney  
3 fail to abide by the requirements of EDCR 2.47(b) before filing his or her motion in limine, such  
4 motion will not be heard by the Court. **Orders shortening time will not be signed except in**  
5 **extreme emergencies. An upcoming trial date is not an extreme emergency.**

6 **Failure of the designated trial attorney or any party appearing in proper person to**  
7 **appear for any court appearances or to comply with this Order shall result in any of the**  
8 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**  
9 **of trial date; and/or (5) any other appropriate remedy or sanction.**

10 Counsel is required to advise the Court immediately when the case settles or is otherwise  
11 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether  
12 a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy  
13 should be given to Chambers.

14 Finally, if parties are interested in a settlement conference conducted by a District Court  
15 Judge sitting as a Mediator, please contact Judge Wiese's Judicial Executive Assistant at 702-671-  
16 3633.

17 Dated this 5th day of February, 2021

18   
19 \_\_\_\_\_

20  
21 D5A 2CE 373F 05AC  
22 Joe Hardy  
23 District Court Judge  
24  
25  
26  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA  
4

5  
6 Kristina Schrage, Plaintiff(s)

CASE NO: A-17-762364-C

7 vs.

DEPT. NO. Department 15

8 Allan Stahl, M.D., Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Setting Civil Jury Trial was served via the court's electronic  
13 eFile system to all recipients registered for e-Service on the above entitled case as listed  
below:

14 Service Date: 2/5/2021

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 2/8/2021

Aaron Shipley	2300 W Sahara AVE STE 1200 Las Vegas, NV, 89102
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# EXHIBIT “2”

**In the Matter Of:**

A-17-762364-C

SCHRAGE, et al.

VS

STAHL, M.D., et al.

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**Deposition Of:**

*KIM A. KLANCKE, M.D.*

*February 25, 2020*

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702-805-4800

[scheduling@envision.legal](mailto:scheduling@envision.legal)



<p style="text-align: right;">Page 54</p> <p>1 just basically listen quickly, talk to the patient.</p> <p>2 There's certain things you want to exclude before you</p> <p>3 put a patient on a treadmill test.</p> <p>4 Q Did he do a physical of the patient?</p> <p>5 A I believe so.</p> <p>6 Q If he didn't, it would be below the standard</p> <p>7 of care, correct?</p> <p>8 A Depending on what the patient could tell him.</p> <p>9 If the patient tells him he's had no valvular heart</p> <p>10 disease or aortic stenosis, then I don't think it would</p> <p>11 be an issue.</p> <p>12 Q Would the patient be able to tell him how long</p> <p>13 he had the chest pains and whether or not they occurred</p> <p>14 with exercise or whether he was still?</p> <p>15 A I'm sorry?</p> <p>16 Q Would the patient be able to tell Dr. Stahl</p> <p>17 about his chest pains as listed in his history?</p> <p>18 A You would hope so.</p> <p>19 Q And did Dr. Stahl inquire about the chest</p> <p>20 pains and the duration of them or anything like that?</p> <p>21 A I would presume so.</p> <p>22 Q Well, show me where he did.</p> <p>23 A Typically you don't write that down. It's a</p> <p>24 screening exam to determine whether or not the patient's</p> <p>25 a suitable candidate for stress test.</p>	<p style="text-align: right;">Page 56</p> <p>1 not evaluation. His sole obligation is to determine</p> <p>2 whether or not the patient can safely and reasonably</p> <p>3 undergo treadmill testing. So he needs to do enough</p> <p>4 evaluation and examination to determine whether or not</p> <p>5 stress testing is safe, reasonable and prudent.</p> <p>6 Q Did he do enough evaluation and screening to</p> <p>7 determine that the stress test was prudent?</p> <p>8 A I believe so.</p> <p>9 Q Tell me what he did.</p> <p>10 A I don't have a written record of what he did.</p> <p>11 Q Well, if you don't have a record of what he</p> <p>12 did, how can you tell us that he did sufficient</p> <p>13 evaluation?</p> <p>14 A Because we know from Dr. Jacob's evaluation</p> <p>15 and exam that he doesn't have any physical findings for</p> <p>16 cardiovascular disease. And we know from Dr. Jacob's</p> <p>17 history that his chest pain is atypical. It doesn't</p> <p>18 occur with activity, and it's been relatively</p> <p>19 longstanding. So the patient has been appropriately</p> <p>20 referred by an internal medicine doctor, and he's a</p> <p>21 suitable candidate for the exercise treadmill test.</p> <p>22 So his job is to determine whether or not he's</p> <p>23 a candidate for stress testing. He is a candidate for</p> <p>24 stress testing, and he does a stress test without</p> <p>25 incident.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Would you agree with me that if Dr. Stahl did</p> <p>2 not do a physical and did not screen this patient before</p> <p>3 the stress test, that would be below the standard of</p> <p>4 care?</p> <p>5 A He has certain information he has to be aware</p> <p>6 of. His primary role on that exam is to be certain the</p> <p>7 patient is a suitable candidate for stress testing. I</p> <p>8 would agree with you that if the patient's not a</p> <p>9 suitable candidate for stress testing, the stress</p> <p>10 testing would be below the standard of care. How you</p> <p>11 arrive at that information is, I think, variable.</p> <p>12 Q Would you agree with me that the failure to</p> <p>13 screen the patient before the stress test is below the</p> <p>14 standard of care?</p> <p>15 A Screen for what?</p> <p>16 Q You tell me.</p> <p>17 A If he's an unsuitable candidate for the stress</p> <p>18 test and you put him on the stress test, that would be</p> <p>19 below the standard of care.</p> <p>20 Q Would you agree with me that the failure to do</p> <p>21 a physical and screen the patient prior to doing a</p> <p>22 stress test would be below the standard of care?</p> <p>23 A No, not necessarily.</p> <p>24 Q Why won't you agree with that?</p> <p>25 A Because all he is -- his sole obligation is</p>	<p style="text-align: right;">Page 57</p> <p>1 Q What did Dr. Stahl do to determine he was an</p> <p>2 appropriate candidate for stress testing? What did he</p> <p>3 do?</p> <p>4 A I don't recall. I don't know exactly what he</p> <p>5 said in his deposition. I'd have to read it. If you</p> <p>6 give me a second, I'll take a look at it.</p> <p>7 Q Sure.</p> <p>8 MR. DOYLE: That assumes he was ever asked</p> <p>9 those questions, of course.</p> <p>10 THE WITNESS: True.</p> <p>11 BY MR. GILLOCK:</p> <p>12 Q Well, no. I guess my --</p> <p>13 MR. DOYLE: Well, he wasn't asked. That's the</p> <p>14 problem.</p> <p>15 A Do you want me to read his deposition if he</p> <p>16 didn't ask him?</p> <p>17 Q No. My question is -- my question is, are you</p> <p>18 aware of the fact that he testified he did not see the</p> <p>19 patient before the stress test?</p> <p>20 MR. DOYLE: That mischaracterizes the</p> <p>21 testimony.</p> <p>22 A Yeah. I don't recall exactly what he said.</p> <p>23 Those are things that he would have to help you with.</p> <p>24 What I know is the patient's an excellent candidate for</p> <p>25 stress testing and the stress test got done.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q Okay. Doctor, my question is, you've stated</p> <p>2 in your report that he did adequate screening of this</p> <p>3 patient. And what I want to know is what you base that</p> <p>4 on because I don't see anything in his records where he</p> <p>5 saw this patient at all prior to the stress test.</p> <p>6 A Well, I based it on the medical records that I</p> <p>7 had available from Dr. Jacobs and the gastroenterologist</p> <p>8 and all the things that are listed at the top of the</p> <p>9 page.</p> <p>10 Q Well, for example --</p> <p>11 A So maybe the thing should say the patient was</p> <p>12 an excellent candidate for stress testing and not</p> <p>13 include Dr. Stahl in it at all if I said something you</p> <p>14 don't like. But certainly he was -- based on the</p> <p>15 records we have, he was -- stress testing was the</p> <p>16 perfect choice for his evaluation.</p> <p>17 Q So if Dr. Stahl did not do any screening or</p> <p>18 evaluation prior to doing the stress test, that would be</p> <p>19 below the standard of care, correct?</p> <p>20 A If in fact there was a reason to not stress</p> <p>21 test him, then -- and he allowed the stress test to go</p> <p>22 forward, that would be below the standard of care. His</p> <p>23 obligation is to have enough understanding of the</p> <p>24 patient to know that he's a reasonable candidate for</p> <p>25 stress testing.</p>	<p style="text-align: right;">Page 60</p> <p>1 he doesn't think the patient needed nuclear stress</p> <p>2 testing, and he testifies, Dr. Jacobs, that he thought</p> <p>3 the pretest likelihood of coronary disease in this</p> <p>4 patient was extremely low. At one point he said</p> <p>5 something about 50/50 that didn't make any sense and</p> <p>6 wasn't necessarily specific to this patient.</p> <p>7 Q Didn't he say as a matter of fact that if it</p> <p>8 wasn't a 50/50 chance of coronary artery disease, he</p> <p>9 wouldn't have sent him over there at all. Didn't he say</p> <p>10 that in his deposition?</p> <p>11 A I hope not.</p> <p>12 Q Well, he did.</p> <p>13 A Because if he -- I mean, so if there's only</p> <p>14 one chance in three this is coronary disease he doesn't</p> <p>15 have to worry about working it up? That's not the way</p> <p>16 the thing works actually. Again, referring to our</p> <p>17 guidelines, there's a whole set of criteria for</p> <p>18 estimating a patient's pretest likelihood of significant</p> <p>19 underlying coronary disease. In this case it's less</p> <p>20 than 10 percent, probably greater than 5 percent.</p> <p>21 Q Okay. Dr. Jacobs sent -- is it your</p> <p>22 understanding that Dr. Jacobs sent an EKG strip with the</p> <p>23 patient or sent it to Dr. Stahl before the test -- the</p> <p>24 stress test was performed?</p> <p>25 A I don't know. I know that there was an EKG</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Are you going to testify to the jury that</p> <p>2 Dr. Stahl did adequate screening of this patient?</p> <p>3 A I'm going to testify to the jury that I don't</p> <p>4 know exactly what he did to determine the patient was a</p> <p>5 reasonable patient for stress testing. He may just know</p> <p>6 Dr. Jacobs well and trust Dr. Jacobs who sent the</p> <p>7 patient over for stress testing.</p> <p>8 Q Are you aware of the fact that Dr. Jacobs</p> <p>9 thought he was at a 50/50 chance of having coronary</p> <p>10 artery disease when he sent the patient over to him for</p> <p>11 stress testing?</p> <p>12 A I think he actually testified to that. He</p> <p>13 said he doesn't do stress testing unless there's a</p> <p>14 50 percent chance, which means this would be exactly the</p> <p>15 wrong test to do. But then he says he actually thinks</p> <p>16 there was less than 1 percent chance that he has</p> <p>17 coronary artery disease and therefore he did stress</p> <p>18 testing. So his testimony was variable on that subject.</p> <p>19 Q Isn't it true that his testimony about the</p> <p>20 1 percent chance was after he got Dr. Stahl's evaluation</p> <p>21 that the test was totally normal?</p> <p>22 A Possible. I don't know. But there's</p> <p>23 certainly not a pretest likelihood of 50 percent because</p> <p>24 then the treadmill test would be the wrong test to do.</p> <p>25 He should be doing a stress nuclear study. He testifies</p>	<p style="text-align: right;">Page 61</p> <p>1 that comes with the stress test in the office. My</p> <p>2 presumption is Dr. Jacobs would -- or Dr. Stahl would</p> <p>3 look at that before stress testing the patient. And I'm</p> <p>4 aware that he was aware that there was a concern about</p> <p>5 T wave changes on the EKG.</p> <p>6 Q Well, there's more concern than just T waves,</p> <p>7 right? What's your understanding as to whether or not</p> <p>8 the EKG that was done by Jacobs was normal or abnormal?</p> <p>9 A It was my understanding that Dr. Jacobs</p> <p>10 thought the EKG was abnormal, and Dr. Stahl thought it</p> <p>11 was indeterminate in his deposition.</p> <p>12 Q Did Dr. Stahl see it before the stress test?</p> <p>13 A I don't know. He had his own to look at. I'm</p> <p>14 not sure if he would look at Dr. Jacobs or not.</p> <p>15 Q Well, if he never saw the patient before the</p> <p>16 stress test, when did he do the screening that was</p> <p>17 necessary for him to meet the standard of care?</p> <p>18 MR. DOYLE: I'll object. It mischaracterizes</p> <p>19 the testimony and the evidence.</p> <p>20 MR. GILLOCK: Dr. Stahl testified he never</p> <p>21 saw the patient before the start of this stress</p> <p>22 test.</p> <p>23 MR. DOYLE: No, actually what Dr. Stahl said</p> <p>24 is he had no independent recollections of his visit</p> <p>25 and what happened that day, but he certainly</p>

# EXHIBIT “3”

DISTRICT COURT

CLARK COUNTY, NEVADA

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, JR.;  
et al.,

Plaintiffs,

vs.

CASE NO. A-17-762364-C

ALLAN J. STAHL, M.D.,; an  
individual; DOES 1 through 10,  
inclusive; ROE ENTITIES 1  
through 10, inclusive,

Defendants.

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Complete caption on following page.)

DEPOSITION OF

ALLAN J. STAHL, M.D.

June 28, 2019

1:12 p.m.

428 South Fourth Street

Las Vegas, Nevada

Reported By: Robin A. Ravize, CCR No. 753

1 MR. GILLOCK: I'll rephrase.

2 BY MR. GILLOCK:

3 Q. Do you agree with me that a health history is  
4 an important part of treating patients?

5 MR. DOYLE: It's an incomplete hypothetical, and  
6 it's vague.

7 Go ahead.

8 THE WITNESS: A health history is routinely done in  
9 patient encounters, yes.

10 BY MR. GILLOCK:

11 Q. What did Mr. Schrage tell you about his  
12 health history?

13 A. I can't recollect the details of our  
14 conversation.

15 Q. That was in 2016, correct?

16 A. That is correct, yes.

17 Q. Can you remember anything about your  
18 conversation with him?

19 A. No. I have no direct recollection.

20 Q. If there was important health information  
21 imparted to you, would it be part of your record?

22 A. It would not typically be part of my record,  
23 no.

24 Q. So are you saying that you would take a  
25 health history from a patient that has a family history of



1 BY MR. GILLOCK:

2 Q. Is there any document that indicates you went  
3 into the room to see the patient beforehand in your chart  
4 anywhere?

5 A. There is not, no.

6 Q. Did you make any notes on the patient history  
7 forms?

8 A. I did not, no.

9 Q. Tell me what you know about his family  
10 history of cardiac problems or heart problems. What's the  
11 extent of it?

12 A. On the referral form it states his father had  
13 a premature heart attack.

14 Q. And what did it say about how long this  
15 patient, Joseph Schrage, had been having chest pains?

16 A. There was no time interval noted.

17 Q. Is that important information that you need  
18 to know?

19 MR. DOYLE: Object. Lacks foundation.

20 Go ahead.

21 THE WITNESS: Not necessarily.

22 BY MR. GILLOCK:

23 Q. Would you agree with me that not everybody  
24 that comes over for a stress test is given a stress test?

25 A. There are rare exceptions, yes.

1 Q. Would you also agree that the person  
2 responsible to determine whether or not a person should be  
3 given a stress test is yourself, once they are referred to  
4 you?

5 A. The doctor who does the test is responsible,  
6 yes.

7 Q. And that would be you in this case, right?

8 A. It would be me, yes.

9 Q. Did you have any phone conversations with  
10 Dr. Jacobs before you did the stress test on this patient?

11 A. I have no recollection.

12 Q. Do you have any recollection of having any  
13 phone conversations with him after?

14 A. I have no recollection either.

15 Q. Have you talked to him since this lawsuit was  
16 filed?

17 A. No, I have not, no.

18 Q. Have you made any written statements to  
19 anyone concerning this particular stress test and the issues  
20 surrounding it, other than just what you have in your  
21 records? Any reports or any indications to anything?

22 A. I have no recollection of doing so, no.

23 Q. Have you talked to your technician about this  
24 stress test?

25 A. I have not, no.

1 Oh, there you've got them.

2 My question, just so it's clear where we are  
3 at, I was wondering if the blood pressures are reported on  
4 the strips?

5 A. The blood pressures are not reported on the  
6 strips.

7 Q. And on this worksheet you've circled "normal"  
8 again; is that correct?

9 A. That is correct.

10 Q. Now, also it has an entry called  
11 "hypertensive." What would that be?

12 A. If the blood pressure rise was greater than  
13 would be normal, we would mark that as hypertensive.

14 Q. What does blunted mean?

15 A. That means the blood pressure response is not  
16 what we would anticipate.

17 Q. Would that mean that if the heart rate is  
18 going up and the blood pressures were not increasing, that  
19 would be blunted?

20 A. That would be the definition, yes.

21 Q. So in doing a stress test, would you agree  
22 with me that one of the things that you look for in doing  
23 your evaluation is whether or not the blood pressures were  
24 increasing along with the heart rate; isn't that right?

25 A. One would expect an appropriate response.



# EXHIBIT “4”

COURT

CLARK COUNTY, NEVADA

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, JR.;  
et al.,

Plaintiffs,

vs.

CASE NO. A-17-762364-C

ALLAN J. STAHL, M.D., an  
individual; DOES 1 through 10,  
inclusive; ROE ENTITIES 1  
through 10, inclusive,

Defendants.

~~~~~  
Complete caption on following page.)

VIDEOTAPED DEPOSITION OF

JOSEFINA RUBIO, M.A.

September 26, 2019

1:04 p.m.

428 South Fourth Street

Las Vegas, Nevada

Reported By: Robin A. Ravize, CCR No. 753

1 Q. Did you practice as a physician assistant?

2 A. Always.

3 Q. And what are your duties as a physician  
4 assistant?

5 A. To bring the patient to the room, check their  
6 vital signs, check the medications, to be up-to-date on the  
7 medicines.

8 Some patients, we have to check if they have  
9 a pacemaker, for instance, or EKGs and also the stress  
10 test.

11 MS. NEWBERRY: Jerry, you meant medical assistant,  
12 not a physician assistant.

13 MR. GILLOCK: Well, I'm asking. She said physician  
14 assistant a while ago.

15 BY MR. GILLOCK:

16 Q. Are you a medical assistant or --

17 A. I'm a medical assistant.

18 Q. Okay.

19 What training have you had? What formal  
20 training have you had in conducting stress tests?

21 A. My co-workers trained me when I started  
22 working with Dr. Stahl.

23 Q. And prior to working with Dr. Stahl, did you  
24 have any training in how to read stress test results?

25 A. No.



1 A. Yes.

2 Q. Let's back up a little bit.

3 Tell me what training you've had in  
4 evaluating the blood pressures that are supposed to appear  
5 on a stress test as the stress test is being given.

6 A. When I went to school, they taught us how to  
7 take the blood pressure and see the normal values; that it  
8 will be 120/80, and that varies also.

9 When I'm doing the stress test, obviously, it  
10 has to start going up because of the walking. And I check  
11 on that every three minutes.

12 And that pressure could reach 160 or 180/90  
13 and that's when I stop the test.

14 Q. Now, what training did you have to determine  
15 what blood pressures you're supposed to see develop while a  
16 stress test is going on?

17 A. Like I said, my co-workers trained me on  
18 that.

19 Q. Did your co-workers train you on blunting?  
20 Do you know what blunting is?

21 A. No.

22 Q. You don't know what blunting is; is that  
23 right?

24 A. You mean, like, being, like, blind?

25 Q. Do you know -- have you ever heard the term

# EXHIBIT “5”

**EXPERT DECLARATION OF MICHAEL DOUGLAS MORAN, M.D., F.A.C.C.,  
F.S.C.A.I. IN REGARD TO JOSEPH SCHRAGE**

I, Michael D. Moran, M.D., F.A.C.C., F.S.C.A.I., being duly sworn, under oath, hereby swear that the following assertions are true to the best of my personal knowledge, training, experience, and belief:

1. I am a board certified physician and surgeon with a subspecialty certification in interventional cardiology and cardiovascular disease.
2. My current area of practice includes cardiology, and I am currently an active medical staff member at various medical centers throughout California while also being the President and C.E.O of Coastal Cardiovascular Institute. In addition, and among other professional memberships, I am a fellow of the American College of Cardiology and Society of Cardiovascular Angiographers and Interventionists.
3. My licenses are on file with the appropriate authorities in the State of California.
4. My additional qualifications to serve as an expert and training are set forth in my Curriculum Vitae, attached hereto as Exhibit A.
5. Based upon my training, background, knowledge and experience, I am familiar with the applicable standards of care required of a physician for a patient presenting to a cardiologist for a treadmill work up with a history of chest pain and has an abnormal ECG which includes an inferior infarct with an undetermined age. I have practiced and continue to practice in this area of medicine.
6. I am qualified on the basis of my training, background, knowledge and experience to offer an expert medical opinion regarding those accepted standards of medical care, the breaches thereof in this case, and any resulting injuries and damages arising therefrom.
7. In preparation for my opinions in this case, I have reviewed medical records from Michael Jacobs, M.D., Allan J. Stahl, M.D., PC, Brent Burnette, M.D. of Gastroenterology Associates, and the Autopsy Report from the Clark County Coroner dated October 4, 2016. In addition, I have also reviewed the deposition transcripts of Michael Jacobs, M.D. (July 20, 2018), Alan Stahl, M.D. (June 28, 2019), and Josefina Rubio, M.A. (September 26, 2019).
8. I anticipate reviewing additional information as this matter progresses and reserve the right to supplement my opinions based upon information not yet available or received.
9. I am competent to testify as to the assertions contained herein.

10. Based upon my review of the records stated herein, it is my understanding that Joseph Schrage was examined by his primary care physician, Dr. Jacobs, on August 1, 2016. Dr. Jacobs referred him to cardiologist Allan J. Stahl, M.D. for a stress test. He had a history of chest pain and pain in the posterior forearm along with an abnormal ECG. The ECG was performed by Dr. Jacobs on August 1, 2016, and Dr. Stahl has confirmed he had access to it. Dr. Stahl delegated the responsibility of performing a stress test to an untrained and unsupervised medical assistant. He, in error, assessed the stress test as follows: (1) negative for ischemia; (2) excellent exercise tolerance for patient's age; (3) normal blood pressure response to exercise; (4) normal heart rate response to exercise; and (5) no arrhythmias were present during exercise. Dr. Stahl did not do any further cardiac work up and did not grant Dr. Jacob's access to the treadmill work sheet that reflects, among other things, the patient's blood pressure during a treadmill test. Specifically, he did not refer Mr. Schrage to the catheterization laboratory for an angiogram. He only had his untrained and unsupervised staff member perform a cardiovascular stress test via treadmill on August 10, 2016. Mr. Schrage ultimately passed away on October 3, 2016 from acute myocardial infarct due to thrombosis of right coronary artery and arteriosclerotic cardiovascular disease.

11. Based upon my experience, training, and education, and in light of the information provided and available to date, it is my opinion, to a reasonable degree of medical certainty, that the care and/or lack of care provided to Mr. Schrage by Dr. Stahl and his staff fell below the standard of care in multiple areas and, in certain areas, Dr. Stahl and his staff grossly fell below the standard of care.

12. As an initial matter, Dr. Stahl should not have permitted Mr. Schrage to perform a treadmill test with his presenting conditions. Just because a treadmill test is requested by a general practitioner does not mean one should be performed. A cardiologist should conduct their own independent work up to determine the cause of the chest pains with an individual presenting with a medical history such as Mr. Schrage. Dr. Stahl made no such effort. Based upon a review of Dr. Stahl's deposition, if he would have seen Mr. Schrage (which he has no recollection of doing) prior to the treadmill test being performed and performed an adequate health history of the patient or even reviewed the information available to him in regard to Mr. Schrage and his health history prior to the treadmill test, then a treadmill test should not have been performed. More specifically, Mr. Schrage presented with an abnormal ECG (i.e. Inferior Infarct), a history of chest pains, and a father who appears to have had a heart attack prior to the age of 55. These risk factors were not all identified on the treadmill worksheet. As a cardiologist, in lieu of a treadmill test, Mr. Schrage should have been admitted to the catheterization laboratory for an angiogram. The angiogram would have shown the arterial blockage causing the continued chest pain experienced by Mr. Schrage.

13. Dr. Stahl claims he formed an opinion prior to the stress test that Mr. Schrage's abnormal ECG was in fact not abnormal and not determinative of a prior myocardial infarction. This opinion is not only confusing as to when he developed it, but it is also wrong. Dr. Stahl testified on page 18 of his deposition that he only saw Mr. Schrage during the treadmill test, although Ms. Rubio confirmed he did not. In any event, Dr. Stahl's interpretation of the ECG is not accurate. The ECG in Dr. Stahl's possession, prior to the performing the treadmill test, is determinative of a prior myocardial infarction. However, even if it was indeterminate if the ECG



was normal (which it was not), Dr. Stahl still should have acted in Mr. Schrage's best interest and taken him to the catheterization lab.

14. In addition, Dr. Stahl failed to adequately monitor the treadmill test or adequately train his staff to monitor the treadmill test. Ms. Rubio was the medical assistant who monitored the treadmill test. She is not qualified to monitor a treadmill test, and Dr. Stahl knew or should have known this information. She confirmed Dr. Stahl, despite his testimony, is not in the room when a treadmill test is being conducted. She also confirmed she has no formal training in conducting the treadmill test. She was merely trained years ago for a day or so by a co-worker. She had no training on the protocols that you are supposed to follow in administering the stress test. She has no training as to know whether blood pressure is increasing the way it is supposed to be increasing during a treadmill test. She claims that Dr. Stahl is in the room next door in case she needs anything. However, she is not adequately trained to know whether she needs anything or not during a treadmill test. So, Dr. Stahl being in the room next door is of no help. Her lack of ability to conduct a treadmill test is further evident by the fact she did not even know the term blunting. This is basic terminology that is used when conducting a treadmill examination and is present on the treadmill worksheet she filled out during Mr. Schrage's treadmill test. Blunting generally means the patient's blood pressure does not continue to rise as the work load increases during the course of the test. This is one indication that a treadmill test should be aborted. Signs of blunting are clearly present on Mr. Schrage's treadmill test as his blood pressure stayed at 160/100 for at least 6 minutes while the heart rate pulse increased 52 beats per minute. Unfortunately, the blunting response was not transmitted to Dr. Jacobs. Instead the assessment of the treadmill stress test, sent to Dr. Jacobs, was in error on multiple areas, including the reference that the blood pressure response to exercise was normal and the exercise tolerance was excellent.

15. In reality, even after the stress test was performed, Dr. Stahl still had sufficient information to warrant sending or suggesting Mr. Schrage be immediately sent 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.

16. So, if Mr. Schrage would have underwent a more cautious work up, including an angiogram as required by the standard of care, and he would have been treated accordingly and he would not have passed away on October 3, 2016.

17. In addition, as indicated above, if Mr. Schrage would have been properly monitored in the treadmill stress test, then the blunting nature of his blood pressure would have been identified and given the opportunity to be adequately addressed.

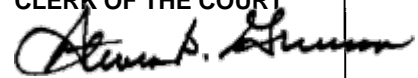
18. As a result, it is my opinion, to a reasonable degree of medical probability, that the failures to meet the appropriate standard of care by Dr. Stahl and his staff were the proximate and legal cause of Mr. Schrage's untimely death on October 3, 2016.

19. I reserve the right to supplement these opinions as stated above.

20. This declaration is signed under penalty of perjury, and all statements contained herein are true and correct.



MICHAEL DOUGLAS MORAN, M.D., F.A.C.C., F.S.C.A.I.



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Attorneys for Defendants

*Allan J. Stahl, M.D.*

*and Allan J. Stahl, M.D., P.C.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

11 KRISTINA DANICA SCHRAGE,

12 Individually and as spouse and natural heir of

13 JOSEPH PATRICK SCHRAGE, JR., and on

14 behalf of the ESTATE OF JOSEPH

15 PATRICK SCHRAGE, JR.; JOSEPH

16 PATRICK SCHRAGE, III, and MILA

17 DANICA SCHRAGE, minors, each

18 individually and as children and natural heirs

19 of JOSEPH PATRICK SCHRAGE, JR., by

20 and through their Natural Parent and

21 Guardian, KRISTINA DANICA SCHRAGE;

22 Plaintiff,

23 vs.

24 ALLAN J. STAHL, M.D.; an individual;

25 ALLAN J. STAHL, M.D., P.C., a Nevada

26 Professional Corporation; DOES 1 through

27 10, inclusive; ROE ENTITIES 1 through 10,

28 inclusive,

Defendant.

**CASE NO.: A-17-762364-C**

**DEPT NO.: XV**

**DEFENDANTS ALLAN J. STAHL, M.D.**

**AND ALLAN J. STAHL, M.D., P.C.'S**

**OPPOSITION TO PLAINTIFF'S**

**MOTION IN LIMINE NO. 1 TO**

**EXCLUDE EVIDENCE OF**

**COLLATERAL SOURCE BENEFITS**

**NOT CONTEMPLATED BY NRS 42.021**

**Hearing Date: January 5, 2022**

**Hearing time: 9:00 a.m.**

COME NOW, Defendants, 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

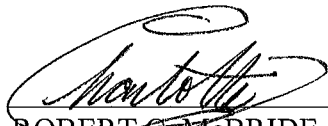
BUYS, ESQ. of the law firm of McBRIDE HALL, and hereby submits this Opposition to

1 Plaintiffs' Motion in Limine No. 1 to Exclude Evidence of Collateral Source Benefits.

2 This Opposition is made and based on the pleadings and papers on file herein, the  
3 Memorandum of Points and Authorities set out below, the exhibit attached hereto, any argument  
4 of counsel as may be adduced at the time of the hearing of this matter, and any other evidence this  
5 Honorable Court deems just and proper.  
6

7 DATED this 15<sup>th</sup> day of December 2021.

8 McBRIDE HALL

9 

10 ROBERT C. McBRIDE, ESQ.

11 Nevada Bar No.: 7082

12 T. CHARLOTTE BUYS, ESQ.

13 Nevada Bar No.: 14845

14 8329 W. Sunset Road, Suite 260

15 Las Vegas, Nevada 89113

16 Attorneys for Defendants

17 *Allen J. Stahl, M.D.*

18 *and Allen J. Stahl, M.D., P.C.*



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **PREFATORY NOTE**

4 This is a professional negligence case (medical malpractice). NRS § 42.021 provides for  
5 and allows introduction of evidence relating to collateral source payments and contractual write-  
6 offs in actions based upon professional negligence of providers of healthcare. Specifically, NRS §  
7 42.021 is a statutory exception to the general collateral source rule for professional negligence  
8 litigation.

9 While Plaintiffs appear to agree, generally, that NRS § 42.021 applies to this case, Plaintiffs  
10 contend that certain collateral source payments (ie. life insurance payments) are still inadmissible.  
11 However, as set forth below, NRS § 42.021 allows a defendant provider of healthcare in a  
12 professional negligence action to introduce collateral source payments (including those subject to  
13 a contract or agreement with any group) that are not subject to a federal statute for subrogation.  
14 *See McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133 Nev.Adv.Rep. 115, 408, P.3d 149 (Nev.  
15 2017).

16 **II.**

17 **FACTS**

18 Plaintiffs contend that on August 10, 2016, Mr. Joseph Schrage was referred by his primary  
19 care physician, Michael Jacobs, M.D. to undergo a treadmill stress test as an initial step in  
20 addressing Mr. Schrage's complaints of occasional chest pain. Dr. Jacobs was also working up Mr.  
21 Schrage's symptoms as a gastrointestinal process and also referred Mr. Schrage for further workup  
22 by Mr. Schrage's Gastroenterologist, who had previously treated Mr. Schrage several years prior.  
23 According to Dr. Stahl's interpretation of Mr. Schrage's cardiac stress test, Mr. Schrage had an  
24 appropriate response to the stress test, and that information was reported back to Dr. Jacobs' office  
25 that same afternoon.

26 A few months later, Mr. Schrage suffered a coronary plaque rupture, an event which could  
27 not have been predicted by way of EKG or angiogram, and subsequently passed away. Plaintiffs'  
28 experts do not contend that Mr. Schrage suffered a cardiac event during the stress test or that the

1 stress test caused a cardiac event. Rather, Plaintiffs contend that Dr. Stahl fell below the standard  
2 of care by following the order of Plaintiffs' primary care physician and should have instead  
3 referred Mr. Schrage to an interventional cardiologist, who could have then taken Mr. Schrage to  
4 a cardiac catheterization laboratory to undergo an angiogram. Defendants deny all allegations of  
5 negligence.

## 6 II.

### 7 ARGUMENT

#### 8 A. NRS § 42.021 ALLOWS EVIDENCE OF PLAINTIFFS' LIFE INSURANCE PAYMENTS, 9 PAYMENTS FROM PLAINTIFF'S EMPLOYER AND OTHER COLLATERAL SOURCE 10 PAYMENTS INTO EVIDENCE, IF SUCH PAYMENTS ARE NOT SUBJECT TO 11 SUBROGATION.

12 This is a professional negligence action. Nevada Revised Statute § 42.021 was specifically  
13 enacted for the purpose of reducing jury verdicts against Nevada healthcare providers in  
14 professional negligence actions. *See McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133  
15 Nev.Adv.Rep. 115, 408, P.3d 149 (Nev. 2017). One of the ways that NRS § 42.021 accomplishes  
16 this purpose is to allow collateral source evidence before the jury. NRS § 42.021 is a statutory  
17 exception to the general collateral source rule adopted in *Proctor v. Castelletti*, 911 P.2d 853 (Nev.  
18 1996).

19 The statute permits into evidence any health, sickness, income/disability/life insurance or  
20 income/disability/life coverage. *See* NRS § 42.021(1).

21 The viability of NRS § 42.021 was analyzed in *McCrosky v. Carson Tahoe Reg'l Med.*  
22 *Ctr.*, 133 Nev.Adv.Rep. 115, 408, P.3d 149 (Nev. 2017). The Nevada Supreme Court found that  
23 NRS § 42.021 would apply to state-based insurance policies or private insurance policies and  
24 agreements. The Court found, that NRS § 42.021 would be preempted as it would apply to federal  
25 insurance payments that had a federal right of subrogation set forth by statute, such as Medicare  
26 or Medicaid.

27 Specifically, NRS § 42.021 has multiple parts in the statute. Because Part 1 of the statute  
28 allows collateral source evidence in medical malpractice/professional negligence actions thereby  
reducing jury verdicts. Part 2 of the statute does not allow insurers or the sources of collateral

1 payments to subrogate or recover their payments from the remaining verdict that is eventually  
2 obtained. Such would be a double whammy (meaning a Plaintiffs' verdict would be reduced  
3 introduction of collateral source evidence, and if subrogation was also permitted the verdict would  
4 be further reduced).

5 In *McCrosky*, the Nevada Supreme Court recognized that the statute would cause a double  
6 reduction of the Plaintiff's verdict. For state and private payments, the Court found NRS § 42.021  
7 constitutional because the Nevada Legislature is permitted to enact laws requiring that Nevada  
8 insurers and private payors not subrogate. However, the State of Nevada cannot enact a law which  
9 is contrary to or inconsistent with federal legislation. Specifically, there is a federal statute, 42  
10 U.S.C. § 2651(a) which allows certain federal insurers to subrogate payments. Hence, NRS §  
11 42.021 is preempted to the extent it would not allow federal insurers (like the U.S. government  
12 which provides Medicare and Medicaid benefits) from not subrogating for health insurance  
13 payments.

14 Plaintiffs seek to exclude evidence of collateral sources that Defendants, pursuant to NRS  
15 § 42.021 are permitted to introduce into evidence (like life insurance payments) for which there is  
16 no federal subrogation statute applicable here, and are, accordingly, not preempted by federal law.  
17 Plaintiff has not cited to any federal statute which allows the U.S. government to subrogate and  
18 recover income payments made by Plaintiff's employer<sup>1</sup> or life insurance payments made to these  
19 Plaintiffs. Absent such a statute, there is no preemption, and Mr. Schrage's life insurance payments  
20 and income are admissible into evidence per NRS 42.021(1).

21 ///

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28 <sup>1</sup> Moreover, while Plaintiffs have referred to the money received from Mr. Schrage's employer as a "gift" in the  
underlying Motion, Mr. Schrage's employer expressly stated that this payment was indeed taxable income. *See*  
correspondence from McDonald Carrano, attached hereto as "Exhibit A." Income received pursuant to Mr. Schrage'  
agreement to work for McDonald Carrano cannot be subrogated by means of a federal statute.

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III.

CONCLUSION

For the reasons stated herein, Defendants respectfully request that Plaintiffs' Motion in Limine No. 1 be denied, and that Plaintiffs' life insurance payments and income payments from Mr. Schrage's employer be admitted into evidence pursuant to NRS § 42.021.

DATED this 13<sup>th</sup> day of December 2021.

McBRIDE HALL

  
ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No.: 14845

8329 W. Sunset Road, Suite 260

Las Vegas, Nevada 89113

Attorneys for Defendants

*Allen J. Stahl, M.D.*

*and Allen J. Stahl, M.D., P.C.*



1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 13<sup>th</sup> day of December 2021, I served a true and correct  
3 copy of the foregoing **DEFENDANTS ALLAN J. STAHL, M.D. AND ALLAN J. STAHL,**  
4 **M.D., P.C.'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1 TO EXCLUDE**  
5 **EVIDENCE OF COLLATERAL SOURCE BENEFITS NOT CONTEMPLATED BY NRS**  
6 **42.021** addressed to the following counsel of record at the following address(es):

- 7
- 8 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
service attached to any copy filed with the Court; or
- 9
- 10 ☐ **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  
11 States mail at Las Vegas, Nevada; or
- 12 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
indicated on the service list below.
- 13

14 Timothy R. O'Reilly, Esq.  
TIMOTHY R. O'REILLY, CHTD.  
15 325 S. Maryland Parkway  
Las Vegas, Nevada 89101  
16 -and-  
17 Gerald I. Gillock, Esq.  
GERALD I. GILLOCK & ASSOCIATES  
18 428 South Fourth Street  
Las Vegas, Nevada 89101  
19 *Attorneys for Plaintiffs*

20

21

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28

/s/ T. Charlotte Buys  
An Employee of McBRIDE HALL

**EXHIBIT “A”**

**EXHIBIT “A”**

# McDONALD CARANO

January 26, 2017

Krista Schrage - Via Fed Ex  
601 Engel Blvd.  
Park Ridge, IL 60068

RE: Check

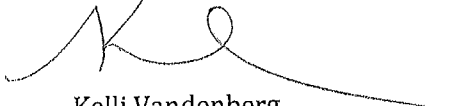
Hi Krista!

Enclosed you will find a check in the amount of \$30,000. We hope this will help you and the kids settle into your new life with a little more ease.

As mentioned, this money will be considered income. Therefore, you will receive a 1099 at the end of 2017 for tax purposes. Please let me know if anything changes with your address in the future.

I'm sure this is still a very difficult time. If there is ever anything I/we can do for you, please don't hesitate to reach out. We are your eternal extended family!

Wishing you all the best!



Kelli Vandenberg  
Director of Human Resources  
McDonald Carano, LLP  
(775) 788-2000

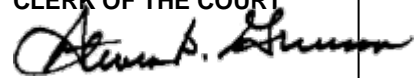
[mcdonaldcarano.com](http://mcdonaldcarano.com)

100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000  
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100

 MERITAS  
LAW FIRM

STAHL 000123

PET APPX 125



**RIS**

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Attorneys for Defendants,  
*Allan J. Stahl, M.D.*  
and *Allan J. Stahl, M.D., P.C.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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, 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;

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C  
DEPT NO.: XV**

**ALLAN J. STAHL, M.D. AND ALLAN J.  
STAHL, M.D., P.C.'S REPLY IN  
SUPPORT OF DEFENDANTS' MOTION  
IN LIMINE NO. 1 TO EXCLUDE ANY  
EVIDENCE OR ARGUMENT IN  
FURTHERANCE OF PLAINTIFFS'  
ORDINARY/ "CORPORATE"  
NEGLIGENCE CLAIM AND TO CAP  
HEDONIC DAMAGES PURSUANT TO  
NRS 41A.035**

**DATE OF HEARING: 1/5/2022**

**TIME OF HEARING: 9:00 A.M.**

COME NOW, Defendants, 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



1 BUYS, ESQ. of the law firm of McBRIDE HALL, and hereby file this Reply in Support of Motion  
2 in Limine No. 1 to Exclude Any Evidence or Argument in Furtherance of Plaintiffs' Ordinary /  
3 "Corporate" Negligence Claim and to Cap Hedonic Damages Pursuant to NRS 41A.035.

4 This Reply is made and based upon the papers and pleadings on file herein, the  
5 Memorandum of Points and Authorities set out below, the exhibits attached hereto, any argument  
6 of counsel which may be adduced at the time of the hearing of the motion, and any other evidence  
7 the Court deems just and proper.

8 DATED this 29<sup>th</sup> day of December, 2021. McBRIDE HALL

9  
10 /s/ T. Charlotte Buys

11 ROBERT C. McBRIDE, ESQ.

12 Nevada Bar No.: 7082

13 T. CHARLOTTE BUYS, ESQ.

14 Nevada Bar No.: 114845

15 8329 W. Sunset Road, Suite 260

16 Las Vegas, Nevada 89113

17 Attorneys for Defendants,

18 *Allen J. Stahl, M.D.*

19 *and Allen J. Stahl, M.D., P.C.*

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1 NRS 41A, as they are allegations for professional negligence arising out of Dr. Stahl and Allan J.  
2 Stahl, M.D., P.C.'s medical care and treatment of Mr. Schrage and involve the same alleged  
3 medical injury. Such, under the case law set forth below from the Nevada Supreme Court sounds  
4 in professional negligence and is limited to a claim of professional negligence.

## 5 II.

### 6 ARGUMENT

#### 7 A. THE \$350,000 CAP ON NON-ECONOMIC DAMAGES FOR PROFESSIONAL NEGLIGENCE 8 IS A "HARD CAP."

9 The entirety of Plaintiffs' causes of action against Dr. Allan J. Stahl and Allan J. Stahl,  
10 M.D., P.C., separate and apart from their claim for "Medical Malpractice/Professional  
11 Negligence," represents an effort to circumvent the professional negligence non-economic damage  
12 cap. In *Tam v. Eighth Judicial Dist. Ct.*, 131 Nev. 732, 738, 358 P.3d 254, 259 (Nev. 2015), the  
13 Nevada Supreme Court stated with regard to the application of the professional negligence non-  
14 economic damage cap (NRS 41A.035) that the cap:

15 "...applies per incident regardless of how many plaintiffs, defendants or claims  
16 are involved..." (Emphasis added).

17 In this case, Plaintiffs have pled a "General Allegations" section in their Fourth Amended  
18 Complaint for Medical Malpractice and Wrongful Death. The "General Allegations" section  
19 describes all of the operative facts pertinent to this case and all claims therein. (See Paragraphs  
20 25(a) – (b) and 26 of Plaintiffs' Fourth Amended Complaint for Medical Malpractice and  
21 Wrongful Death). The "General Allegations" then, are incorporated by reference into every claim  
22 and cause of action, in Plaintiffs' entire Fourth Amended Complaint. As such, the operative facts  
23 are virtually identical to every claim.

24 In Plaintiffs' First Cause of Action, using the operative facts, set forth in Plaintiffs'  
25 "General Allegations," Plaintiffs asserts a "Medical Malpractice/ Professional Negligence/  
26 Wrongful Death" claim against Dr. Stahl and Allan J. Stahl, M.D., P.C. Moreover, in that very  
27 same cause of action for "Medical Malpractice/Professional Negligence/ Wrongful Death,"  
28 Plaintiffs also incorporate by reference the Declaration of Michael D. Moran, M.D. (See Paragraph

33 of Plaintiffs’ Fourth Amended Complaint for Medical Malpractice and Wrongful Death). Plaintiffs contend that Dr. Stahl and Allan J. Stahl, M.D., P.C. “breached their duties and fell below the standard of care for health care providers...”. (See Paragraph 33 of Plaintiffs’ Fourth Amended Complaint for Medical Malpractice and Wrongful Death).

That same contention in one verbal gymnastics measure after another, is precisely the same for all of Plaintiffs’ claims and causes of action (namely that Defendants should have ordered Mr. Schrage be admitted to the catheterization laboratory to diagnose and treat atherosclerosis cardiovascular disease) in hopes of reducing his chance of death. (See Paragraph 25 of Plaintiffs’ Fourth Amended Complaint for Medical Malpractice and Wrongful Death).

Indeed, the crux of Plaintiffs’ Negligent Hiring, Training and Supervision claim has been pled by Plaintiffs as follows:

“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 Paragraph 25(b) of Plaintiffs’ Fourth Amended Complaint for Medical Malpractice and Wrongful Death).

A contention that an employee of a physician’s professional corporation (a provider of healthcare as defined by NRS 41A.017) fell below the standard of care and was not appropriately trained or supervised to assist a physician in the physician meeting the required standard of care is a contention for professional negligence.<sup>2</sup>

Moreover, there is no appellate authority in Nevada where the operative facts and the injury are identical and Plaintiff is permitted to bring a claim for “Professional Negligence” and “Ordinary Negligence” arising from the same operative facts and injury.

In the *Estate of Curtis v. Life Care Center of So. Las Vegas*, 466 P.3d 1263 (Nev. 2020) the Nevada Supreme Court stated that because a Plaintiff’s claims for abuse, neglect, tortious breach of implied covenant and fair dealing and also intentional mismanagement, budgeting and understaffing were necessarily and inextricably connected to the claims of negligent medical

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<sup>2</sup> Such a contention, respectfully, is also a misstatement of the standard of care and will be rebutted by the Defense’s expert witnesses at the time of trial.



1 treatment, such claims cannot be used to circumvent the requirements and limitations (and cap) set  
2 forth in NRS Chapter 41A governing professional negligence lawsuits.

3 Please note that even budgeting and staffing necessarily were found to be professional  
4 negligence claims in the *Curtis* decision. In *Curtis*, as here, if the professional negligence claims  
5 fail then the negligent hiring, training, and supervision/ ordinary negligence claims utilizing the  
6 same operative facts and injury must fail.

7 In *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 403 P.3d 1280 (Nev.  
8 2017), the Nevada Supreme Court recognized that, at times, a distinction between professional  
9 negligence and ordinary negligence can be subtle. However, nowhere in *Szymborski* did the Court  
10 state that subtle or not, the same claims can be both. In *Szymborski*, the Court found that the claims  
11 involved actions by non-professional healthcare providers for a non-patient (even though the  
12 setting of negligence was at a hospital) and therefore dismissed all professional negligence claims  
13 (leaving only claims for ordinary negligence). *Szymborski* does not stand for the proposition that  
14 the same set of operative facts can be both ordinary negligence and professional negligence.  
15 Plaintiff has not cited a single case in Nevada, which permits such a determination.

16 Further, in *Zhang v. Barnes*, 832 P.3d 878 (Nev. 2016) (unpublished) (holding affirmed in  
17 Estate of *Curtis v. Life Care Center of So. Las Vegas*, 466 P. 3d 1263 (Nev. 2020)), the Nevada  
18 Supreme Court stated that when negligent hiring, training, supervision claims are inextricably  
19 linked to the underlying professional negligence claims, such claims "...cannot be used as a  
20 channel to allege professional negligence against a provider of healthcare to avoid the statutory  
21 caps on such actions." In this case, Plaintiffs' Cause of Action against these Defendants, is for  
22 Negligent Hiring, Training, and Supervision and deserves the same treatment as was given in  
23 *Zhang*.

24 In this case, the only alleged injury is Mr. Schrage's death, which Plaintiffs contend could  
25 have possibly been prevented if he had been taken to a cardiac catheterization lab and underwent  
26 an angiogram. However, in a desperate attempt to try to avoid the statutory cap on non-economic  
27 damages in professional negligence actions per NRS 41A.035, Plaintiffs attempt to argue that their  
28 claims for negligent hiring, training and supervision are general negligence and not professional

1 negligence by contending that Ms. Josephina Rubio, an employee of Allan J. Stahl, M.D., who  
2 assisted in performance of the cardiac exercise stress-test, was not appropriately trained to assist  
3 physician Dr. Stahl in meeting the standard of care. (See Paragraph 25 of Plaintiffs' Fourth  
4 Amended Complaint for Medical Malpractice and Wrongful Death). However, even if Plaintiffs'  
5 allegations were true, Plaintiffs' general negligence claim must fail for 2 reasons:

6 First, the only injury claimed from the allegedly negligent healthcare rendered to Plaintiff  
7 is the same injury alleged to have occurred from alleged failure to hire, train, and supervise. They  
8 are not separate injuries. At best, Plaintiffs' claim for negligent hiring, training, and supervision is  
9 necessarily and inextricably intertwined with Plaintiffs' professional negligence claim and thus, it  
10 is subsumed by the professional negligence claim.

11 Secondly, the Nevada Supreme Court has repeatedly decided that if failure to hire, train,  
12 or supervise led to negligent medical care, then all of such claims arising from the same injury are  
13 deemed professional negligence. See *Estate of Mary Curtis, et al., v. Life Care Center of So. Las*  
14 *Vegas, et. al.*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (Nev. 2020); see also *Zhang, M.D. v. Barnes*,  
15 832 P.3d 878 (Nev. 2016) (unpublished) (holding affirmed in the *Estate of Mary Curtis, et al., v.*  
16 *Life Care Center of So. Las Vegas, et. al.*).

17 Specifically, in *Curtis*, the Nevada Supreme Court stated that if an underlying ordinary  
18 negligence claim for negligent staffing, training, and budgeting did not cause the plaintiff's injury,  
19 but instead, relies upon the same injury claimed as a result of professional negligence, then the  
20 entire claim is one for professional negligence. The Nevada Supreme Court expressly stated this  
21 concept as follows:

22 "Thus, **critically**, if the underlying negligence did not cause Curtis's death, no other  
23 factual basis was alleged for finding LCC liable for **negligent staffing, training,**  
24 **and budgeting**. We conclude that the Estate's claims are inextricably linked to the  
25 underlying negligence, and if the underlying negligence is professional negligence,  
26 as addressed below, the Estate's complaint is subject to NRS 41A.071's affidavit  
requirement." (*Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv.  
Op. 39 446 P.3d 1263, 1267 (Nev. 2020).<sup>1</sup> (Emphasis added).

27 Here, Plaintiffs are contending that Defendants Dr. Stahl and his professional corporation  
28 breached the standard of care (professional negligence) because Dr. Stahl provided inadequate

cardiac medical care to Mr. Schrage, resulting in loss of chance at preventing Mr. Schrage's death. Such a claim cannot also be the basis for an ordinary negligence claim where the injury is the same. Under *Curtis* and *Zhang*, such a pleading cannot be sued to circumvent the professional negligence \$350,000 non-economic damage cap.

**B. A CLAIM ARISING FROM THE PHYSICIAN-PATIENT RELATIONSHIP OR THAT IS SUBSTANTIALLY RELATED TO MEDICAL TREATMENT, IT IS AN ACTION SOUNDING IN PROFESSIONAL NEGLIGENCE AND NOT ORDINARY NEGLIGENCE.**

On December 9, 2021, the Nevada Supreme Court issued its incredibly recent opinion in *Montanez v. Sparks Family Hosp.*, 137 Nev. Adv. Op. 77 at \*7 (Dec. 9, 2021), finding that a claim for "premises liability" due to failure to maintain the cleanliness of a medical facility sounded in professional negligence rather than ordinary negligence. In its decision, the Nevada Supreme Court noted "' 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.'" *Id.* at \*6 (citing to *Papa v. Brunswick Gen. Hosp.*, 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 (Nev. 2017)). The Nevada Supreme Court concluded that "the level of cleanliness that a medical provider must maintain is inherently linked to the provision of medical treatment..." and therefore a breach of such duty sounds in medical malpractice. *Id.* at \*7.

Here, Plaintiffs, in their Opposition attempt to argue that the actions of Allan J. Stahl, M.D., P.C. in training Medical Assistant Josephina Rubio are "ordinary negligence." This contention is belied by Plaintiffs' earlier representation to this Court in Plaintiffs' Fourth Amended Complaint for Medical Malpractice and Wrongful Death which stated that "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* Paragraph 25(b) of Plaintiffs' Fourth Amended Complaint, which was subsequently incorporated by reference into each of Plaintiffs' Causes of Action.

There is no allegation that the cardiac stress test performed by Ms. Rubio and Dr. Stahl

1 caused Mr. Schrage’s death. There is no allegation that Dr. Stahl did not have what he needed to  
2 interpret the stress test appropriately within the standard of care. Instead, Plaintiffs contend that  
3 Dr. Stahl, should have ordered additional treatment in the form of an angiogram for Mr. Schrage  
4 and that it is the role of medical assistant to assist the physician in meeting the standard of care.  
5 Plaintiffs now want to call these allegations ordinary negligence hoping to convince this Court that  
6 the exception to “professional negligence” set forth in *Curtis* should apply here. However,  
7 Plaintiffs are wrong and the exception does not apply.

8 In the *Estate of Curtis v. S. Las Vegas Med. Inv’rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d  
9 1263, 1267 (2020), the Court had a situation where a nurse “accidentally” administered a drug to  
10 the wrong patient. The nurse did not intend to administer the drug to the wrong patient. It was an  
11 accident. The Court, finding that there was no judgment involved in accidentally giving the  
12 medicine to the wrong patient, found that such an instance would warrant the application of a  
13 “common knowledge” exception to professional negligence (finding the accident would be  
14 ordinary negligence). In so finding, however, the Nevada Supreme Court in *Curtis* stated that the  
15 “narrow” common knowledge exception “...applies only to situations involving negligence that is  
16 apparent without any expert testimony **and does not apply to situations where the professional**  
17 **exercises medical judgment...**”. (Emphasis added). *Id.* at 1268.

18 In *Curtis*, the Court went on to state that the “common knowledge exception, which  
19 Plaintiff argues applies here, is “extremely narrow” and “only applies in rare situations.” The  
20 exception applies to “blatant negligence” and the Court declines to extend the “common  
21 knowledge exception” to “...situations that involve professional judgment...” (*See Curtis*, 466  
22 P.3d at 1268).<sup>3</sup>

---

23  
24  
25 <sup>3</sup> Moreover, in the extremely recent decision rendered in *Lopez v. Joseph Candela, M.D.*, the Nevada Court of Appeal  
26 went to considerable lengths to point out that the “common knowledge exception” to find that medical care by a  
27 medical provider in treating a patient is “ordinary negligence” is “...extremely narrow and only applies in rare  
28 situations...”. *See Lopez v. Candela*, No. 79590-COA, 2020 WL 5905289 (Nev. App. 2020) at \*3. In *Lopez* (an  
October 2020 decision), the Nevada Court of Appeal stated that Dr. Candela’s alleged failure to “follow up” or  
“communicate” with a patient is “...indicative of Professional Negligence because it likely involves medical  
diagnosis, treatment, or judgment...”. *Id.* at \*4.



1 Here, Plaintiffs contend that Ms. Rubio should have, in essence, made a judgment call in  
2 interpreting the patient's test results to diagnosis "blunting" during the performance of a treadmill  
3 stress-test. *See* pages 5-6 of Plaintiff's Opposition. While such a contention misstates the standard  
4 of care, it is entirely a contention based on Ms. Rubio's judgment in rendering medical care to Mr.  
5 Schrage. Her judgment (or alleged misjudgment), per *Curtis*, can only support a claim of  
6 "professional negligence."

7 If Plaintiffs were permitted to litigate this claim, using the same injury, as both professional  
8 negligence and ordinary negligence, under *Curtis* (and the other three 2020 and 2021 Nevada  
9 Supreme Court cases directly on point), such would constitute reversible error.<sup>4</sup>

### 10 III.

### 11 CONCLUSION

12 Based upon the foregoing, Defendants Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C.'s  
13 Motion in Limine No. 1 to Exclude Any Evidence or Argument in Furtherance of Plaintiffs'  
14 Ordinary / "Corporate" Negligence Claim and to Cap Hedonic Damages Pursuant to NRS  
15 41A.035.

16 DATED this 29<sup>th</sup> day of December, 2021. McBRIDE HALL

17  
18 /s/ T. Charlotte Buys

19 ROBERT C. McBRIDE, ESQ.

20 Nevada Bar No.: 7082

21 T. CHARLOTTE BUYS, ESQ.

22 Nevada Bar No.: 114845

23 8329 W. Sunset Road, Suite 260

24 Las Vegas, Nevada 89113

25 Attorneys for Defendants,

26 *Allen J. Stahl, M.D.*

27 *and Allen J. Stahl, M.D., P.C.*

28 <sup>4</sup> *See* (1) *Schwartz v. Univ. Med. Ctr. of S. Nevada*, 460 P.3d 25, No. 77554, No. 77666, 2020 WL 1531401 (Nev. 2020); (2) *Turner v. Renown Reg'l Med. Ctr.*, 461 P.3d 163 No. 77312, No. 77841, 2020 WL 1972790 (Nev. 2020); and (3) *Montanez v. Sparks Family Hosp.*, 137 Nev. Adv. Op. 77 at \*7 (Dec. 9, 2021).

1 **CERTIFICATE OF SERVICE**

2

3 I HEREBY CERTIFY that on the 29<sup>th</sup> day of December 2021, I served a true and correct

4 copy of the foregoing **ALLAN J. STAHL, M.D. AND ALLAN J. STAHL, M.D., P.C.'S**

5 **REPLY IN SUPPORT OF DEFENDANTS' MOTION IN LIMINE NO. 1 TO EXCLUDE**

6 **ANY EVIDENCE OR ARGUMENT IN FURTHERANCE OF PLAINTIFFS' ORDINARY/**

7 **"CORPORATE" NEGLIGENCE CLAIM AND TO CAP HEDONIC DAMAGES**

8 **PURSUANT TO NRS 41A.035** addressed to the following counsel of record at the following

9 address(es):

- 10
- 11 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-
- 12 service attached to any copy filed with the Court; or
- 13 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
- 14 postage thereon fully prepaid, addressed as indicated on the service list below in the United
- 15 States mail at Las Vegas, Nevada; or
- 16 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
- 17 indicated on the service list below.

18 Timothy R. O'Reilly, Esq.  
TIMOTHY R. O'REILLY, CHTD.  
325 S. Maryland Parkway  
Las Vegas, Nevada 89101

19 -and-

20 Gerald I. Gillock, Esq.  
GERALD I. GILLOCK & ASSOCIATES  
428 South Fourth Street  
Las Vegas, Nevada 89101

21 Attorneys for Plaintiffs

22

23

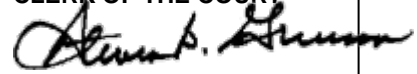
24

25 /s/ Natalie Jones

26 An Employee of McBRIDE HALL

27

28



**RIS**

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Attorneys for Defendants  
*Allan J. Stahl, M.D.*  
*and Allan J. Stahl, M.D., P.C.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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, 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;

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C  
DEPT NO.: XV**

**REPLY IN SUPPORT OF DEFENDANTS  
ALLAN J. STAHL, M.D. AND ALLAN J.  
STAHL, M.D., P.C.'S (1) MOTION FOR  
LEAVE AND (2) MOTION FOR PARTIAL  
SUMMARY JUDGMENT TO DISMISS  
PLAINTIFFS' CLAIM FOR PUNITIVE  
DAMAGES**

**HEARING DATE: JANUARY 5, 2021**

**HEARING TIME: 9:00 A.M.**

COME NOW, Defendants, ALLAN J. STAHL, M.D. and ALLAN J. STAHL, M.D., P.C.,  
by and through their counsel, ROBERT C. McBRIDE, ESQ. and T. CHARLOTTE BUYS, ESQ.

1 of the law firm of McBRIDE HALL, and files their Reply in Support of Defendants' (1) Motion  
2 for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive  
3 Damages.

4 This Reply is made and based upon the papers and pleadings on file herein, the  
5 Memorandum of Points and Authorities set out below, the exhibits attached hereto, any argument  
6 of counsel which may be adduced at the time of the hearing of the motion, and any other evidence  
7 the Court deems just and proper.

8  
9 DATED this 29<sup>th</sup> day of December, 2021.

McBRIDE HALL

10  
11 /s/ T. Charlotte Buys

12 ROBERT C. McBRIDE, ESQ.

13 Nevada Bar No.: 7082

14 T. CHARLOTTE BUYS, ESQ.

15 Nevada Bar No.: 14845

16 8329 W. Sunset Road, Suite 260

17 Las Vegas, Nevada 89113

18 Attorneys for Defendants,

19 *Allen J. Stahl, M.D.*

20 *and Allen J. Stahl, M.D., P.C.*



1  
2 **REPLY POINTS AND AUTHORITIES**

3 **I.**

4 **INTRODUCTION/FACTS**

5 In this professional negligence case, Plaintiffs contend that Mr. Joseph Schrage was  
6 referred by his primary care physician, Michael Jacobs, M.D., to undergo a treadmill stress test  
7 performed by Allan J. Stahl, M.D., as an initial step in addressing Mr. Schrage's complaints of  
8 occasional chest pain. Dr. Jacobs was also working up Mr. Schrage's symptoms as a  
9 gastrointestinal process and also referred Mr. Schrage for further workup by Mr. Schrage's  
10 Gastroenterologist, who had previously treated Mr. Schrage several years prior. According to Dr.  
11 Stahl's interpretation of Mr. Schrage's cardiac stress test, Mr. Schrage had an appropriate response  
12 to the stress test, and that information was reported back to Dr. Jacobs' office that same afternoon.

13 A few months later, Mr. Schrage suffered a coronary plaque rupture, an event which could  
14 not have been predicted by way of EKG or angiogram, and subsequently passed away. Plaintiffs'  
15 experts do not contend that Mr. Schrage suffered a cardiac event and died during the stress test or  
16 that the stress test caused a cardiac event. Rather, Plaintiffs contend that Dr. Stahl fell below the  
17 standard of care by following the order of Plaintiffs' primary care physician and should have,  
18 instead, referred Mr. Schrage to an interventional cardiologist to then have Mr. Schrage undergo  
19 an angiogram performed at a cardiac catheterization laboratory. Defendants deny all allegations  
20 that they fell below the standard of care.

21 In opposing this Motion, Plaintiffs argue that their basis for punitive damages is a  
22 contention that Dr. Stahl's alleged "...failure to adequately assess whether his patient was a viable  
23 candidate for treadmill stress testing was below the standard of care for a cardiac physician." *See*  
24 Page 4 of Plaintiff's Opposition.

25 Negligence or substandard care, does not form a basis for punitive damages. In fact, even  
26 gross negligence does not form a basis for punitive damages. *Ebaugh v. Rabkin*, 22 Cal. App. 3d.  
27 891, 894, Cal. Rptr. 706(1972). Indeed, even where evidence supports an inference that the  
28 Defendant was Defendant was negligent to the point of being unconscionably irresponsible is

1 insufficient to invoke Nevada’s punitive damages statute. *See First Interstate Bank v. Jafbro’s Auto*  
2 *Body, Inc.*, 106 Nev. 54, 57 P.2d 765 (1990).

3 **II.**

4 **LEGAL ARGUMENT**

5 **A. THE DISTRICT COURT HAS THE DISCRETION AND AUTHORITY TO DETERMINE WHETHER**  
6 **DEFENDANTS’ CONDUCT MERITS PUNITIVE DAMAGES AS A MATTER OF LAW.**

7 In *Bongiovi v. Sullivan*, the Nevada Supreme Court stated that the district court has both  
8 the discretion and authority to review proposed facts which purportedly would support a punitive  
9 damage claim and may determine, as a matter of law, whether there are, in fact, sufficient facts for  
10 such purpose. *See also Wickliffe v. Fletcher Jones of Las Vegas, Inc.*, 99 Nev. 353, 661 P.2d 1295  
11 (Nev. 1983)(where, earlier, the Nevada Supreme Court found that “[i]t is the responsibility of the  
12 trial court to determine whether, as a matter of law, the plaintiff has offered substantial evidence  
13 of malice in fact to support a punitive damage instruction.”).

14 Additionally, the Nevada Supreme Court has expressly abrogated the “slightest doubt”  
15 standard for summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1036, 1031  
16 (2005). To defeat this Motion, Plaintiff must “do more than simply show that there is some  
17 metaphysical doubt as to the operative facts” in order to avoid summary judgment being entered  
18 against them. *Id.* [internal quotations omitted]. Instead, Plaintiff must “set forth specific facts  
19 demonstrating the existence of a genuine issue for trial or have summary judgment entered against  
20 [them].” *Id.*

21 Plaintiff has failed to do that here. Plaintiff’s Opposition is devoid of any evidence to  
22 establish that Dr. Stahl willfully or deliberately ignored information. In fact, the evidence from  
23 Plaintiffs experts, at best, establishes that only professional negligent conduct is alleged against  
24 Dr. Stahl and his professional corporation.

25 **B. PLAINTIFFS HAVE NO BASIS FOR PUNITIVE DAMAGES.**

26 The Nevada Supreme Court has been very consistent over the years in setting and  
27 maintaining the very high burden necessary for the imposition of punitive damages. In this case,  
28 at most, Dr. Stahl misjudged Mr. Schrage’s need for further cardiac workup.

1 The Nevada Supreme Court has repeatedly stated that mere negligence, or even gross  
2 negligence is not sufficient to justify an award of punitive damages. *See Leslie v. Jones Chemical*  
3 *Co.*, 92 Nev. 391, 551 P.2d 234 (Nev. 1976). In fact, the Nevada Supreme Court in *Countrywide*  
4 *Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (Nev. 2008) stated that a Defendant's  
5 conduct must "...exceed..." mere recklessness or gross negligence.

6 NRS § 42.005 requires that a plaintiff prove an entitlement to punitive damages by clear  
7 and convincing evidence. And, the conscious disregard of a probable harmful consequence must  
8 be coupled with a willful and deliberate failure to act to avoid such consequences. (*See* NRS §  
9 42.001(1)). A Plaintiff is not automatically entitled to punitive damages in the State of Nevada, by  
10 contending a physician fell below the standard of care.

11 Here, Plaintiff alleges no conduct against Dr. Stahl and Allan J. Stahl, M.D., P.C., which  
12 would even potentially give rise to punitive damages. Merely alleging negligence is not sufficient  
13 to implicate punitive damages. *See Maduik v. Agency Rent-A-Car*, 114 Nev. 1, 3, 953 P.2d 24, 25  
14 (1998) (holding that conduct ruled to be an indignity, unkind, and inconsiderate did not rise to the  
15 level of being atrocious, intolerable, or outside all bounds of decency, as required for imposing  
16 punitive damages). "[E]ven unconscionable irresponsibility will not support a punitive damages  
17 award." *Id.* at 26.

18 In order to award punitive damages, these Defendants must possess a requisite state of  
19 mind, denoting conduct exceeding mere recklessness or even gross negligence. *Countrywide*  
20 *Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243, 255 (2008).

21 At best, the entirety of Plaintiff's basis for punitive damages Dr. Stahl's alleged mistaken  
22 error of judgment in believing Mr. Schrage did not need additional cardiac work-up. In *McDaniel*  
23 *v. Merck, et al.*, 367 Pa.Super. 600, 533 A.2d 436 (1987), the Pennsylvania Supreme Court adopted  
24 the principles set forth in the Restatement of Torts Second § 908(2) covering punitive damages. In  
25 doing so, the Court observed that "[p]unitive damages may not be awarded for misconduct which  
26 constitutes ordinary negligence such as inadvertence, mistake and **errors of judgment.**" *Id.* at 447.  
27 (emphasis added). Since a mistake or an error of misjudgment cannot be a basis for punitive  
28 damages, Plaintiffs do not have a factual basis for punitive damages in this case.

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## CONCLUSION

At most, this is a medical malpractice/professional negligence action. Nothing more. Plaintiff has, perhaps, made a sufficient showing to present their professional negligence claims to a jury. Plaintiffs have not, however, presented clear and convincing evidence, an evidentiary showing to support a claim that Dr. Stahl and Allan J. Stahl, M.D., P.C. acted with “conscious disregard” to either intentionally or by implied malice engage in despicable conduct to injure Joseph Schrage. Accordingly, Plaintiffs’ claim for punitive damages must, respectfully, be dismissed.

DATED this 29<sup>th</sup> day of December, 2021.

McBRIDE HALL

/s/ T. Charlotte Buys

ROBERT C. McBRIDE, ESQ.  
Nevada Bar No.: 7082  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No.: 14845  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys for Defendants,  
*Allen J. Stahl, M.D.*  
*and Allen J. Stahl, M.D., P.C.*



1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 29<sup>th</sup> day of December, 2021, I served a true and correct  
3 copy of the foregoing **REPLY IN SUPPORT OF DEFENDANTS ALLAN J. STAHL, M.D.**  
4 **AND ALLAN J. STAHL, M.D., P.C.'S (1) MOTION FOR LEAVE AND (2) MOTION FOR**  
5 **PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' CLAIM FOR**  
6 **PUNITIVE DAMAGES** addressed to the following counsel of record at the following  
7 address(es):

- 8 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
9 service attached to any copy filed with the Court; or
- 10 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
11 postage thereon fully prepaid, addressed as indicated on the service list below in the United  
12 States mail at Las Vegas, Nevada; or
- 13 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
14 indicated on the service list below.

15 Timothy R. O'Reilly, Esq.  
16 TIMOTHY R. O'REILLY, CHTD.  
17 325 S. Maryland Parkway  
18 Las Vegas, Nevada 89101  
19 -and-  
20 Gerald I. Gillock, Esq.  
21 GERALD I. GILLOCK & ASSOCIATES  
22 428 South Fourth Street  
23 Las Vegas, Nevada 89101  
24 *Attorneys for Plaintiffs*

25 */s/ T. Charlotte Buys*  
26 \_\_\_\_\_  
27 An Employee of McBRIDE HALL  
28

1 TRAN

DISTRICT COURT

2  
3 CLARK COUNTY, NEVADA

4 \* \* \* \* \*

5  
6 KRISTINA DANICA SCHRAGE, )  
7 ESTATE OF JOSEPH PATRICK ) CASE NO. A-17-762364-C  
8 SCHRAGE JR., )

9 Plaintiffs, ) DEPT. NO. XV

10 vs. )

**Transcript of Proceedings**

11 ALLAN STAHL, M.D., MICHAEL )  
12 JACBOS, ALLAN J. STAHL, M.D., )  
13 P.C., )

Defendants. )

14 BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

15 **ALL PENDING MOTIONS**

16 WEDNESDAY, JANUARY 5, 2022

17 APPEARANCES:

18 For the Plaintiffs: GERALD I. GILLOCK, ESQ.  
TIMOTHY R. O'REILLY, ESQ.

19 For the Defendants: ROBERT C. MCBRIDE, ESQ.  
20 CHARLOTTE BUYS, ESQ.

21 RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT  
22 TRANSCRIBED BY: KRISTEN LUNKWITZ

23  
24 Proceedings recorded by audio-visual recording; transcript  
25 produced by transcription service.

1 WEDNESDAY, JANUARY 5, 2022 AT 12:48 P.M.

2

3 THE CLERK: A762364, *Kristina Schrage versus Allan*  
4 *Stahl, M.D.*

5 THE COURT: Go ahead and state your appearances.

6 MR. O'REILLY: Good afternoon, Your Honor. Tim  
7 O'Reilly and Gerry Gillock on behalf of the plaintiffs in  
8 this matter.

9 THE COURT: Good afternoon.

10 MR. MCBRIDE: Good afternoon, Your Honor. Robert  
11 McBride and Charlotte Buys on behalf of the defendants.

12 THE COURT: Good afternoon. Okay. Bear with me a  
13 moment.

14 [Pause in proceedings]

15 THE COURT: I'm trying to remember which ones I  
16 went through first. So, -- yeah. So, I did go through  
17 Plaintiffs' first. So, let's start with those and then do  
18 Defendants.

19 So, they're on the -- I mean, I'm sorry to repeat  
20 from what you heard on the other case, but so it's on the  
21 record here. The moving party prepares the Order on  
22 Motions in Limine, includes the reasons for the granting  
23 and denials, submits those, of course, to the other side  
24 for review and approval. Include the following general  
25 language in the Orders. Rulings on Motions in Limine are

1 provisional in nature, subject to revision at and during  
2 the time of trial. Denial or granting without prejudice.  
3 Exclude evidence is subject to potential opening the door  
4 at the time of trial, but if you want exclude evidence to  
5 come in, raise that with me outside the presence of the  
6 jury before you do that.

7           Let's see. Probably remember another thing as  
8 well to include in that, but --

9           THE CLERK: Objections.

10           THE COURT: Oh, yeah. Thank you. Ms. Duncan's  
11 heard me say this many times.

12           Include in there the Court reminds parties to  
13 preserve any and all objections at the time of the trial  
14 regardless of the rulings on Motions in Limine.

15           And we'll go through them and I'll tell you my  
16 initial inclinations. As you've heard -- or you probably  
17 heard yourselves, too, I do change my mind sometimes. So  
18 don't take it as a: Hey, you can't argue.

19           But Plaintiff's Motion in Limine Number 1, To  
20 Exclude Evidence of Collateral Source Benefits Not  
21 Contemplated by NRS 42.021. I know that defendant has a  
22 somewhat related one, from what I recall, and maybe a  
23 little bit of not just overlap but potential conflict in  
24 perhaps the positions plaintiff took in this Motion versus  
25 the Nonopposition to the other Motion.



1 But I'm inclined to grant this one. I -- you  
2 know, I -- we're dealing with life insurance payments,  
3 payments from employer. I don't think the examples set  
4 forth in Defendants' Opposition really apply here, but  
5 welcome arguments beginning with plaintiffs' counsel.

6 MR. O'REILLY: Your Honor, with -- Tim O'Reilly.  
7 With the understanding the Court's inclined to grant it, we  
8 agree the examples that have been set forth by defense are  
9 not applicable in this situation. There is a statute  
10 directly on point and we ask that it be followed. Thank  
11 you.

12 THE COURT: Thank you. And you'll get a rebuttal  
13 if you need one. So, --

14 MS. BUYS: Thank you, Your Honor. Charlotte Buys  
15 for the defendants.

16 While plaintiffs did not oppose Defendants' Motion  
17 in Limine Number 6, To Introduce Evidence of Collateral  
18 Source Benefits, they appear to now be seeking to preclude  
19 evidence of, you know, life insurance benefits received as  
20 a result of Mr. Schrage's death. 42.021 was enacted by the  
21 Nevada Legislature pursuant to Keep Our Doctors in Nevada,  
22 a statewide ballot initiative.

23 And, under 42.021, it allows all collateral source  
24 evidence to come into medical malpractice action. And this  
25 is a medical malpractice action. Therefore, state law

1 allows collateral sources to come in, unless there's a  
2 reason for them not to. The only reason the state of  
3 Nevada, per *McCrosky versus Carson Tahoe*, is if there's a  
4 federal statute providing for a right to subrogation  
5 because the second part of the statute does not allow a  
6 collateral source to seek subrogation.

7 THE COURT: Say that last part again, I missed it.

8 MS. BUYS: Certainly, Your Honor.

9 The second part of the statute does not allow a  
10 collateral source to seek subrogation. So, if there's a  
11 federal statute on point that says a source can subrogate,  
12 then that would preempt 42.021. And the purpose of 42.021  
13 is to prevent double-dipping where a plaintiff receives  
14 payments from both the healthcare providers and collateral  
15 sources for the same damages. And that's directly out of  
16 *McCrosky*.

17 In this case, all plaintiffs need to do to have  
18 this Motion just granted outright is to provide federal  
19 statute that allows subrogation of plaintiffs' life  
20 insurance. Otherwise, the Motion should be denied.

21 Additionally, Your Honor, life insurance is a  
22 benefit that is obtained pursuant to a contractual  
23 agreement, which is in the language of the statute.

24 Of course, I believe we provided examples of the  
25 social security payments, which were in our brief as well,

1 Your Honor, and I don't believe that's an issue, based on  
2 the Non-Opposition, but I can argue that as well.

3 THE COURT: So, where in the statute does it talk  
4 about life insurance?

5 MS. BUYS: In the latter part of the statute, in  
6 42.021 subsection 1, it does refer to collateral source  
7 benefits received pursuant to a contractual agreement.  
8 That's the very last part.

9 THE COURT: That's one of these that's super --  
10 that subsection is long.

11 United States Social Security Act, any state or  
12 federal disability or Worker's Compensation Act, any  
13 health, sickness, or income disability insurance, acts  
14 of insurance that provides health benefits or income  
15 disability coverage, any contract or agreement of any  
16 group, organization, partnership, or corporation to  
17 provide and reimburse the cost of medical, hospital,  
18 dental, or other healthcare services.

19 Not seeing life insurance in there, or am I  
20 missing that, or --

21 MS. BUYS: No, Your Honor, but it --

22 THE COURT: Okay.

23 MS. BUYS: -- is a contractual, collateral source  
24 benefit that is, pursuant to 42.021, which allows a  
25 defendant to introduce all evidence of collateral source.



1 That's the purpose and intent of the statute under KODIN.  
2 And, so, absent a federal statute that says there's a  
3 subrogation right, which is -- which all plaintiff has to  
4 do is point to one, that collateral source evidence comes  
5 in. And they can certainly go and plaintiff can provide  
6 evidence that the amounts paid to secure that collateral  
7 benefit.

8 THE COURT: Let's see. So, life insurance and  
9 then the -- is there an issue with money from the employer  
10 -- income payments from the employer?

11 MS. BUYS: I believe it was addressed in both  
12 Motions, Your Honor, one of which was the unopposed one for  
13 Defendants' Motion in Limine Number 6. So, I'm not quite  
14 sure the position on that one, based on the briefing.  
15 However, I mean, it's -- again, if it's a collateral  
16 source, then I believe we attached an exhibit from Mr.  
17 Schrage's employer that this is his taxable income.  
18 They're making a loss of earnings claim that this is  
19 received as part of his taxable income, pursuant to his  
20 employment.

21 THE COURT: Thank you. Anything else?

22 MS. BUYS: Thank you, Your Honor.

23 THE COURT: Thank you. Any rebuttal?

24 MR. O'REILLY: Yes, Your Honor. I think opposing  
25 counsel is trying to completely misdirect the Court. The

1 purpose of 42.021 is collateral source and medical  
2 benefits. Life insurance is not a medical benefit -- or,  
3 excuse me. Life insurance is not a medical benefit and  
4 it's not associated -- it's not addressed as a matter for  
5 [indiscernible]. It wasn't supposed to be. The  
6 Legislature specifically laid out in terms of what  
7 collateral source can be admitted as evidence in a medical  
8 malpractice matter and that is what can be permitted. And  
9 the life insurance, as well as a gift from the law firm,  
10 would not be associated with this matter.

11           To clear up the issue as it relates to the Non-  
12 Opposition to Motion in Limine 6, which is Defendants'  
13 Motion in Limine 6, that relates to the social security  
14 benefits and that is the collateral source. That's  
15 addressed underneath the statute.

16           THE COURT: Okay. Tell me about the income,  
17 because I think there's -- well, I know there's an argument  
18 or disagreement in terms of -- you all characterize it as  
19 a, quote/unquote, gift. Defendants characterize it as  
20 taxable income. Tell me about that.

21           MR. O'REILLY: I believe it is a gift, Your Honor,  
22 just because in terms of the fact that the law firm had to  
23 declare it as a taxable income. That was their decision  
24 with the IRS, but it was essentially a gift to our client.  
25 And if the Court is going to deal with that issue it would

1 be after a verdict.

2 THE COURT: Thank you very much.

3 So, I -- especially on the -- well, I'm going to  
4 grant Plaintiffs' Motion in Limine Number 1, to Exclude  
5 Evidence of Collateral Source Benefits Not Contemplated by  
6 NRS 42.021. And, specifically, the life insurance and the  
7 -- whether it's characterized as taxable income or a gift,  
8 that amount from the employer, now that the gift/taxable  
9 income, I do go back and forth somewhat on that. And, so,  
10 to the extent defendants, you know, want to reraise it, I'd  
11 be happy to consider it later on, if appropriate. And, you  
12 know, all these rulings are subject to revision, as well,  
13 to be clear.

14 But the life insurance, I agree with plaintiffs'  
15 argument. I mean, subsection 1 is very extensive in terms  
16 of a list of different types of benefits that can come into  
17 evidence, overcoming the general exclusion of collateral  
18 source evidence. Life insurance is definitely not listed  
19 there and I think it -- plaintiffs' argument is sound in  
20 terms of the list is more medical type of benefits or  
21 benefits along those lines and life insurance is not that.  
22 And the fact that it's not listed, more importantly. So  
23 granting that one.

24 Number 2, Preclude Defendants From Using Their  
25 Retained Experts to Offer Professional Negligence Opinions



1 Against Dr. Michael Jacobs and Dr. Brent Burnette. I'm  
2 inclined to grant that. I don't -- and pretty much because  
3 I didn't see that there's any expert testimony that would  
4 support Defendants' Opposition. So, I'm inclined to grant,  
5 but definitely welcome arguments on this one.

6 MR. O'REILLY: Your Honor, again, I'd defer to the  
7 fact that the Court's inclined to grant it. Having said  
8 that, the Court did not see in terms of any reports or in  
9 terms of expert testimony in regard to it because there is  
10 none. In fact, their own expert, Dr. Klancke, indicates  
11 that Dr. Jacobs appropriately ordered an exercise treadmill  
12 test. So, it would actually be contradictory in terms of  
13 their position.

14 THE COURT: Thank you.

15 MR. MCBRIDE: Thank you, Your Honor. Robert  
16 McBride.

17 Really, from our standpoint, Your Honor, I think  
18 we just have a limited opposition and I agree that there's  
19 nothing in Dr. Klancke's report that -- or Dr. Aragon's  
20 report that specifically criticizes Dr. Jacobs or Dr.  
21 Burnette. It's really for the purpose of ensuring that --  
22 in the event that the door is somehow opened, I don't know  
23 that that's going to occur by plaintiffs' counsel or  
24 plaintiffs' expert, then I think that we should be allowed  
25 to explore that, to the extent that it falls within the

1 confines of their affidavits and their testimony.

2           And that's traditionally what we've done. We  
3 understand that experts are limited to their reports and to  
4 their depositions. So, to the extent -- that's not the  
5 intent of going beyond or being critical of them. We just  
6 don't want to leave that opportunity open.

7           THE COURT: Oh, yeah. Thank you.

8           Mr. O'Reilly, any rebuttal?

9           MR. O'REILLY: I have nothing further. I think  
10 the Court's already told us the position as it relates to  
11 opening the door.

12           THE COURT: That's fair. And it's true. So, I'm  
13 going to grant Number -- Plaintiffs' Motion in Limine  
14 Number 2. And, again, I -- you know, I used to not add if  
15 it's, you know, excluded and you think the door is opened  
16 raise it with me outside the jury, but I've seen that done  
17 when it's excluded raised in front of the jury and that's  
18 not a good thing. So, if you think the door is opened or  
19 been opened on this or any other issue, raise it with me  
20 outside their presence, which should be, you know, --  
21 should not need to be said, but it does.

22           So, -- but granted because, yeah, there is no  
23 report, no deposition testimony that either Dr. Jacobs or  
24 Dr. Burnette was, you know, professionally negligent,  
25 breached the standard of care. But, to the extent it may

1 be opened later, raise it with me outside the presence of  
2 the jury.

3           Number 3, I'm inclined to deny -- so, Plaintiffs'  
4 Motion in Limine Number 3, to Exclude Dr. Kim Klancke's  
5 Testimony Because it's Cumulative of Dr. Joseph Aragon's  
6 Testimony. I'm inclined to deny for the reasons set forth  
7 in the Opposition. Two similar experts, similar opinions,  
8 which is not necessarily uncommon, but they're not the same  
9 and, you know, if we were talking about three, then it  
10 might be a different issue. But, generally, when they're  
11 similar but not the same, and we're talking about two  
12 experts, generally -- and this has been raised in other  
13 cases. Generally, and no exception here, I don't think  
14 allow two similar ones. So, I'm inclined to deny it for  
15 those reasons.

16           MR. O'REILLY: Thank you, Your Honor.

17           Due to the fact of what the Court's inclined to  
18 deny that, I will be more substantive in my response.

19           THE COURT: Sure.

20           MR. O'REILLY: What I'd like to direct the Court  
21 to initially is on page 3 of our Reply, it lays out in  
22 terms of the essential opinions of both Dr. Klancke and Dr.  
23 Aragon. Interestingly, by and through the Opposition,  
24 there was no dispute as it relates to those. Those  
25 opinions overlap significantly.



1           Furthermore, Your Honor, they concede in their  
2 Opposition that both the testimony, as it relates to the  
3 standard of care, and causation is identical for both  
4 experts. So, there is no reason for those experts both to  
5 be here. There's only one exception in terms of the  
6 overlapping and I believe one of those experts, and I  
7 believe it was Dr. Klancke, he adds in his opinion that  
8 Rubio complied with the requirements to administer a stress  
9 test.

10           So, if, in fact, the Court's inclined to deny it,  
11 we ask that Dr. Klancke, at the very least, be limited to  
12 that opinion because there's no reason that we have two  
13 cardiologists in here from the defendants offering the same  
14 exact opinions, overlapping, and we are only permitted one.  
15 That is very prejudicial in terms of the plaintiffs and,  
16 therefore, to the fact that Klancke, if he is permitted to  
17 testify, it be limited in terms of the standard of care as  
18 it relates to Rubio or the tech, Rubio, in terms of her  
19 administering the treadmill examination.

20           THE COURT: Thank you very much.

21           MR. MCBRIDE: Your Honor, if I can, just very  
22 briefly?

23           THE COURT: Sure.

24           MR. MCBRIDE: As you correctly pointed out, this  
25 issue comes up quite a bit in a lot of med-mal cases where

1 there are multiple experts called that were retained by a  
2 party in a particular case. And this situation our point  
3 is that Dr. Klancke is a general cardiologist, just like  
4 Dr. Stahl. That's Dr. Stahl's career. That's what he's  
5 been. So, to the extent that he's addressing those issues  
6 relative to what a general cardiologist would do, the same  
7 [indiscernible] that apply to him, as well as the standard  
8 of care relative to the issues that plaintiffs' expert, Dr.  
9 Moran, who was an interventional cardiologist, which is  
10 quite a bit different in terms of practice, and what they  
11 will do, and have the capability of doing for a patient.

12           So, to the extent that I would submit that we've  
13 had to walk this tightrope many, many times in the other  
14 cases in terms if we have an expert where there might be  
15 potential overlap, we avoid offering opinions from that  
16 expert that might overlap with the other expert and we try  
17 to restrict them to certain areas which we think they are  
18 better suited to testify to.

19           In this case, we are fully prepared to do that in  
20 this case. There's no reason for us to offer cumulative  
21 testimony and I understand, even if we go beyond that, we  
22 may potentially run the risk of not being able to call the  
23 other expert if that expert goes beyond or offers opinions  
24 that are substantially similar or cumulative. So, we're  
25 not -- it's not our intention. But, in this case,

1 specifically, Dr. Moran, plaintiffs' expert is an  
2 interventional cardiologist. So, Dr. -- in this case, Dr.  
3 Aragon, as an interventional radiologist, is expected to  
4 address more specifically the issues as it relates to an  
5 angiogram or whether another type of procedure, a further  
6 procedure, would have been indicated in this case.

7 And, so, I think that those are the issues that  
8 we're focused on, separating the two experts, and keeping  
9 their testimony from overlapping. So, I don't think that's  
10 going to be an issue, Your Honor. We're fully prepared for  
11 that. We've done this many, many times before. So, we  
12 understand the ramifications and the potential pitfalls  
13 with it.

14 So, that -- I would say that Dr. Klancke should be  
15 allowed to offer testimony, again, not only to the standard  
16 of care of Josefina Rubio, who did the treadmill test, but  
17 to the extent that it doesn't overlap with Dr. Aragon's  
18 opinions, other opinions that relate to Dr. Stahl's  
19 standard of care.

20 THE COURT: Thank you. Any rebuttal?

21 MR. O'REILLY: There is, Your Honor.

22 With all due respect to Mr. McBride, not really  
23 interested in what he's done in other cases. We're dealing  
24 with this case at hand, Your Honor.

25 Again, the chart did not reference that one bit in

1 terms of the overlap. They are overlapping. I think he's  
2 concede that in terms of what he has represented to the  
3 Court at this point in time. What are they not going to  
4 overlap and what are they going to testify to?

5 As I indicated, I think Dr. Klancke, he provides a  
6 report as it relates to Rubio's training. That is what he  
7 specifically should only be able to testify to. If they  
8 are going through the expense of bringing him here to  
9 testify, Your Honor, which is only an attempt to prejudice  
10 plaintiffs by bringing in multiple experts, then he should  
11 be limited to that one test -- one -- or one opinion that  
12 is outside of Dr. Aragon's report.

13 THE COURT: Thank you very much.

14 I'm going to stick with my initial inclination and  
15 deny Plaintiffs' Motion in Limine Number 3, To Exclude  
16 Klancke's Testimony Because It's Cumulative of Dr. Aragon's  
17 Testimony. Two similar experts, but definitely not the  
18 same in terms of even background and qualifications.  
19 Highly similar even opinions, but, again, it's not overly  
20 cumulative, at least at this stage, as far as I can tell.

21 So, to quote from the statute, perhaps is what I  
22 should do. As noted in Plaintiffs' Motion on page 4:

23 Even if relevant evidence should be excluded if  
24 its, quote, probative value is substantially outweighed  
25 by considerations of undue delay, wasted time, or



1           needless presentation of cumulative evidence.

2           So, at this stage, I do not find that the  
3 testimony is substantially outweighed by considerations of  
4 needless presentation of cumulative evidence. To the  
5 extent that that may come up at the time of trial, I  
6 welcome, you know, objections if plaintiffs' counsel thinks  
7 it would be appropriate.

8           Plaintiffs' Motion in Limine Number 4, to Limit  
9 Dr. Stahl's Testimony to That Allowed By Non-Retained  
10 Treating Physicians. This one was interesting because  
11 it's, you know, a party -- a non-retained party treating  
12 medical provider. So, I think the way I would -- well, let  
13 me ask one question before I get into -- was Dr. Stahl  
14 deposed and I just missed that or --

15           MR. O'REILLY: He was deposed, Your Honor.

16           THE COURT: Okay. I apologize then. Okay.

17           So, here's what I'd be inclined to do. I'd be  
18 inclined to grant in part, you know, the -- to limit his  
19 testimony to that allowed by non-retained treating  
20 physicians. That testimony, certainly, though would  
21 include opinions formed in the course and scope of  
22 treatment that were disclosed during discovery. You know  
23 why I -- probably why I asked about deposition, I didn't --  
24 let me, perhaps, ask a related question.

25           Was his testimony attached to this Motion, or

1 Reply, or Opposition? Don't think it was, but --

2 MR. O'REILLY: I don't think so, Your Honor.

3 THE COURT: Okay. All right.

4 MR. O'REILLY: And that's because he didn't have  
5 an opinion.

6 THE COURT: Okay. Well, so, part of why I ask,  
7 you know, if he's deposed and he, you know, sets forth in  
8 his deposition, then, the notice issue really isn't there  
9 because you're on note of, hey, this is what he plans on  
10 saying at trial and you can be more specific in terms of,  
11 hey, here's his answer X, which he doesn't have a basis  
12 for. But I don't -- with this Motion, I don't have that.

13 So, generally speaking, if it's a treating  
14 provider, like Dr. Stahl is, he's entitled to testify his  
15 opinions formed within the scope -- course and scope of  
16 treatment that were disclosed. Generally disclosure would  
17 include if he was deposed, opinions he, you know, testified  
18 to in his deposition, and/or opinions set forth in any type  
19 of disclosure.

20 So, I'd be inclined to grant it because he is --  
21 he can't -- if he didn't do a report, he can't testify as  
22 to opinions that are outside of that, generally. And maybe  
23 that's more of an argument to hear from defendants on that.  
24 So, I guess I'd be inclined to grant, subject to what I've  
25 stated more -- in more detail, I guess.

1 MR. O'REILLY: Thank you, Your Honor. The  
2 plaintiffs would have nothing further to add tow hat the  
3 Court's inclined to do.

4 THE COURT: Okay.

5 MS. BUYS: And, Your Honor, Charlotte Buys, again,  
6 for Dr. Stahl.

7 If you have a retained expert under NRCP 16.1, the  
8 expert should produce an expert report. If you're a  
9 treating physician that wants to go and provide opinions,  
10 generally you're limited to the opinions that are formed at  
11 the treatment of the patient. Dr. Allan Stahl is not just  
12 a physician who treated Joseph Schrage. He's the defendant  
13 in this case. And, as a defendant, he must be given the  
14 opportunity to testify on his own behalf.

15 Plaintiffs do not cite to any caselaw regarding  
16 what a defendant physician can and can't testify to. They  
17 cited to, I believe, it's *FCH1 versus Rodriguez*, which,  
18 again, not a professional medical malpractice case where  
19 there is a defendant physician. Plaintiffs have made an  
20 accusation in this case that Dr. Stahl's care caused  
21 plaintiff decedent's death. Specifically, at Paragraph 25  
22 of Plaintiffs' Fourth Amended Complaint, plaintiff  
23 specifically alleged, and I quote:

24 At the catheterization laboratory, an adequate  
25 workup would have been performed, identifying and

1 diagnosing and treating Mr. Schrage for  
2 atherosclerosis, cardiovascular disease, including  
3 thrombosis of the right coronary artery, which caused  
4 Mr. Schrage's untimely death.

5 That's Paragraph 25A of Plaintiffs' Fourth Amended  
6 Complaint, page 7, line 17 through 21.

7 In his answer, Dr. Stahl stated at page 3, quote:  
8 Answer in Paragraph 25 including all subparts, 26  
9 and 27 of Plaintiffs' Fourth Amended Complaint,  
10 Defendant Allan J. Stahl and Allan J. Stahl, M.D., P.C.  
11 deny each and every allegation contained therein.

12 Plaintiffs want to make an accusation against Dr.  
13 Stahl and then preclude him from explaining his denial.  
14 They have, again, not cited to any case in Nevada that  
15 precludes a medical malpractice defendant physician from  
16 testifying in his own case. Indeed, I believe the argument  
17 was he should have retained himself and authored a report.  
18 He's not being paid to come here and give a fee statement.  
19 He's brought here against his will. And he was also  
20 identified as a witness who is anticipated to testify about  
21 the facts and circumstances surrounding the matter,  
22 including his care and treatment of Mr. Schrage in his  
23 early initial case conference disclosure back in March of  
24 2018.

25 THE COURT: So, let me pause you there because



1 maybe I'm overlooking something, but I don't know how my  
2 initial inclination would deny those things you're asking  
3 for.

4 MS. BUYS: Certainly, Your Honor.

5 So, in this case, Dr. Stahl saw the patient one  
6 time in 2016 and testified that he does not recall the  
7 patient. Therefore, the plaintiffs are inferring that he  
8 should only be allowed to testify regarding the opinions he  
9 thought of in a patient he does not recall. They're  
10 limiting his testimony and they were given an opportunity  
11 to ask all of their questions regarding this patient at his  
12 deposition. He was deposed on this matter.

13 However, just solely stating he can only state  
14 what was in his deposition, which are opinions formed  
15 during the course of treatment, it, again, precludes him  
16 from fully testifying in his defense and denying the  
17 accusation against him.

18 THE COURT: I guess I'm a little confused. Okay.  
19 Any rebuttal?

20 MR. O'REILLY: No, Your Honor. I'd be confused as  
21 well.

22 I think that supports, in terms of the Sixth  
23 Amendment argument that's set forth in the Opposition,  
24 which I did not --

25 THE COURT: Well, I mean, the Sixth Amendment

1 argument --

2 MR. O'REILLY: -- understand at --

3 THE COURT: -- doesn't --

4 MR. O'REILLY: So, --

5 THE COURT: I wouldn't --

6 MR. O'REILLY: I have nothing further to add, Your  
7 Honor.

8 MR. MCBRIDE: And, Your Honor, can I just add,  
9 too, in the course of these arguments here that we not  
10 engage in the sort of personal commentary about another  
11 attorney in their arguments. We certainly have not done  
12 that, so I would just ask that as a common, professional  
13 courtesy.

14 THE COURT: Well, I mean, when I say I'm confused,  
15 I think it's fair for the attorney to say they were  
16 confused. And, the Sixth Amendment, I -- I mean, that's in  
17 the briefs and so noted, but yeah. I -- you know, maybe  
18 somebody needs to file a trial brief and be more specific  
19 for me.

20 MR. O'REILLY: We'd be happy to, Your Honor.

21 THE COURT: But, as it stands now, I'm -- I -- let  
22 me put it more neutrally, I guess. I do not -- this may be  
23 my fault, I do not understand defendants' argument,  
24 especially in light of my initial inclination.

25 So, the Court is going to grant Plaintiffs' Motion

1 in Limine to Limit Dr. Stahl's Testimony To That Allowed By  
2 Non-Retained Treating Physicians, which, to be clear, so  
3 include this -- and you all will be preparing it. He can  
4 testify to his opinions formed in the course and scope of  
5 treatment. He can testify to opinions disclosed in the  
6 deposition, disclosed in medical records or otherwise, and  
7 discovery. And, to the extent, you know -- and it may be  
8 trial briefs on both sides because the specifics aren't  
9 there for me at this time in terms of plaintiff may be  
10 taking the position of: Hey, he said X and that is not  
11 formed in the course and scope of treatment. Defendants  
12 may be saying: He said X and that is in the course and  
13 scope of treatment. But both the Motion and the Opposition  
14 and the Reply were -- didn't reference any real specifics  
15 for me.

16           Again, without prejudice and -- but, yeah, even --  
17 so the Sixth Amendment argument doesn't apply, to be clear,  
18 but the -- I lost my train of thought. Oh, the argument of  
19 somehow I'm precluding Dr. Stahl from testifying in his  
20 defense, I'm not doing that. So, that's probably where I'm  
21 not understanding defendants' argument. But it can be  
22 clarified in a trial brief, if anybody thinks it's  
23 necessary.

24           MR. O'REILLY: Thank you, Your Honor.

25           THE COURT: Yeah. Plaintiffs' Motion in Limine

1 Number 5, Preclude Defendants From Referring to Plaintiffs'  
2 Negligent, Hiring, Training Claim as One of Medical  
3 Malpractice or Professional Negligence. I, you know, up  
4 front, struggled with this, you know, the -- we've had  
5 numerous cases on this issue from the Supreme Court and it,  
6 you know, can be hard to discern exactly sometimes.

7 But I think this is the -- maybe the type of thing  
8 that I need to wait for evidence to come in to be more  
9 specific and see what the evidence is, rather than -- you  
10 know, because the Motion is: Hey, don't allow defendants  
11 to call our negligent hiring/training claim one for medical  
12 malpractice. So, that's a long, meandering way of saying I  
13 welcome arguments of counsel, beginning with -- is this Mr.  
14 O'Reilly's?

15 MR. O'REILLY: It is, Your Honor. We understand  
16 what the Court indicated in terms of what the Court would  
17 be inclined to do. Wait and let the evidence comes in, I  
18 think that's a very good and very valid point and we'd be  
19 fine with that, understanding the Court taking this under  
20 advisement in terms of the issue or staying -- or staying  
21 it because there is significant evidence here in terms of  
22 negligent hiring and training. There is a valid claim for  
23 relief that's currently pending right now. It has not been  
24 dismissed. It has not been moved to dismiss by defendant.  
25 As the Court is well aware, we're on the eve of trial and,



1 therefore, permitted to move forward with it at the present  
2 time.

3 THE COURT: Thank you very much.

4 MS. BUYS: Thank you, Your Honor.

5 We have a similar Motion pending as well,  
6 Defendants' Motion in Limine Number 1, with significant --

7 THE COURT: Let me look at my notes on that, but -  
8 - oh. It's not super helpful. Go ahead.

9 MS. BUYS: No worries, Your Honor.

10 So, basically, the gravamen and foundation of  
11 plaintiffs' entire Complaint is the contention that Mr.  
12 Schrage died due to alleged miscare by the doctor,  
13 providing a cardiac, exercise stress test and instead of  
14 referring the patient to a cath lab for an angiogram and  
15 possible stent placement. The claims in this case are  
16 claims of professional negligence arising out of medical  
17 malpractice. Plaintiffs submitted expert Declarations  
18 arguing the defendants fell below the standard of care.  
19 And I make this point because it is the only medical injury  
20 in the entire case.

21 THE COURT: Yeah. I mean, that -- at least to  
22 some extent, I think that's a very fair point in terms of  
23 the damages, even if there are two claims, I think are the  
24 same. That's what you're saying. Right?

25 MS. BUYS: Yes, Your Honor.

1           THE COURT: Where I, you know, may diverge is it  
2 seems that the negligent hiring claim, hiring/training  
3 claim, is a -- hired this -- and I apologize, I forget her  
4 name.

5           MR. O'REILLY: Rubio.

6           THE COURT: What? Rubio.

7           And this is me characterizing, but turning her  
8 loose without training. And, so, that's where the -- I  
9 have a hard time saying: Well, that's a professional  
10 negligence claim. So, if you can expand on that maybe?

11          MS. BUYS: Certainly, Your Honor.

12          The Nevada Supreme Court has issued a wave of  
13 authority trying to clarify this issue.

14          THE COURT: That's fair. Yes.

15          MS. BUYS: I -- actually, the case cited by  
16 plaintiffs, *Szymborski*, was my case, Your Honor.

17          THE COURT: Okay.

18          MS. BUYS: And to clarify, that was not a case  
19 where you had the professional negligence and ordinary  
20 negligence proceeding. It was solely ordinary negligence  
21 arising out of property damage to a nonpatient.

22          So, the Nevada Supreme Court came out with the  
23 *Estate of Mary Curtis*, as well as the extremely incredibly  
24 recent *Montanez versus Sparks Family Hospital* case, which  
25 expanded upon the *Zhang versus Barnes* case, which said if a

1 negligent hiring, training, supervision claim is inherently  
2 linked, and they use -- they actually use the term  
3 inherently linked, to the underlying medical malpractice,  
4 it is subsumed within the underlying medical malpractice  
5 and is subject to NRS 41A.

6 THE COURT: Which one are you -- which case is  
7 that one?

8 MS. BUYS: Oh, certainly, Your Honor. The  
9 inherently linked language is page 7 of *Sparks -- Montanez*  
10 *versus Sparks Family Hospital*, which was attached to our  
11 Opposition, as well as the *Zhang versus Barnes* case. And I  
12 believe I have a -- the *Zhang versus Barnes* case, which is  
13 cited as well in our belief, where the Nevada Supreme Court  
14 said if there's a claim for professional negligence, claims  
15 of hiring -- negligent hiring, training, supervision cannot  
16 be used as separate claims to circumvent the cap. And  
17 that's Zang versus Barnes, which was unpublished and the  
18 holding was later affirmed in the *Estate of Mary Curtis*  
19 *versus Life Care Center of Southern Nevada*.

20 And, so, plaintiffs cannot use the same underlying  
21 medical injury and state that's professional negligence and  
22 then try and say: Well, negligent hiring, training,  
23 supervision, based upon that same medical malpractice  
24 injury, is an entirely separate cause of action.

25 And, actually, I believe in our brief, Your Honor,

1 we cited to the contention in their Complaint that what  
2 Josefina Rubio did was not ensure that Dr. Stahl met the  
3 standard of care. And that's Paragraph 25B of Plaintiffs'  
4 Complaint. An allegation that an employee of a physician's  
5 professional corporation, which is a provider of healthcare  
6 under NRS 41A.071, did not somehow monitor a physician to  
7 make sure he provided appropriate medical care to a patient  
8 is medical malpractice.

9           And to briefly address the common knowledge  
10 argument that plaintiffs made, the Nevada Supreme Court has  
11 said that it is extremely narrow and, quote, only applies  
12 in rare situations. It does not apply in situations that  
13 involve professional judgment.

14           Again, here, the basis of Complaint, which is  
15 plead in plaintiffs' general allegation section and  
16 incorporated by reference into every claim and cause of  
17 action is that Dr. Stahl fell below the standard of care by  
18 following the order of plaintiffs' primary care physician  
19 and not ordering additional treatment. That is medical  
20 judgment to a -- squarely to a tee. There is no allegation  
21 that the treadmill test performed by Ms. Rubio caused Mr.  
22 Schrage to have a medical episode during the test or that  
23 it somehow caused him to die during the test. That's not  
24 the allegation. The allegation is that he should have had  
25 additional treatment. That is the entire contention in



1 Plaintiffs' Fourth Amended Complaint, Your Honor.

2           And I quote: The Stahl corporation did not  
3           adequately train, hire, or supervise its employees and  
4           medical assistants enough to assist Dr. Stahl in  
5           meeting the required standard of care.

6           That's the negligent hiring, training claim. If  
7           plaintiffs' professional negligence claim against the  
8           defense is defended in front of the jury that they didn't  
9           cause or contribute to Mr. Schrage's death, then all of the  
10          remaining claims fail because they are inherently linked  
11          and subsumed within the professional negligence.

12          As a result, Your Honor, the Nevada Supreme Court  
13          has issued all of these recent cases, the *Estate of Curtis*,  
14          *Turner versus Renown*, *Schwartz versus UMC*, to clarify that  
15          you cannot plead around the requirements and limitations of  
16          NRS Chapter 41A. That's precisely what's happening here,  
17          which the Nevada Supreme Court has said you can't do.

18          In this case, the underlying alleged negligence  
19          was a breach of the standard of care and medical treatment.  
20          The alleged negligent hiring, training, and supervision  
21          claim is inherently linked to it. Therefore, the gravamen  
22          of the case is professional negligence and it cannot be  
23          ordinary negligence. And the Nevada Supreme Court in the  
24          *Estate of Curtis* said this is a legal determination. So it  
25          can be made now, not based on having it go in front of a

1 jury. It's not a question of fact. It's a legal  
2 determination.

3 THE COURT: Thank you very much.

4 MS. BUYS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Any rebuttal?

7 MR. O'REILLY: Yes, Your Honor.

8 Tech Rubio was not trained. Tech Rubio did not  
9 even understand what certain words meant on the sheet that  
10 she had in front of her. Tech Rubio was turned to run  
11 wild. There is not a dispositive motion that's in front of  
12 this Court right now, as counsel would ask the Court to  
13 believe. This is Motion for -- Motion in Limine. This is  
14 merely a Motion in Limine to preclude defendants from  
15 referring to plaintiffs' negligent hiring and training  
16 claim as one from medical malpractice. That's the scope.  
17 That's the purpose of the Motion. There's not a  
18 dispositive motion. It is the fourth claim for relief and  
19 it should not be consumed in each other. As the Court  
20 originally indicated, and plaintiffs still agree, the Court  
21 should listen in terms of the evidence and ultimately make  
22 a decision after the evidence in terms of what to do with  
23 this claim for relief.

24 THE COURT: Thank you very much.

25 I am going to stick with my initial inclination

1 and grant Plaintiffs' Motion in Limine.

2 MR. MCBRIDE: And, Your Honor, -- I'm sorry to  
3 interrupt. I thought you originally were going to wait for  
4 the evidence to come in before granting. Is it now that  
5 your inclination is to grant it now?

6 THE COURT: Is that what I said earlier? Wait?

7 MR. MCBRIDE: I wrote down that you were going to  
8 wait for the evidence to come in --

9 THE COURT: Okay. Is that your understanding of  
10 what I said?

11 MR. MCBRIDE: Mr. O'Reilly agreed --

12 MR. O'REILLY: Yes, Your Honor. That's my  
13 understanding.

14 THE COURT: Okay. That's fair. Sorry about that.

15 So, I am going to stick with my initial  
16 inclination and defer ruling on Plaintiffs' Motion in  
17 Limine Number 5. I do -- so, include this in -- even why I  
18 am deferring is fair to include in the Order, to defer  
19 ruling on to allow evidence the develop. And welcome  
20 follow-up from both sides on it. It is -- and include  
21 this, as plaintiff notes, this is a Motion in Limine and  
22 it's substantively a Motion in Limine as well. It's not a  
23 dispositive motion. So, defer ruling on that and see how  
24 it shakes out at trial.

25 MR. MCBRIDE: Thank you, Your Honor.

1 THE COURT: Thank you. Thank you. Sometimes  
2 happens when I have a lot.

3 MR. MCBRIDE: I'm sorry to interrupt.

4 THE COURT: No, that's okay. No, I thank you.

5 Plaintiffs' Motion in Limine Number 6, to Pre-  
6 Instruct the Jury on Preponderance Standard and Legal  
7 Cause. I am inclined to grant. I do find it's not often  
8 that parties request this, but when they do ask for some  
9 pre-instruction I usually will grant it because I do find  
10 it's somewhat helpful to give the jurors some type of  
11 roadmap. And, so, I'm probably looking, if there are  
12 issues with the particular language, rather than just the  
13 blanket Opposition, I'm looking to hear anything on that  
14 from defense.

15 But, before we go to them, is there any argument  
16 by plaintiffs, if I'm inclined to grant it?

17 MR. O'REILLY: There is not, Your Honor.

18 THE COURT: Okay. Go ahead.

19 MS. BUYS: Thank you, Your Honor.

20 Plaintiffs' Proposed Jury Instruction regarding  
21 legal cause is actually for general negligence. So, again,  
22 with this being a medical malpractice case in Nevada, where  
23 the cause of injury is not readily apparent, a qualified  
24 medical expert must establish causation, which is Didier  
25 versus Sotolong at 441 P.3d 1091, Nevada 2019.



1           Such an expert must testify to a reasonable degree  
2       of medial probability.

3           That's *Perez versus Las Vegas Medical Center*.

4           And, moreover, it's prejudicial and confusing for  
5       the jury to be instructed on just one or two instructions  
6       without the context of the other instructions because it  
7       indicates that special weight must be given or  
8       consideration to one instruction over another. And, so,  
9       it's the Court's function to instruct the jury and they  
10      should be instructed at one time, after all of the evidence  
11      has been heard, at the end of trial.

12           Thank you, Your Honor.

13           THE COURT: Let me add, before you sit down.

14           MS. BUYS: Okay.

15           THE COURT: Have you all gone over jury  
16      instructions with each other yet?

17           MS. BUYS: No, Your Honor.

18           THE COURT: Okay. Thank you.

19           Anything from plaintiffs' counsel?

20           MR. GILLOCK: Yes, Your Honor.

21           I -- number one, the substantial factor does not  
22      just necessarily apply to general negligence cases. The  
23      legal cause is used in multiple cases. It's been used in  
24      many medical malpractice cases. It primarily is used when  
25      there are nonparties to a litigation who I'm -- having been

1 here before, know that there's going to be some inferences  
2 towards their conduct and towards what they did or didn't  
3 do. So, the legal cause is a substantial factor in causing  
4 the death or injury to the plaintiff.

5 So, -- and as far as the Court giving a pre-  
6 instruction, I think that needs to be given, along with  
7 certain other pre-instructions. We ask the Court to talk  
8 to the jury about what preponderance of the evidence is and  
9 what legal cause is so they know as we go forward what  
10 we're dealing with.

11 THE COURT: Thank you. So, I'm going to grant.  
12 Stick with my initial inclination, grant Plaintiffs' Motion  
13 in Limine Number 6, to Pre-Instruct the Jury on  
14 Preponderance Standard and Legal Cause. Now, you all start  
15 on Monday. Right? Trial. Okay. So, let's see. We need  
16 Proposed Jury Instructions -- a big set that hopefully is  
17 the agreed on, a set from plaintiffs propose and defendants  
18 object to, set that defendants proposed and plaintiffs  
19 object to. And we need those as soon as possible, I guess  
20 I would say. Definitely on Friday at least.

21 If defendants do have, you know, one or two  
22 instructions that they would like to be pre-instructed, I'm  
23 happy to do that, you know, subject to plaintiffs' approval  
24 or my ordering of the plaintiffs' objection.

25 MR. GILLOCK: I think our paralegals are trying to

1 arrange a time for us to --

2 THE COURT: Okay.

3 MR. GILLOCK: -- get together tomorrow.

4 THE COURT: Okay. And that's fine. But if there  
5 are, you know, one or two or three that defendants want  
6 added to a pre-instruction, it's probably very appropriate  
7 to do that. And, again, when it's been asked and it's, you  
8 know, these type of fundamental instructions, I generally  
9 will do it. And if there's particular language, you know,  
10 that there's a disagreement on, I can revise the Proposed  
11 accordingly. But, here, both Proposed Instructions appear  
12 to be appropriate Pre-Instructions. And we can add -- so,  
13 when you meet and confer, you know, you can add, hey, --  
14 and there are stock, general, you know, burden of proof,  
15 direct/circumstantial evidence that I give to all the  
16 juries. We can include this and any other -- well,  
17 potentially any that defendant requests as well to that.

18 So, include all that in the Order.

19 MR. O'REILLY: Okay.

20 THE COURT: Number 7, Preclude Dr. Stahl From  
21 Testifying Regarding His Usual Practices, I'm inclined to  
22 deny that. Because I think it's fair, he -- you know,  
23 understandably, again, I don't know that I have the depo,  
24 but if he understandably doesn't recall this particular  
25 incident, I think it's fair for him to say, generally, this

1 is how I do things. But I welcome arguments, beginning  
2 with whomever is arguing this one.

3 MR. O'REILLY: Okay. Thank you, Your Honor.

4 Actually it's attached to our Motion here, this is  
5 Motion in Limine 7, we did attach --

6 THE COURT: Oh, okay.

7 MR. O'REILLY: -- certain excerpts of Dr. Stahl's  
8 --

9 THE COURT: See, I do miss some things. So,  
10 again.

11 MR. O'REILLY: -- deposition. I don't think it's  
12 a complete deposition, but it's clearly in terms of support  
13 on this Motion in Limine.

14 Dr. Stahl testified he only saw the deceased in  
15 this matter at the time of the stress test. Dr. Stahl's  
16 assistant, Rubio, confirmed he did not see the deceased  
17 prior to the stress test starting. Dr. Stahl will attempt  
18 to come into this court and tell us that his common  
19 practice is to see somebody beforehand. That is  
20 prejudicial to plaintiffs. That contradicts in terms of  
21 what his testimony and it's only going to confuse the jury,  
22 Your Honor. It will mislead this jury and that should not  
23 be permitted.

24 What his habit is is not consistent with his  
25 testimony. What his habit is is not consistent with what



1 his assistant has already testified under oath, Your Honor.

2 THE COURT: So, his habit is inconsistent with  
3 both his tech's testimony and his own testimony. Is that  
4 what you're saying?

5 MR. O'REILLY: That's correct, Your Honor.

6 THE COURT: Because he says: I only saw Mr.  
7 Schrage at the moment of the stress test. So that  
8 would have been when I looked at it.

9 Thank you.

10 MS. BUYS: Thank you, Your Honor. Charlotte Buys  
11 for Dr. Schrage -- Dr. Stahl, excuse me.

12 I believe your inclination was correct. Dr. Stahl  
13 treated the patient one time, nearly six years ago, in  
14 August 2016 and the examples that plaintiffs counsel just  
15 set forth are all subject to cross-examination when he's on  
16 the stand. So, again, I would just defer and say that your  
17 inclination is appropriate in this case and would, again,  
18 be subject to cross-examination at the time of his  
19 testimony.

20 THE COURT: Thank you very much.

21 MS. BUYS: Thank you.

22 THE COURT: Any rebuttal, Mr. O'Reilly?

23 MR. O'REILLY: Yes, Your Honor.

24 I'm not sure if the Court identified or -- in  
25 terms of where he testified to this, but I will tell the

1 Court at page 18 of his deposition transcript:

2 I only saw Mr. Schrage at the moment of the stress  
3 test. So that would have been when I have looked at  
4 it.

5 He can't come in now and say I -- it was so many -  
6 - as counsel has already given the preview for. It was so  
7 many years ago. I don't remember who he was. My common  
8 practice would have been -- I would have seen him  
9 beforehand. I may have testified to that, but that's not  
10 my common practice. He can't discredit that, Your Honor.  
11 That's completely misleading this jury.

12 THE COURT: Thank you very much.

13 So, sounds like you'll have adequate fodder if he  
14 does contradict his deposition testimony, subject to cross-  
15 examination and impeachment. But it -- you know, it's not  
16 uncommon that someone comes in and testifies contrary to  
17 their deposition testimony. And I'm going to stick with my  
18 initial inclination and deny Plaintiffs' Motion in Limine  
19 Number 7. Please, for the reasons in the Opposition,  
20 including but not limited to the fact that Dr. Stahl will  
21 be subject to cross-examination and impeachment, should he  
22 deviate from his particular deposition testimony.

23 Plaintiffs' Motion in Limine Number 8, to Strike  
24 Dr. Fishbein's Report and Preclude Him From Testifying at  
25 Trial. There seems to be some disconnect in Plaintiffs'

1 Motion where certain key, procedural facts were not  
2 mentioned in the Motion. So, it makes it hard, sometimes,  
3 when I'm reading the Motion. I's like: Oh my goodness,  
4 what this -- you know, maybe I'm going to grant the Motion.  
5 Then I read and the Opposition says: Hey, we agreed to  
6 extend time.

7 So, inclined to deny it, but welcome arguments of  
8 counsel.

9 MR. O'REILLY: Your Honor, in terms of key facts,  
10 I think the key facts here is this. Dr. Fishbein was  
11 designated as a rebuttal expert.

12 THE COURT: So, let me pause you there. Because  
13 words matter. So, show me where they say Dr. Fishbein is a  
14 rebuttal.

15 [Pause in proceedings]

16 MR. O'REILLY: I don't have his report right here,  
17 Your Honor. I believe that's where it would indicate it.  
18 And, if not, then I may be incorrect.

19 [Colloquy between plaintiffs' counsel]

20 MR. MCBRIDE: I can shortcut things, Your Honor.  
21 For counsel, it's Exhibit E to our Opposition is the  
22 designation, if you want to look at that.

23 MR. O'REILLY: That is his report?

24 MR. MCBRIDE: No, that's the designation of  
25 experts -- rebuttal experts.

1 THE COURT: Yeah, their first time designate and  
2 disclose --

3 MR. MCBRIDE: Rebuttal and supplemental report on  
4 page 3.

5 THE COURT: Bless you.

6 MR. MCBRIDE: Bless you.

7 MS. BUYS: Thank you.

8 MR. O'REILLY: That is rebuttal.

9 THE COURT: So, yeah. So, I do read this stuff,  
10 mostly, and sometimes I overlook things, but if you look at  
11 that disclosure -- you know, again, going back, when I get  
12 a Motion that says he's designated untimely and it doesn't  
13 mention this agreement it's disappointing. Let me put it  
14 that way. But -- so, I get the Opposition and I see  
15 there's an agreement to say: Hey, we just got these  
16 slides. Can we designate in 30 days? And everybody says:  
17 Yes. At least from my read. And, then, I get a Motion  
18 that says: Well, they did it untimely. It's like but look  
19 at the disclosure -- I mean, one, whether it's sent as a  
20 rebuttal or not in the disclosures probably a more form  
21 over substance thing if that were the case, but, if you  
22 look at the disclosure, it doesn't refer to him as a  
23 rebuttal.

24 MR. O'REILLY: So, it's a disclosure of initial  
25 expert, untimely.



1 THE COURT: Do you disagree --

2 MR. GILLOCK: Should be stricken totally then.

3 THE COURT: Well, let me pause you. Do you  
4 disagree that there was an agreement to --

5 MR. O'REILLY: Your Honor, there was an informal -  
6 -

7 THE COURT: -- extend the time?

8 MR. O'REILLY: -- discussion as it relates to the  
9 production of the slides in this matter. However, it was  
10 not -- and that's what came out after the issue.

11 THE COURT: So, turn to Exhibit C of the  
12 Opposition, and I'll quote it for you. I mean, it's an e-  
13 mail from your legal assistant, Birtha E. Hutchat --  
14 Hutchison [phonetic]. Is that how you say her name? To  
15 Ms. Amy Clark Newberry.

16 Good morning, Ms. Newberry. As per Timothy  
17 O'Reilly, please be advised that he has agreed to an  
18 extension of the initial expert disclosure deadline for  
19 the limited purpose of each of us disclosing a  
20 pathologist for 30 days as per your letter.

21 MR. O'REILLY: So, is it a rebuttal, as they  
22 disclosed it, or is it an initial expert?

23 THE COURT: Well, let's back up a little maybe.

24 So, the way you have just characterized it in your  
25 Motion and now in argument is: Hey that, one, in your

1 Motion doesn't mention an extension. It just says it's  
2 untimely. But, now, in argument, you're saying: Well,  
3 there's an informal discussion. But there's an agreement.  
4 Right? Can we agree on that?

5 MR. O'REILLY: There was an agreement in terms of  
6 as a result of the pathology slides being disclosed, Your  
7 Honor. Yes.

8 THE COURT: Okay. Okay. Good. So, the  
9 timeliness argument, is that out the window then or is it  
10 still in play somehow?

11 MR. O'REILLY: Your Honor, I'll withdraw it in  
12 terms of the timely argument.

13 THE COURT: Okay.

14 MR. O'REILLY: It's more of a substantive argument  
15 that's at issue here.

16 THE COURT: Okay. So tell me about the  
17 substantive argument.

18 MR. O'REILLY: The substantive, in terms of: Is  
19 it initial disclosure or is a rebuttal report? Being --

20 THE COURT: Well, it's an initial.

21 MR. O'REILLY: -- designated as a rebuttal report.

22 THE COURT: So, I'll go back to that. Where do  
23 they say it's a rebuttal?

24 MR. O'REILLY: Mr. McBride just told us where.

25 THE COURT: No he didn't. He's shaking his head,

1 no, no. He's shaking his head no. He's waiting his turn  
2 to argue but is -- again, look at the disclosure. They  
3 don't even call it a rebuttal.

4 MR. O'REILLY: That's what he just told us, Your  
5 Honor.

6 MR. MCBRIDE: No. Page 3 --

7 THE COURT: He didn't. The record is clear he did  
8 not tell us that. He's shaking his head every time you  
9 call it rebuttal, he's shaking his head no. He's being  
10 polite waiting his turn, but he's going to get up and say  
11 it's not a rebuttal.

12 MR. O'REILLY: Then if it's his initial report,  
13 Your Honor, then it's his initial report, Your Honor.

14 THE COURT: Okay. Okay. Any -- anything else  
15 before we turn it over to him?

16 MR. O'REILLY: No.

17 THE COURT: Okay.

18 MR. MCBRIDE: Your Honor, very quickly. I think  
19 Your Honor has already focused on the issue here in this  
20 case. There was an agreement. Again, this was prior  
21 counsel who was representing Dr. Stahl at the time, of  
22 course. So we aren't privy to the exact conversations that  
23 took place. But, obviously, we have the e-mail.

24 And, also, the very fact that this is really --  
25 really this whole Motion is a matter of form over

1 substance. And, in fact, trying to exclude Dr. Fishbein on  
2 a procedural basis, arguing that he was a rebuttal,  
3 clearly, as the Court is focused, I've tried to direct Mr.  
4 O'Reilly to page 3 of the designation.

5           The document itself is entitled a Rebuttal  
6 Disclosure and a Supplemental Disclosure of -- excuse me.  
7 Disclosure of Expert Witnesses and Disclosure of Rebuttal  
8 Expert Witnesses. If you look very closely, you can see  
9 what Mr. Doyle's [phonetic] office did. They identified  
10 Dr. Aragon, Dr. Klancke as providing rebuttal testimony in  
11 this particular thing. So, that's where they are providing  
12 the rebuttal testimony. But if you look at page 3, it very  
13 clearly says Dr. Fishbein, per the agreement that  
14 plaintiffs' counsel and Mr. Doyle's office had, was only  
15 going to be -- is -- it doesn't say anywhere that he was a  
16 rebuttal expert.

17           So, I think -- and here's the thing -- the other  
18 thing to keep in mind. This report that the -- the reports  
19 were disclosed. They had this -- Dr. Fishbein's deposition  
20 was even taken a year after the reports, more than a year  
21 after the reports. They had opportunity for over a year.  
22 His deposition was taken March 26<sup>th</sup>, 2020. They had an  
23 opportunity for over a year to object to this disclosure if  
24 they felt it was an improper rebuttal, if they felt it was  
25 untimely. They could have raised it at any point in time.



1 They did not. They did not object to it. They did not  
2 bring a Motion.

3 We are now two years -- you know, fast-forward  
4 three years from the date of this disclosure. They have --  
5 there's no prejudice. There's no harm from any issue about  
6 untimeliness. And, again, it sounds like they've also, you  
7 know, withdrawn that argument to that extent.

8 So, Your Honor, clearly, I think this Motion to  
9 Exclude Dr. Fishbein should be denied.

10 THE COURT: Thank you. Any rebuttal?

11 MR. O'REILLY: Not at this time, Your Honor.

12 THE COURT: Okay. Yeah. You know, I'm not a fan  
13 of the phrase, it is what it is, but sometimes it applies.  
14 And it does here. I mean, the disclosure was timely per  
15 the agreement and, you know, like I said earlier, words do  
16 matter. Clearly, in the Defendant Stahl's Second  
17 Supplemental Disclosure of Expert Witnesses and Disclosure  
18 of Rebuttal Expert Witnesses, per the agreement, identifies  
19 Dr. Fishbein as his cardiac pathologist expert. It  
20 references his report, CV, his fee schedule, those types of  
21 things. Does not say: Hey, he's a rebuttal to anybody.  
22 Rather, it's an initial expert disclosure, as was the  
23 agreement between parties.

24 And, on top of that, plaintiff has had the  
25 opportunity to take the opportunity to depose Dr. Fishbein.

1 That's really secondary though because, I mean, it's not  
2 untimely. It's not a rebuttal expert, and, so, the Motion  
3 is denied for those reasons.

4 MR. MCBRIDE: Thank you, Your Honor.

5 THE COURT: Thank you. Okay. Okay.

6 Defendants' Motion in Limine Number 1 to Exclude  
7 Evidence or Argument in Furtherance of Plaintiffs' Ordinary  
8 Corporate Negligence Claim and to Cap Hedonic Damages.

9 This seems to be that -- here's my note, and that's why I  
10 said it wasn't really helpful. It seems to be a Motion for  
11 Summary Judgment. What I'm inclined to do is defer ruling  
12 on it. You know, whether it's a directed verdict or  
13 something else after evidence comes in, whether after a  
14 case in chief or all the evidence, I'm inclined to defer  
15 ruling on it. But I welcome arguments of counsel.

16 I guess now I'm starting with you all. Sorry.

17 MS. BUYS: Oh, thank you, Your Honor.

18 I'd just like to incorporate the arguments that I  
19 made in opposition to Plaintiffs' Motion in Limine Number  
20 5. Again, the same injury is used as the basis for the  
21 entirety of the Complaint. Under the authority for the  
22 Nevada Supreme Court, including *Zhang versus Barnes*, the  
23 *Estate of Mary Curtis*, *Renown versus Turner*, *Schwarts*  
24 *versus UMC*, and the recent *Montanez versus Sparks Family*  
25 *Hospital* case, the entirety of the action is for

1 professional negligence. It relies upon the same existing  
2 injury, which was alleged to be as a result of the medical  
3 diagnosis, judgment, and treatment of Dr. Stahl in caring  
4 for Mr. Schrage. Therefore, we would request that it be --  
5 the requirements and limitations of NRS Chapter 41A,  
6 including NRS 41A.035 apply to this matter.

7 THE COURT: So, let me ask you. So, I think --  
8 so, the damages issue, if for a -- hypothetically speaking,  
9 I decide, okay, you're right, there is a cap, that would  
10 come in after the verdict. Right? We don't tell the jury  
11 there's a cap. Right?

12 MS. BUYS: Correct.

13 THE COURT: Okay.

14 MS. BUYS: The application of the cap comes  
15 afterwards, but the requirements for bringing and pleading  
16 and proving professional negligence do differ with general  
17 negligence with regard to expert testimony. That must be  
18 used to establish duty, breach, causation, and the damages  
19 in this case. So, the other portions of NRS Chapter 41A.

20 THE COURT: Okay. Thank you very much.

21 MS. BUYS: Thank you, Your Honor.

22 THE COURT: Any opposition?

23 MR. O'REILLY: Your Honor, as the Court indicated,  
24 if there was going to be some type of reduction, it would  
25 be after the verdict that would come in. So, we would

1 agree with the Court's inclination as it is essentially a  
2 dispositive motion, to preserve ruling on this issue until  
3 some later date or deny it without prejudice. I mean, it's  
4 going to be an issue, maybe, at the conclusion of trial.

5 THE COURT: Thank you very much.

6 Any rebuttal?

7 MS. BUYS: Oh, just, again, citing to *Zhang versus*  
8 *Barnes*, Your Honor, if the underlying negligence is  
9 professional negligence then an allegation for ordinary  
10 negligence or negligent hiring, training, supervision  
11 cannot be used to plead around the protections of NRS  
12 Chapter 41A.

13 THE COURT: Thank you.

14 MS. BUYS: Thank you.

15 THE COURT: So, I'm going to defer ruling on this  
16 one for the reasons I did on the other one. To the extent,  
17 -- and, you know, the damages cap may or may not apply.  
18 That can certainly be addressed after the verdict. And any  
19 of the other issues raised, I think it's appropriate still  
20 to defer ruling on. So, deferring ruling on Number 1.

21 Defendants' Motion in Limine Number 2, to Include  
22 Others on the Verdict Form. Here's my note, although maybe  
23 I'd change it from deny to defer, but I'm inclined to deny  
24 and/or defer as premature and wait until evidence comes in  
25 at trial. I -- you know, I -- there's this tension or



1 conflict of -- probably tension is better, you know,  
2 between yeah, you can -- these nonparties can be on the  
3 Verdict Form and need to be in certain circumstances, but I  
4 disagree with an argument that they automatically get put  
5 on there. There has to be an evidentiary basis for that.  
6 And, so, at this time, I think it's either denied without  
7 prejudice or defer ruling, but I welcome arguments.

8 MR. MCBRIDE: Thank you, Your Honor.

9 I would simply just point out if you're -- if the  
10 Court is inclined to defer, I think that's probably the  
11 more appropriate measure. But I would just point out some  
12 certain characteristics about this case that bely the  
13 statements raised by the plaintiffs in their Opposition.  
14 And, in particular, the main thing -- they also argue that  
15 it's premature. Again, we think it's possible to make a  
16 ruling such as this, but we can wait until the evidence  
17 comes in.

18 But, clearly, as you can see from the Opposition  
19 or the Reply brief that we filed, that on one hand they say  
20 that Dr. Moran, their expert, is -- cannot render any  
21 opinions as to a primary care physician such as Dr. Jacobs  
22 because he's not qualified. He's not worked in that  
23 capacity. And they quote to his deposition transcript  
24 where he says: Well, I don't, you know, contend to be an  
25 expert or an expert in primary care practice. But, yet, if

1 you look at the Affidavit, which they submitted from Dr.  
2 Moran, it absolutely, entirely belies --

3 THE COURT: Doesn't he opine on --

4 MR. MCBRIDE: He does. He does. If you look at  
5 that, it's Exhibit -- attached to our Exhibit 2.

6 THE COURT: Bear with me a moment.

7 MR. MCBRIDE: And you can see the Declaration and  
8 --

9 THE COURT: So, hold on.

10 MR. MCBRIDE: Sure.

11 THE COURT: I know I looked at -- it's Exhibit 2  
12 you said to the --

13 MR. MCBRIDE: Was it Exhibit A?

14 THE COURT: Well, it's Exhibit 1?

15 MR. MCBRIDE: Oh, I got it. It's in reference to  
16 -- it's Exhibit A but it's Exhibit 2 to their Complaint.

17 THE COURT: So, --

18 MR. MCBRIDE: There's a Declaration. There's a  
19 couple of Declarations. There's the one that was attached  
20 in support of the Complaint and then --

21 THE COURT: Oh, okay.

22 MR. MCBRIDE: And then if you look at Exhibit 2 to  
23 their Complaint, which is attached to ours.

24 THE COURT: Another Declaration of --

25 MR. MCBRIDE: Another Declaration.

1 THE COURT: Okay.

2 MR. MCBRIDE: And, in particular, this is the one  
3 dated August 12, 2018.

4 THE COURT: Yes.

5 MR. MCBRIDE: And he talks about -- at the first  
6 four paragraphs, talks about his qualifications as a  
7 cardiologist, but then very specifically he talks about:

8 Based upon his training, background, knowledge,  
9 and experience, I am familiar with the applicable  
10 standards of care required for a physician, including  
11 those through providing internal medicine --

12 THE COURT: Which -- sorry. Which page?

13 MR. MCBRIDE: Paragraph 5 of that -- of Exhibit 2.

14 THE COURT: Okay.

15 MR. MCBRIDE: Those certified in internal medicine  
16 as well as those acting as a primary care physician  
17 with a patient presenting with a history of chest pain  
18 and an abnormal ECG.

19 Then if you go -- he talks about that, his  
20 experience with that particular practice of medicine. He  
21 then also goes in Paragraph 6:

22 I am furthermore, based upon my training and  
23 background, knowledge, and experience, I am familiar  
24 with the applicable standards of care required of a  
25 physician for a patient presenting to a cardiologist or

1 a primary care physician.

2 So, he talks about his experience in at least two  
3 separate instances. And, then, if you look at Paragraph  
4 11, it's the second page, he says:

5 Based upon his experience, training, and  
6 education, in light of the information provided and  
7 available to date, it is my opinion to a reasonable  
8 degree of medical certainty that the care and/or lack  
9 of care provided by -- to Mr. Schrage by Dr. Jacobs and  
10 Dr. Stahl fell below the standard of care.

11 Then he goes through that in that paragraph where  
12 he outlines the various violation. He then says, at  
13 Paragraph 13:

14 It is further my opinion to a reasonable degree of  
15 medical probability that the failure to meet the  
16 appropriate standard of care by Dr. Stahl and Dr.  
17 Jacobs was the proximate and legal cause of Mr.  
18 Schrage's untimely death on October 3, 2016.

19 So, Your Honor, I would submit that one way or  
20 another this evidence is going to get into the record, if  
21 they do intend to call Dr. Moran because certainly I intend  
22 to cross-examine him at great length about his Affidavit.  
23 And the fact that also having contradicts his testimony  
24 where it says he's not an expert in primary care practice.

25 So, clearly, the groundwork is laid. And, so, I



1 think it's just a matter of waiting until this Dr. Moran  
2 testifies at trial, my opportunity to cross-examine him,  
3 but it is going to be very difficult for him to avoid  
4 acknowledging these statements under penalty of perjury.

5           So, -- and I don't want to suggest that  
6 plaintiffs' counsel was suborning perjury by allowing Dr.  
7 Moran to offer opinions to which he wasn't qualified  
8 because, clearly, he's the one who signed the Affidavit and  
9 he's the one who said that he had those qualifications.  
10 So, I would just lay that as groundwork. I think that the  
11 appropriate remedy would be to defer this until Dr. Moran  
12 testifies.

13           THE COURT: Thank you very much.

14           MR. MCBRIDE: Thank you. And under -- just under  
15 the fact too that under the *Pirooz* case, of course, and  
16 the *Bhatia* case, which allows, you know, a plaintiff -- or  
17 rather a defendant to rely on the testimony and the  
18 opinions of plaintiffs' own experts.

19           THE COURT: Right. Thank you very much.

20           MR. MCBRIDE: Thank you.

21           THE COURT: Any opposition?

22           MR. GILLOCK: No, Your Honor. I found his  
23 argument quite interesting since he made the comment a  
24 while ago about making disparaging remarks towards counsel  
25 and then talked about suborning perjury. Very

1 interesting.

2 THE COURT: Well, --

3 MR. GILLOCK: So, Your Honor, --

4 MR. MCBRIDE: I did not say that.

5 MR. GILLOCK: -- I think --

6 THE COURT: So, let me pause you on that. I mean,  
7 let's take a step back and, you know, you're all fine  
8 attorneys. So, please continue.

9 MR. GILLOCK: Okay. I think the Court to defer  
10 ruling is the appropriate action.

11 THE COURT: Yeah. I agree. But yeah. The -- so,  
12 I'm not going to say deny. I'm going to say defer ruling,  
13 as being a little premature right now. Wait until the  
14 evidence comes in at trial. Include this in the Order.  
15 The Court does note Dr. Moran's August 12, 2018 Declaration  
16 wherein he at least appears to opine or aver, perhaps is a  
17 better word, about his familiarity with a primary care  
18 physician and standard of care as to Dr. Jacobs and Dr.  
19 Stahl, both. So, I appreciate the arguments.

20 MR. MCBRIDE: Your Honor, if -- not to interrupt.  
21 Could I be excused for just a few minutes?

22 THE COURT: Sure. Sure.

23 MR. MCBRIDE: I think that Ms. Buys is going to  
24 handle the next couple.

25 THE COURT: Yeah. That's fine.

1 MR. MCBRIDE: Thank you.

2 THE COURT: No worries.

3 Defendants' Motion in Limine Number 3, to Exclude  
4 Conversations Between Plaintiff Kristina Schrage, Dr. Pitor  
5 Kubiczek, and Dr. Marc Ovadia. I'm inclined to grant  
6 because the statements from these doctors appear to be  
7 hearsay without an exception. Plaintiffs' argument that  
8 the statements of these doctors show Ms. Schrage's pain and  
9 suffering as a plaintiff, I don't follow that one because  
10 we're talking about statements from the doctors, not  
11 statements from Ms. Schrage. So, I don't think that gets  
12 it out of the hearsay exclusion, but welcome arguments,  
13 beginning with Ms. Buys.

14 MS. BUYS: Thank you so much, Your Honor.

15 As the Court has stated its inclination, we  
16 certainly agree. During her deposition, plaintiff  
17 testified about conversations she had with the medical  
18 examiner, Dr. Kubiczek, after her husband's death as to  
19 whether or not it was preventable and with Illinois Dr.  
20 Marc Ovadia, her son's cardiologist who never treated or  
21 met Mr. Schrage. And she contends what's critical of Dr.  
22 Stahl's care and that his death could have been  
23 preventable. The statements being made are being admitted  
24 for the truth of the matter asserted. So, it would be  
25 hearsay under NRS 51.035 and should, respectfully, be

1 precluded.

2 THE COURT: Thank you.

3 Any opposition?

4 MR. O'REILLY: Your Honor, we understand that the  
5 Court's inclined to grant. We'd possibly ask the Court to  
6 defer ruling until Ms. Schrage's on the stand, until the  
7 issue comes up. We understand in terms of the hearsay. We  
8 understand the exceptions. We understand as it relates to  
9 the Court's not tracking our argument as it relates to  
10 following-up on her pain and suffering, but we'd ask the  
11 Court to defer ruling until the issue is in front of the  
12 Court.

13 THE COURT: Thank you.

14 So, this one, I think it's appropriate to rule  
15 right now. I mean, the issue to me is clear. So, the  
16 Court grants the Plaintiffs' [sic] Motion in Limine Number  
17 3 to Exclude the Conversations between Plaintiff Kristina  
18 Schrage and Dr. Kubiczek and Dr. Ovadia. Appreciate  
19 plaintiffs' arguments to try and get that in, but, to me,  
20 it's clear it's hearsay and, you know, showing her pain and  
21 suffering from statements from nonparty, nontreating,  
22 nonexpert doctors in this case, it's still hearsay. And,  
23 so, the Court grants that one.

24 MS. BUYS: Thank you, Your Honor.

25 THE COURT: Thank you.



1           Number 4, Exclude Autopsy Photographs. I think  
2 I'm inclined to grant. I mean, it seems to me, and we can  
3 certainly confirm, that there's a stipulation that Mr.  
4 Schrage died on X date. It -- the --

5           MR. O'REILLY: Your Honor, can I -- may I  
6 interrupt the Court?

7           THE COURT: Sure.

8           MR. O'REILLY: I think what we're talking about  
9 here is 19 photographs of the corpse.

10          THE COURT: I think so.

11          MR. O'REILLY: So, we don't have a plan or an  
12 intent to show 19 photographs of a corpse. This is a hard  
13 case. May -- we possibly have to show a couple? Possibly.  
14 Defendants most recently disclosed in support of Dr.  
15 Fishbein the x-rays of his scalp to use in support of his  
16 testimony. So, it's not our intent to show 19 graphic,  
17 naked photographs of a corpse to the jury. If we're going  
18 to use photographs as it relates to the corpse, we'll ask  
19 the Court permission before we show them.

20          THE COURT: Anything?

21          MS. BUYS: Thank you, Your Honor.

22                 And I think in counting everything, I believe  
23 total, the photographs that were submitted to the Court  
24 under seal and provided to plaintiffs' counsel, I think it  
25 was about --

1           THE COURT: And to be clear, let me pause you. I  
2 apologize. I have not seen any of these photographs  
3 myself. So, if they were submitted, they got lost  
4 somewhere.

5           THE LAW CLERK: They're in that [indiscernible].

6           THE COURT: Oh, they're in that locker,  
7 apparently. But I have not seen them. So, --

8           MS. BUYS: Certainly, Your Honor.

9           I believe in total it's about 43 photographs  
10 because I went through and I counted them last night.

11          THE COURT: Okay.

12          MS. BUYS: But -- and I think to go off of Mr.  
13 O'Reilly's argument, we are not seeking to exclude  
14 photographs related to the heart, however there are photos  
15 of the decedent's body in various stages of undress. So  
16 seeking to exclude those as well as --

17          THE COURT: So, I knew I heard 19 from somewhere.  
18 So, I'm looking at your Motion on page 4, it says 19 --

19          MS. BUYS: Right.

20          THE COURT: -- a couple of times. So, --

21          MS. BUYS: Right. I apologize about that  
22 confusion. I just was -- that's why I went back through  
23 last night and I counted them. I'm like, I believe there's  
24 like 43 total, as the ones that provided to plaintiffs'  
25 counsel.

1           So, I believe there's an agreement here, if I'm  
2 understanding the opposing side correctly, that the intent  
3 of the Motion is just to preclude photos of other organs.  
4 There's photos of like the eyeball as well as skin  
5 discoloration, so to not show those graphic photographs.  
6 However, to clarify, the Motion does not seek to preclude  
7 photographs of the heart, because at the core of it, it's a  
8 cardiac, heart case. So, I believe there's an agreement on  
9 that, Your Honor.

10           THE COURT: So, to clarify any agreement, get  
11 together and say: Okay, we're okay with, you know,  
12 Photograph A or Photograph 3. And if you -- you know, if  
13 plaintiff wants something that defendant doesn't want, show  
14 it to me, and I'll, you know, make the ruling. But let's  
15 call it granting without prejudice to exclude the 19  
16 autopsy photographs, while -- oh, I forgot to confirm. Is  
17 there a stipulation that Mr. Schrage died on X date?

18           MS. BUYS: I --

19           THE COURT: Do you stipulate to that fact?

20           MS. BUYS: I believe we will, Your Honor. I don't  
21 think there's anything in writing currently, so --

22           THE COURT: So, that's an attorney-way of saying  
23 that. I believe we will. Yes or no?

24           MR. MCBRIDE: Yes, Your Honor.

25           MS. BUYS: Yes.

1 THE COURT: Okay. There. And we'll put that  
2 stipulating fact in front of the jury. I don't recall the  
3 date myself as I sit --

4 MR. GILLOCK: October 3<sup>rd</sup>.

5 THE COURT: Okay. Of what year?

6 MR. GILLOCK: 2016.

7 THE COURT: 2000 -- okay. So, October 3<sup>rd</sup>, 2016.  
8 Mr. Schrage died on October 3<sup>rd</sup>, 2016, fact stipulated by  
9 the parties. If I forget, which I will, you all remind me,  
10 hey, tell the jury this is a stipulated fact.

11 Yeah. So to the extent, you know, plaintiff wants  
12 certain ones, you know, it sounds like defendant is willing  
13 to work with plaintiff on particular ones, and if you can't  
14 agree, show me and I'll rule on it, but for now it's  
15 granted without prejudice as to exclude the 19 autopsy  
16 photographs referred to in the Motion.

17 Any questions on that one?

18 MS. BUYS: No, Your Honor. Thank you.

19 THE COURT: Any questions on --

20 MR. O'REILLY: No, Your Honor.

21 THE COURT: Okay. Number 5, to Require Expert  
22 Testimony to Establish Medical Negligence and Exclude  
23 Evidence Not in Compliance with NRS 41A.100. Inclined to  
24 deny. Sometimes my notes aren't super clear. I have:  
25 Deny in part because too broad, better handled on a



1 question-by-question and answer-by-answer basis. But grant  
2 in part -- let's see. Oh, yeah. Grant in part the portion  
3 that defendant concedes to -- or, I'm sorry, plaintiff  
4 concedes to on page 3 of the Opposition. But welcome  
5 arguments.

6 MS. BUYS: Thank you, Your Honor.

7 The purpose of this Motion was to preclude lay  
8 witness opinions being offered to show that the defendant  
9 healthcare providers deviated from the applicable standard  
10 of care or offered to prove causation. NRS 41A.100  
11 provides that expert testimony must be used to establish  
12 the applicable standard of care, deviation therefrom, and  
13 causation.

14 While a lay witness can testify as to opinions  
15 that are rationally based on the perception of the witness  
16 and helpful to a clear understanding of the testimony both  
17 of the fact at issue, the medical matters at issue in this  
18 case pertain to allegations that the defendants provided  
19 negligent care and treatment to Mr. Schrage during a stress  
20 test. There's no testimony that plaintiff was a percipient  
21 witness to Dr. Stahl providing this medical care to the  
22 decedent.

23 And, in their Opposition, plaintiffs appear to  
24 contend that a lay witness should be able to, quote:

25 Testify about another person's subjective

1           complaints.

2           However commenting about the subjective complaints  
3 for the quality of care goes beyond the observation of a  
4 lay witness based upon perception as contemplated by NRS  
5 50.265. And, as such, any of these opinions are beyond the  
6 scope of a lay witness and are expert opinions.

7           THE COURT: Thank you very much.

8           Any opposition?

9           MR. GILLOCK: Well, no, Your Honor. I think we  
10 just kind of follow the rules.

11          THE COURT: That's a --

12          MR. GILLOCK: I don't think we need a ruling on  
13 it.

14          THE COURT: -- fair way to summarize it, I think.  
15 But I will give a ruling. So, I'm denying in part,  
16 granting in part. The denying in -- so, let's start with  
17 the granting in part, I think, is more appropriate.

18          So, granting in part. Plaintiffs are -- as set  
19 forth in great detail on page 3 in those two paragraphs,  
20 page 3 of the Opposition, only experts are going to be  
21 establishing breach of the standard of care and causation.  
22 Lay witnesses, however, may offer opinions based on their  
23 perceptions under NRS 50.265, etcetera, etcetera.

24          To the extent a question or an answer appears to  
25 be in violation in the limitations of lay witness opinions,

1 I expect that I'll get an objection or a Motion to Strike.  
2 And I'll be prepared to rule on that particular issue at  
3 the time. So, grant in part, deny in part, as set forth in  
4 page 3 of the Opposition, and as clarified by me.

5 Motion in Limine Number 6, to Introduce Evidence  
6 of Collateral Sources Under NRS 42.021. This is the one  
7 where I said: Ah, I think the Plaintiffs' Opposition may  
8 conflict somewhat with their other -- their own Motion.  
9 But welcome arguments on this one, in case we need to  
10 clarify it.

11 MS. BUYS: Thank you, Your Honor.

12 Yes. Plaintiffs did not oppose the Defense's  
13 Motion to Apply the Collateral Source Rule and exception  
14 under NRS 42.021, specifically regarding, I believe, Mr.  
15 Schrage's private insurance that paid for his medical care,  
16 as well as plaintiffs' other medical care that they might  
17 be alleging as damages, as well as -- I believe in our  
18 Motion we cited to other collateral source payments and  
19 acts of forgiveness, such as, you know, forgiveness of  
20 student loans, which I don't believe was opposed by  
21 plaintiff. So, I believe, to the extent that the ruling  
22 applies for plaintiffs, it's sort of part and parcel.

23 THE COURT: Thank you.

24 Any opposition?

25 MR. O'REILLY: Yeah. Your Honor, --

1 THE COURT: So, next time file an Opposition.

2 MR. O'REILLY: Yes. I think there may have been  
3 some confusion in regard to it and I apologize to the  
4 Court, as well as to opposing counsel, on that, Your Honor.

5 THE COURT: And let me pause you a little because  
6 I think it's fair for me to clarify why I'm allowing  
7 opposition argument, despite the Non-Opposition. It's  
8 clear that they at least opposed a part of it because they  
9 filed their Motion on that issue. So, go ahead.

10 MR. O'REILLY: Yes, Your Honor. Thank you.

11 And the social security is addressed in the  
12 collateral source, Your Honor.

13 THE COURT: So, social security, --

14 MR. O'REILLY: And if they want to --

15 THE COURT: -- you don't oppose that portion?

16 MR. O'REILLY: Don't oppose that part.

17 THE COURT: Okay.

18 MR. O'REILLY: If they want to bring in the  
19 medical provider, I'm not sure -- or, sorry, the medical  
20 insurance, I think that was the other point that counsel  
21 indicated, I'm not tracking where we may bring that in, but  
22 if that's an issue, yes, under the collateral source rule,  
23 they're permitted to bring that in.

24 THE COURT: Okay.

25 MR. O'REILLY: Those are the two that we don't

1 have opposition to. The other -- in terms of life  
2 insurance, I think that was addressed previously, Your  
3 Honor.

4 THE COURT: So, in their Motion, they also --  
5 let's see. And this is where I -- let's see. I'm looking  
6 at page 7.

7 MR. O'REILLY: The one other issue, Your Honor,  
8 was the student loan issue.

9 THE COURT: Oh, yeah, yeah. That's the one I was  
10 trying to look for. Student loan forgiveness.

11 MR. O'REILLY: And, Your Honor, that is not an  
12 issue that's specifically set forth in the collateral  
13 source statute that we discussed earlier and that should  
14 not be discussed at the time of trial.

15 THE COURT: Thank you.

16 Any rebuttal?

17 MS. BUYS: Certainly, Your Honor.

18 I think, you know, since it wasn't opposed, and  
19 we're sort of sua sponte doing this here, the student loan  
20 issue can certainly be brought up as both parties have  
21 economists regarding consumption reports. So, I believe  
22 it's more appropriate as to that as opposed to necessarily  
23 a 42.021. At this point in time, as well, I believe that  
24 the insurance and the social security payments were  
25 thoroughly addressed already by the Court.



1           Of course, the other argument, I would just like  
2 to incorporate over from the Opposition to Plaintiffs'  
3 Motion and also cite to that [indiscernible] case which  
4 basically says that there's not a constitutional,  
5 fundamental right to recover damages in a medical  
6 malpractice case. You're only allowed to get what the  
7 people of Nevada allow you to get. And, under 42.021,  
8 collateral sources are allowed in medical malpractice  
9 cases. So, just bringing that over.

10           THE COURT: Yeah, no. That's fair. I mean, it's  
11 been upheld as constitutional.

12           I'm going to call it granting in part, denying in  
13 part. So, granting -- you know, and it's subject to proper  
14 foundation as -- with any other evidence, but certainly  
15 defendants can bring in collateral source payments from  
16 social security, any type of medical insurance payment,  
17 accident insurance. Life insurance, I already excluded  
18 that. So, I'm denying the Motion in part on that.

19           On the student loan forgiveness, that's kind of  
20 like the life insurance. I don't see a basis for that to  
21 come in under 42.021 subsection 1. It doesn't seem to me  
22 that that would apply to the collateral source exceptions  
23 set forth in that portion of the statute and there's not  
24 really a whole lot of brief on that particular point. So,  
25 it's subject to revision if you want to file a brief and

1 tell me, hey, student loans apply because of this, I'm  
2 happy to consider it. But, for now, denying/excluding the  
3 student loans and the life insurance benefits.

4           Number 7, Preclude Plaintiffs From Eliciting  
5 Testimony Regarding Any Deviation From the Standard of Care  
6 That Did Not Cause or Contribute to Any of Plaintiff's  
7 Injuries. I'm inclined to deny as too broad and vague.  
8 Better handled as a -- on a question-by-question, answer-  
9 by-answer basis. But welcome arguments by counsel.

10           MS. BUYS: Thank you, Your Honor.

11           Pursuant to NRS 41A.100, in order to establish  
12 medical malpractice, the plaintiffs must establish through  
13 expert testimony, one, the proper standard of care by which  
14 to measure the defendants' conduct; two, a negligent breach  
15 of the standard of care; and, three, resulting injury was  
16 proximately caused by the breach. Criticism of physician  
17 or his group which is not asserted to have caused  
18 plaintiff's injuries is irrelevant and should be precluded  
19 as it doesn't bear upon standard of care or causation.

20           For example, and being cautious with using an  
21 analogy, if this were a car accident case arising from a  
22 head-on automobile crash, it would be immaterial if the  
23 defendant's tail light was defective. So, the sole purpose  
24 of this Motion is just to preclude references to any  
25 alleged deviation of the standard of care, which did not

1 cause or contribute to plaintiff's injuries. And, so, it  
2 would be immaterial and prejudicial.

3 THE COURT: Thank you very much.

4 Any opposition?

5 MR. O'REILLY: Your Honor, --

6 THE COURT: This is probably where you tell me if  
7 you're inclined to stick -- or ask me, if inclined to stick  
8 with your initial inclination, then I'd be happy answer if  
9 you ask me that.

10 MR. O'REILLY: Your Honor, if you're inclined to  
11 stick with your initial --

12 THE COURT: I am so inclined.

13 Thank you. So, denied -- denying Motion in Limine  
14 7 as too broad and vague. Welcome particularized  
15 objections or Motions to Strike on a question-by-question  
16 or answer-by-answer basis at the time of trial.

17 And to be clear, I mean, Nevada Supreme Court, my  
18 read of the opinions anyway, they've been pretty clear in  
19 terms of, A, we need rulings on motions in limine to be  
20 particularized based on evidence rather than, you know,  
21 blanket types of things if there's not a reason to give a  
22 blanket. And this is one of those cases on that issue  
23 only.

24 So, Number 8, Exclude Photographs and Videos  
25 Disclosed in Plaintiffs' Second Supplemental. Inclined to

1 deny, subject to adequate foundation and authentication at  
2 the time of trial with an admission by me, that kind of  
3 like those photographs, I have not seen these videos. I  
4 didn't' -- I don't know if we have them. Do you know?

5 THE LAW CLERK: For the things to be filed under  
6 seal?

7 THE COURT: I don't even know.

8 THE LAW CLERK: Anything that's filed --

9 THE COURT: If we have them, I haven't seen them.  
10 Let's just leave it at that.

11 But I'm inclined to decline Number 8. You know, I  
12 need to see the evidence in order to grant it. I did not -  
13 - I don't think we got it, at least in time for me to  
14 review. So, -- but welcome arguments of counsel.

15 MS. BUYS: Thank you, Your Honor.

16 And I believe to clarify it was sent by a link in  
17 the actual document itself.

18 THE COURT: Oh, yeah.

19 MS. BUYS: Because it's --

20 THE COURT: I didn't -- thank you for -- I did see  
21 the link and I didn't have time.

22 MS. BUYS: Certainly.

23 We would just request that this would be deferred.  
24 There's about seven minutes of photo montages, as well as  
25 several other videos and photographs that don't even

1 necessarily include the plaintiff or the decedent. And,  
2 so, that -- we would just respectfully request that it be  
3 deferred at the time of the trial.

4 THE COURT: Okay. Thank you.

5 Any opposition?

6 MR. O'REILLY: No. Your Honor, we're fine with in  
7 terms of what the Court's inclined to do and --

8 THE COURT: So, I'm probably inclined to defer.

9 MR. O'REILLY: That's fine, Your Honor.

10 THE COURT: That -- yeah. So let me defer. And I  
11 apologize. I did not have time to click on that link and  
12 watch those things. So, I defer ruling. Certainly, as  
13 with any other evidence, there has to be proper foundation  
14 laid and authentication. And, if not, then I'll expect  
15 I'll hear an objection.

16 THE LAW CLERK: And, Judge, she said there's a  
17 link in that?

18 THE COURT: There's -- in their brief.

19 THE LAW CLERK: Oh, okay. I'll [indiscernible].

20 THE COURT: I did -- like I said, I saw it, now  
21 that you reminded me. I just didn't click on it.

22 Defendants' Motion in Limine Number 9, To Preclude  
23 Jeffery Silvestri from Providing, quote, Expert, closed  
24 quote, Opinions. Another true admission, I did not have  
25 his deposition to read through. But, nevertheless, I'm



1 inclined to deny because it seems to me that the issues  
2 raised go more to weight than a blanket exclusion. He, you  
3 know, -- managing partner. I think that was his title.  
4 And issues of weight can go to cross-examination,  
5 impeachment. Managing partner, equity partner of the firm  
6 that employed. His opinions about projected income, I  
7 mean, there's notice, obviously. So, that's not really an  
8 issue. The issues, again, can be examined further on  
9 cross-examination, but welcome arguments.

10 MR. MCBRIDE: Thank you, Your Honor.

11 And, again, our objection to this in the Motion is  
12 really to preclude -- and, in this case, by way of  
13 background, Mr. Silvestri, as the managing partner, he was  
14 deposed as the 30(b)(6) --

15 THE COURT: Of the firm.

16 MR. MCBRIDE: -- for the firm. So, I would submit  
17 that actually his testimony -- and we just wanted to try to  
18 define the parameters of his testimony as a fact witness.  
19 He is a fact witness. He was not properly designated as an  
20 expert witness, retained -- or even a non-retained expert  
21 witness.

22 So, relative to his testimony about what the  
23 anticipated future earnings, all those things I would agree  
24 with you are subject to cross-examination. But, just to  
25 point out, in his deposition, I apologize you weren't

1 provided with the actual deposition, but, you know, he,  
2 essentially, acknowledged that the future income of Mr.  
3 Schrage was based on, quote, a lot of speculation, closed  
4 quote.

5           So, again, by his own admission, he acknowledges  
6 that what he did in this case -- I think he took an  
7 anonymous partner at his -- at Mr. Schrage's level, or an  
8 attorney at his level, and then tried to project what the  
9 anticipated career path and income would be for someone of  
10 his stature, his education, training, and so on. And I  
11 think so much of that is speculation; that it doesn't rise  
12 to the level of a -- an expert witness who can testify to a  
13 reasonable degree of probability this is what he would have  
14 earned. This is -- and that's the catchphrase, typically,  
15 that is used for any expert, that they're testifying to a  
16 reasonable medical certainty, economic certainty, or  
17 whatever.

18           So that's not there in his deposition and it's not  
19 -- and, again, to the extent that those topics that came up  
20 in his deposition, the factual scenario about how long he  
21 worked there, his knowledge base of being the managing  
22 partner, that's all relevant. But certainly offering an  
23 expert, or holding himself out, or the plaintiff holding  
24 him out as an expert to this jury is misleading. And I  
25 think it should be limited to his testimony. He is a fact

1 witness in this case, not an expert witness.

2 THE COURT: Thank you very much.

3 MR. MCBRIDE: And, again, there is no expert  
4 report. There is nothing. Again, just like with Dr.  
5 Stahl, there was no expert report and, so, I would say that  
6 what's good for the goose, to coin Mr. Johnson's statement.  
7 What's good for the goose --

8 THE COURT: I'm trying not to remember that.

9 MR. MCBRIDE: I know. Me too. But I remembered  
10 that.

11 So, thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. GILLOCK: Yes, Your Honor. Let me correct  
14 something right off the bat because Mr. Silvestri was  
15 disclosed as an expert witness on November 15<sup>th</sup>, 2019.

16 THE COURT: Oh, he was?

17 MR. GILLOCK: He was originally disclosed as a  
18 fact witness in February of 2018 --

19 THE COURT: And then you amended or --

20 MR. GILLOCK: And then deposed him -- then they  
21 deposed him in April and he re -- and he was cross-examined  
22 extensively by defense counsel as to his opinions and as to  
23 the path that the plaintiff was on. I -- the caselaw is  
24 pretty -- is very clear that an officer of a company can  
25 establish the necessary foundation to determine whether or

1 not that person is going to, in all likelihood, -- more  
2 likely than not --

3 THE COURT: Yeah, so part of your argument --

4 MR. GILLOCK: -- so I think it goes to the weight  
5 --

6 THE COURT: -- is his deposition was taken before  
7 -- now I'm remembering, looking at --

8 MR. GILLOCK: Yeah. It was taken before the  
9 disclosure and --

10 THE COURT: And you said: Hey, this in lieu of a  
11 report is --

12 MR. GILLOCK: Right.

13 THE COURT: Okay.

14 MR. GILLOCK: And they had all that. So, his  
15 goose and gander argument is very well taken here.

16 But, in addition, Mr. Silvestri is knowledgeable.  
17 He's the one that recruited this guy. He's the one that  
18 hired him. He's the one that served as the manager. He's  
19 on the Finance Committee of the law firm. At the time of  
20 his deposition, there was a large spreadsheet laid out in  
21 front of the defendants, which had been provided, that  
22 showed exactly how partners on his path and -- were going  
23 to be compensated. So, not only is he able to lay the  
24 foundation for his testimony, and we will very carefully do  
25 that, but he will also be able to lay the foundation for

1 the opinions of Dr. Swanson who is the economist who is  
2 subject to their Motion Number 10.

3 THE COURT: Thank you very much.

4 Any rebuttal?

5 MR. MCBRIDE: No, Your Honor.

6 Just simply, like I said, there was no indication  
7 that his opinions were stated to a reasonable degree of any  
8 probability. So, I think that, in and of itself, he was  
9 designated and originally his deposition was taken as a  
10 fact witness and I would submit that he's not an  
11 appropriate expert witness, beyond the scope of his factual  
12 testimony.

13 THE COURT: Thank you very much.

14 So, I have a very clear indication my memory is  
15 not perfect, but I -- you know, once I was reminded, and  
16 I'm looking at page 5 of the Opposition. And I do recall  
17 the sequence, if you will, in the identification. So, I'm  
18 going to deny Defendants' Motion in Limine Number 9 to  
19 Preclude Jeffrey Silvestri, Esquire, from Providing Expert  
20 Opinions for the reasons set forth in the Opposition.  
21 Having said that, include this in the Order, you know, it's  
22 subject, of course, to laying proper foundation, which he  
23 may or may not be able to do. I don't have specifics right  
24 here. But, given the timeline, given the disclosure, given  
25 the deposition, given his status as managing partner of the



1 law firm and part owner, those are some of the reasons I'm  
2 denying it at this time.

3           Okay. We're halfway through all of them. More  
4 than halfway through, we already got through Plaintiffs'.  
5 Okay.

6           MR. O'REILLY: More than half. We're almost done.

7           THE COURT: Okay. Halfway through Defendants'.

8           Defendants' Motion in Limine Number 10, To Exclude  
9 Economic Opinions of Plaintiffs' Expert, David Swanson.  
10 I'm inclined to deny this one as well. The issues raised  
11 go to weight rather than blanket exclusion and subject to,  
12 of course, cross-examination, impeachment, proper  
13 foundation. But better handled while at trial, based on  
14 testimony and objections. Welcome arguments, beginning  
15 with --

16           MR. MCBRIDE: Your Honor, the defense will  
17 essentially abide by the Court's ruling on this one. I  
18 think with the point, though, to be raised that the  
19 personal consumption report that Mr. Swanson prepared -- I  
20 mean, I do believe that the fact that he's not an economist  
21 that's going to be an issue that is subject to cross-  
22 examination and goes to his weight. But in terms -- and  
23 the sources he relied on as well, that also goes to weight.  
24 But I think, though, that the issue we have here is we do  
25 have an issue of an untimely submission of the specific

1 personal consumption report that was disclosed after his  
2 deposition was taken. So, with regard to that portion, I  
3 think the -- we would just ask the Court to take a look at  
4 that and consider that in light of the issue about  
5 timeliness.

6 This is a different situation than what we had  
7 here with Dr. Fishbein. This is a situation where it was  
8 disclosed after he was deposed. So, on that basis, we  
9 would just ask that the Court consider the possible  
10 exclusion of his report as it relates to personal  
11 consumption.

12 THE COURT: Thank you very much.

13 Any opposition?

14 MR. GILLOCK: That subject matter came up in his  
15 deposition, but we'll withdraw his personal consumption.

16 THE COURT: Okay. Thank you.

17 MR. GILLOCK: Gladly.

18 THE COURT: Thank you, both. That makes my job  
19 easier. I --

20 MR. MCBRIDE: See, we get along, Judge. We get  
21 along.

22 THE COURT: You're both smiling --

23 MR. GILLOCK: They can't raise the issue if they  
24 want it withdrawn. So, we'll certainly agree to that.

25 THE COURT: So, personal consumption report

1 withdrawn. The remainder of my initial inclination  
2 remains. Okay.

3           Number -- oh, yeah. You know what happened was I  
4 got two binders from defendant, one of which was mostly  
5 your Motions. So, we don't have to do this because we  
6 already did it.

7           MR. MCBRIDE: We already did it.

8           MR. GILLOCK: Well, you did give me concern, Your  
9 Honor, when you said we're halfway there.

10           THE COURT: Again, my memory is not perfect, so  
11 I'm like oh we still have --

12           MR. MCBRIDE: I know. I was a little concerned  
13 too.

14           THE COURT: -- three-quarters of a binder to go  
15 through, but that's what it was.

16           MR. GILLOCK: It just shows experienced counsel.  
17 Mr. McBride and I were both prepared to wing it on the last  
18 ones.

19           MR. MCBRIDE: And, Your Honor, I think there was -  
20 - the only other thing was there was a Motion for Partial  
21 Summary Judgment to Dismiss Plaintiffs' Claim for Punitive  
22 Damages. And I don't know if you received that or whether  
23 that's something --

24           MR. O'REILLY: Actually, I think it was a Motion  
25 for Leave to File.

1 MR. GILLOCK: It wasn't a Motion for Partial  
2 Summary Judgment.

3 THE COURT: Okay. Well, whatever it is --

4 MR. MCBRIDE: Motion for Leave and --

5 THE COURT: -- I have not looked it.

6 MR. MCBRIDE: -- Motion for Partial Summary  
7 Judgment.

8 THE COURT: That's okay. So, --

9 MR. O'REILLY: Well, Your Honor, do you want to  
10 address this on Monday?

11 THE COURT: Yes.

12 MR. O'REILLY: Okay.

13 THE COURT: I literally have not even seen that  
14 one.

15 MR. O'REILLY: No worries.

16 THE COURT: Any other issues about trial that  
17 we're starting on Monday?

18 MR. GILLOCK: We're starting on Monday and do I  
19 understand the Court is calling down 61 jurors?

20 THE COURT: Let's see.

21 MR. GILLOCK: Or 60 jurors? Because I think -- I  
22 would think we would need more than that with the present  
23 Covid issues.

24 THE COURT: Oh man.

25 MR. GILLOCK: Because the last -- Mr. McBride and

1 I tried a case less than a month -- or just a little over a  
2 month ago and we went through about 75 jurors.

3 THE COURT: Yeah. That's a good question and a  
4 good point.

5 MR. MCBRIDE: And --

6 THE COURT: Hold on.

7 [Colloquy between the Court and staff]

8 MR. GILLOCK: I heard -- 60 is what I heard.

9 MR. MCBRIDE: I think it was because -- originally  
10 it was 45 and we asked for an addition 15 I think. Does  
11 that sound right to you?

12 THE COURT: Bear with me a moment.

13 MR. MCBRIDE: Sure.

14 [Colloquy between the Court and staff]

15 THE COURT: Okay. Let's reach out to -- normally  
16 this would be Ms. Rivera, but she's out. To Jury Services  
17 and ask if we can get 75. So, we'll see if we can get 75.

18 MS. BUYS: Thank you, Your Honor.

19 THE COURT: Did you all hear me?

20 MR. GILLOCK: What's that? No.

21 THE COURT: Well, you did.

22 MS. BUYS: Yes, Your Honor. You're going to  
23 request 75. Thank you, Your Honor.

24 MR. MCBRIDE: Seventy-five. I did hear that.

25 THE COURT: So, we'll see if --



1 MR. GILLOCK: Okay.

2 THE COURT: -- we can -- if that's -- really, I  
3 hadn't even thought of that people are even more scared now  
4 than they were --

5 MR. GILLOCK: And if they have somebody at home --

6 THE COURT: -- three weeks ago.

7 MR. GILLOCK: -- whereas before --

8 THE COURT: And it's raging.

9 MR. MCBRIDE: I can tell you, Your Honor, by  
10 virtue of the fact that I had two people in my household  
11 have it and I've tested negative twice so far, but I took  
12 another one just the other day just to make sure. I'm  
13 still waiting for it but the lines are crazy getting these  
14 tests right now. And --

15 THE COURT: Well, we'll reach out and see if we  
16 can get 75. If not, we've got the 60.

17 I don't know if we have a start time.

18 MR. GILLOCK: Yeah. What time Monday?

19 MR. MCBRIDE: I thought you had said 1:30.

20 MR. GILLOCK: I think we said 1:30 to start and  
21 then the other days were at 10.

22 THE COURT: Bear with us. We're trying to see.

23 THE CLERK: 1 p.m., Judge.

24 THE COURT: 1 p.m.

25 MR. O'REILLY: 1 p.m.

1 THE COURT: On Monday.

2 Anything else about the trial?

3 MR. MCBRIDE: One thing we also -- Mr. Gillock and  
4 I also did, and we probably suggest or request that we also  
5 get at least one extra alternate, you know, at least three.  
6 We've done it with three. We've done it with four. But  
7 we've had every -- the trials we've had, we've had someone  
8 test positive in every case.

9 THE COURT: And --

10 MR. MCBRIDE: So, just to be on the safe side.

11 THE COURT: Yeah, no. That's a good point.

12 Thoughts from plaintiff on that?

13 MR. GILLOCK: Well, just -- I think four.

14 MR. MCBRIDE: Four.

15 MR. GILLOCK: Four alternates. And what we did is  
16 we just increased the number that we put in the box from 20  
17 to 22 and then we exercised -- each of us exercised two  
18 challenges on the alternates --

19 MR. MCBRIDE: Yeah.

20 MR. GILLOCK: -- and four. But we couldn't  
21 exercise the -- we had to exercise the four on the panel  
22 and the alternate challenges were limited to the  
23 alternates. And I think we only had two -- we didn't have  
24 four, a total of four. Yeah, because we put a -- four plus  
25 four plus eight. So, we had 26 in the box? Twenty-four or

1 26.

2 THE COURT: In the criminal ones, we put 24 in  
3 there?

4 MR. GILLOCK: Yeah. So, I think what we did is if  
5 you had -- if you have a jury of eight and we have four  
6 perempts, so that's eight plus eight is 16. And, then, if  
7 we have two -- four alternates, but if we each only have  
8 two perempts, then we have 20 plus two, 22. So, we only  
9 need 22 in the box. Yeah.

10 THE COURT: Okay. So we'll do -- remind me and  
11 we'll put 22 up there.

12 THE CLERK: Actually, I think you need 24, Judge.

13 THE COURT: Twenty-four?

14 THE CLERK: Yeah. If we're going to have four  
15 alternates.

16 MR. GILLOCK: Yeah, four alternates. So how does  
17 it work out?

18 THE CLERK: We'll need 24 because you'll have six  
19 perempts each.

20 MR. GILLOCK: Okay. Yeah.

21 THE CLERK: So, 24 minus 12 is 12.

22 MR. GILLOCK: Perfect.

23 THE CLERK: So that will give you your eight  
24 jurors and your four alternates.

25 THE COURT: Sounds good.

1 MR. GILLOCK: Your math is better than my.

2 MR. MCBRIDE: I trust her math skills.

3 MR. GILLOCK: I trust you.

4 THE COURT: Yeah. So do I.

5 And, then, the alternates, you know, those -- your  
6 -- you'll have two alternates strikes, is that --

7 MR. GILLOCK: Challenges. Yeah, three strikes.

8 THE COURT: Those will be from the pool at the  
9 end. If you don't exercise the challenge, then basically  
10 the person at the very end gets bumped off, is how I do it.  
11 And if we seat 24, that's kind of easy for us because  
12 that's what we do in criminal anyway. We put up folding  
13 chairs in front of the box there to --

14 MR. GILLOCK: Yeah. Okay.

15 THE COURT: -- get everybody over there.

16 MR. MCBRIDE: And, so, Judge, 1 p.m. on Monday.  
17 I'm sorry to ask this again. The rest of the week, I know  
18 you have --

19 THE COURT: Yeah. So, generally, try and start at  
20 10:30. And --

21 THE CLERK: [Indiscernible] a little bit on  
22 Tuesday and Thursday.

23 THE COURT: Yeah. Well, Tuesday's status checks,  
24 so it might go fairly fast.

25 So, plan on, generally, 10:30.

1 MR. GILLOCK: Okay.

2 MR. MCBRIDE: Okay.

3 THE COURT: Subject to -- I guarantee none of my  
4 hearings in the next two weeks will last this long.

5 MR. MCBRIDE: And Mr. Johnson and Mr. Moynihan  
6 aren't going to be [indiscernible].

7 THE COURT: I did not say that. Any other  
8 questions?

9 MR. MCBRIDE: No, Your Honor.

10 THE COURT: Since we're all here. Yeah, it -- you  
11 know, better to ask. And I'm always -- dialogue is a lot  
12 better, you know, than not. So, --

13 MR. MCBRIDE: All right. Thank you, Your Honor.  
14 Thanks, everyone.

15 MR. GILLOCK: Thanks, Judge. Thank you, Your  
16 Honor.

17 THE COURT: Thank you all. Thank you for your  
18 patience, again.

19

20 PROCEEDING CONCLUDED AT 2:55 P.M.

21 \* \* \* \* \*

22

23

24

25



1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

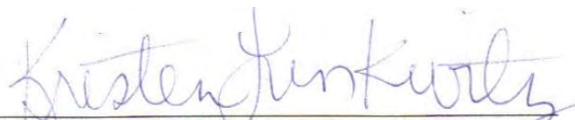
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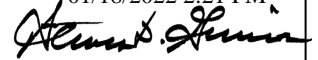
21 INDEPENDENT TRANSCRIBER

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25

  
CLERK OF THE COURT

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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, 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;

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C  
DEPT NO.: XV**

**ORDER REGARDING DEFENDANTS  
ALLAN J. STAHL, M.D. AND ALLAN J.  
STAHL, M.D., P.C.'S MOTIONS IN  
LIMINE ( 1 – 10)**

**Date of Hearing: January 5, 2022  
Time of Hearing: 9:00 a.m.**

This cause having come on for hearing on January 5, 2022, upon Defendants, ALLAN J. STAHL, M.D. and ALLAN J. STAHL, M.D., P.C.'s Motions in Limine 1-10; and Plaintiffs being

1 represented by attorney TIMOTHY O'REILLY, ESQ. of the law firm of TIMOTHY R.  
2 O'REILLY, CHTD., and GERALD I. GILLOCK, ESQ. of the law firm of GERALD I. GILLOCK  
3 & ASSOCIATES, and Defendants being represented by ROBERT C. MCBRIDE, ESQ. and T.  
4 CHARLOTTE BUYS, ESQ. of the law firm of MCBRIDE HALL; and the Court having reviewed  
5 the papers and pleadings on file herein and having heard argument of counsel and otherwise being  
6 duly advised in the premises, hereby issues the following Order:

7 **GENERAL LANGUAGE REQUESTED BY THE COURT**

8 Rulings on Motions in Limine are provisional in nature and are made without prejudice,  
9 subject to revisions up to and during the time of trial. Additionally, evidence that is ruled to be  
10 excluded during hearing of the Parties' Motions in Limine, may be included at the time of trial,  
11 subject to the "opening of the door." However, if the Parties want excluded evidence to come in  
12 at the time of trial, they are reminded to raise that issue with the Court outside the presence of the  
13 jury. The Court also reminds the Parties to preserve any and all objections at the time of the trial  
14 regardless of the Court's rulings on the Parties' Motions in Limine.

15 **DEFENDANTS' MOTIONS IN LIMINE**

16  
17 ***Motion in Limine No. 1 – To Exclude Any Evidence of Argument in Furtherance of***  
18 ***Plaintiffs' Ordinary/ "Corporate" Negligence Claim and to Cap Hedonic Damages***  
***Pursuant to NRS 41A.035***

19 Ruling on Defendants Allan J. Stahl, M.D., and Allan J. Stahl, M.D., P.C.'s Motion in  
20 Limine No. 1 to exclude evidence or argument in furtherance of Plaintiffs' ordinary/ "corporate"  
21 negligence claim and to cap hedonic damages pursuant to NRS 41A.035 shall be DEFERRED  
22 until after the Plaintiffs' case-in-chief or after all of the evidence is heard at the conclusion of trial.

23 Defendants, Dr. Stahl and Allan J. Stahl, M.D., P.C., seek to preclude and/or dismiss any  
24 reference to any ordinary/ "corporate" negligence as alleged against Defendants in Plaintiffs'  
25 "Negligent Hiring, Training, and Supervision" claim, since such claim arises out of and is  
26 inherently linked to Plaintiffs' professional negligence claim. Plaintiffs' contend that their claim  
27 for "Negligent Hiring, Training, and Supervision" is a separate claim for ordinary negligence.  
28 Defendants contend that such claim for "Negligent Hiring, Training, and Supervision" arises out

1 of a contention sufficiency and/or existence of the training of a medical assistant performing a  
2 medical cardiac stress test of Plaintiffs' Decedent, Joseph Schrage, Jr, in a medical office and  
3 alleges the same medical injury, and is therefore subsumed into Plaintiffs' claim for professional  
4 negligence and subject to the requirements and limitations of NRS Chapter 41A, (including the  
5 cap on non-economic damages per NRS 41A.035), pursuant to *Montanez v. Sparks Family Hosp.*,  
6 137 Nev. Adv. Op. 77 at \*7 (Dec. 9, 2021), the *Estate of Mary Curtis, et al., v. Life Care Center*  
7 *of So. Las Vegas, et. al.*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (Nev. 2020); *Zhang, M.D. v. Barnes*,  
8 832 P.3d 878 (Nev. 2016) (unpublished); *Schwartz v. Univ. Med. Ctr. of S. Nevada*, 460 P.3d 25,  
9 No. 77554, No. 77666, 2020 WL 1531401 (Mar. 28, 2020); and *Turner v. Renown Reg'l Med. Ctr.*,  
10 461 P.3d 163 No. 77312, No. 77841, 2020 WL 1972790 (April 23, 2020).

11 ***Motion in Limine No. 2 – To Include Others on the Verdict Form***

12 Ruling on Defendants' Motion in Limine No. 2 to Include Others on the Verdict Form has  
13 been DEFERRED until the presentation of evidence at the time of trial.

14 Defendants' Motion seeks to include non-parties on the verdict form pursuant to *Piroozi v.*  
15 *Eighth Jud. Dist. Ct.*, 131 Nev. 1004, 363 P.3d 1168 (2015) and *Bhatia v. Eighth Jud. Dist. Ct.*,  
16 2018 Nev. Unpub. LEXIS 394, 417 P.3d 352 (May 9, 2018). Specifically, Defendants note that  
17 Plaintiffs' expert Dr. Moran opined in an expert Declaration that Plaintiffs' Decedent's treating  
18 primary care physician, Dr. Michael Jacobs, breached the standard of care and that Dr. Moran was  
19 familiar with the standard of care for a primary care physician. However, Dr. Moran later testified  
20 in his deposition that he was not familiar with the standards of care for a primary care physician.  
21 The Court does note that Plaintiffs' expert, Michael Moran, M.D., in his August 12, 2018  
22 Declaration does appear to aver about his familiarity with a primary care physician and standard  
23 of care as to Dr. Jacobs and Dr. Stahl, both.

24  
25 ***Motion in Limine No. 3 – To Exclude Conversations Between Plaintiff Kristina Schrage,***  
26 ***Dr. Pitor Kubiczek, and Dr. Marc Ovadia***

27 Defendants' Motion to Exclude Conversations between Plaintiff Kristina Schrage and Dr.  
28 Pitor Kubiczek is hereby GRANTED. Plaintiffs may not introduce statements from Ms. Kristina

1 Schrage's conversation with Dr. Pitor Kubiczek regarding whether Mr. Schrage's death was  
2 preventable and her conversations with her son's Cardiologist, Dr. Marc Ovadia, who did not treat  
3 Mr. Schrage, regarding the quality of Dr. Stahl's medical care, as such statements are inadmissible  
4 hearsay being offered for the truth of the matter asserted pursuant to NRS 51.065.

5  
6 ***Motion in Limine No. 4 – To Exclude Autopsy Photographs***

7 DEFERRED Ruling to address specific issues that may arise at trial.

8 ***Motion in Limine No. 5 – To Require Expert Testimony to Establish Medical Negligence***  
9 ***and to Exclude Evidence Not in Compliance with NRS 41A.100***

10 Defendants' Motion to Require Expert Testimony to Establish Medical Negligence and to  
11 Exclude Evidence Not in Compliance with NRS 41A.100 is DENIED IN PART and GRANTED  
12 IN PART. The Court orders that only experts will be allowed to establish a breach of the standard  
13 of care and causation at the time of trial. Lay witnesses, however, may offer opinions based upon  
14 their perceptions as set forth under NRS 50.265. To the extent a question or an answer appears to  
15 be in violation in the limitations of lay witness testimony per NRS 50.265, the parties may object  
16 or move to strike such testimony and the specific issue will be ruled upon at the time of trial.

17  
18 ***Motion in Limine No. 6 – To Introduce Evidence of Collateral Sources Under NRS***  
19 ***42.021***

20 Defendants' Motion in Limine No. 6 to Introduce Evidence of Collateral Sources Under  
21 NRS 42.021 is GRANTED IN PART and DENIED IN PART. Although Defendants' Motion in  
22 Limine No. 6 was unopposed by Plaintiffs, the Court allowed verbal opposition argument in light  
23 of Plaintiffs' Motion in Limine No. 1. The Court holds that Defendants, who are statutory providers  
24 of health care as such is defined in NRS 41A.017, may introduce evidence of collateral source  
25 payments from Social Security, any type of medical insurance and any accident insurance with  
26 proper foundation. Evidence of Plaintiffs' life insurance payments and student loan forgiveness  
27 shall be excluded, but the Court's decision to exclude such payments may be subject to revision in  
28 light of additional briefing, if any.



1  
2 ***Motion in Limine No. 7 – To Preclude Plaintiffs from Eliciting Testimony Regarding***  
3 ***Any Deviation from the Standard of Care that Did Not Cause or Contribute to Any of***  
4 ***Plaintiff’s Injuries***

5 Defendant’s Motion in Limine No. 7 to preclude Plaintiffs from eliciting testimony  
6 regarding any deviation from the standard of care that did not cause or contribute to any of  
7 Plaintiffs’ alleged injuries is DENIED, as the Motion is overly broad. The Court will welcome  
8 particularized objections or motions to strike testimony on a question-by-question and/or answer-  
9 by-answer basis at the time of trial.

10 ***Motion in Limine No. 8 – To Exclude Photographs and Videos Disclosed in Plaintiffs’***  
11 ***Second Supplemental 16.1 Disclosure from Evidence***

12 DEFERRED Ruling to address specific issues that may arise at trial.

13 ***Motion in Limine No. 9 – To Preclude Jeffrey Silvestri, Esq. from Providing “Expert”***  
14 ***Opinions***

15 Defendants’ Motion in Limine to exclude certain “expert” opinions of Jeffrey Silvestri,  
16 Esq. is DENIED, as Mr. Silvestri was disclosed as a non-retained expert witness, was deposed,  
17 and due to his status as a managing partner of a law firm. However, admission of Mr. Silvestri’s  
18 testimony at the time of trial is subject to the laying of proper foundation.

19  
20 ***Motion in Limine No. 10 – To Exclude Economic Opinions of Plaintiffs’ Expert David***  
21 ***Swanson***

22 Defendants’ Motion in Limine to exclude the economic opinions of Plaintiffs’ expert David  
23 Swanson is DENIED IN PART and GRANTED IN PART. Defendants contend that Mr.  
24 Swanson’s economic opinions are speculative and will not assist the trier of fact pursuant to  
25 *Hallmark v. Eldridge*, 124 Nev. 189 P.3d 636 (Nev. 2008). Defendants also contend that Mr.  
26 Swanson’s March 6, 2020 report was an untimely expert disclosure. During oral argument,  
27 Plaintiffs’ counsel agreed to withdraw Mr. Swanson’s untimely March 6, 2020 report. The Court  
28 therefore DENIES IN PART Defendants’ Motion in Limine No. 10, as the issue raised as to

whether Mr. Swanson's economic opinions are speculative and will assist the trier of fact goes to the weight of his testimony. However, Mr. Swanson's testimony must be subject to proper foundation and will be subject to cross-examination and impeachment at the time of trial.

**IT IS SO ORDERED.**

Dated this 18th day of January, 2022



**A8A FDC 83C6 94B0**  
**Joe Hardy**  
**District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

DATED this 14<sup>th</sup> day of January, 2022.

DATED this 14<sup>th</sup> day of January, 2022.

/s/ T. Charlotte Buys

ROBERT C. McBRIDE, ESQ.  
Nevada Bar No.: 7082  
T. CHARLOTTE BUYS, ESQ.  
Nevada Bar No.: 14845  
McBRIDE HALL  
8329 W. Sunset Road, Suite 260  
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Attorneys for Defendants  
*Allen J. Stahl, M.D.*  
*and Allen J. Stahl, M.D., P.C.*

/s/Timothy R. O'Reilly

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-and-  
Gerald I. Gillock, Esq.  
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*Attorneys for Plaintiffs*

**From:** [Isela Arauz](#)  
**To:** [Teyla Charlotte Buys](#); [Timothy R. O'Reilly](#); [Gerald Gillock](#)  
**Cc:** [Robert McBride](#); [Kristine Herpin](#); [Natalie Jones](#); [Candace P. Cullina](#); [Gaby Chavez](#); [Michael coggeshall](#)  
**Subject:** RE: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine  
**Date:** Friday, January 14, 2022 10:57:13 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[Pltfs" proposed orders on MILs 1-8.pdf](#)

---

Good morning Ms. Buys,

Attached are our revised proposed orders. Please advise if we may affix your electronic signature on these.

Also, Mr. O'Reilly authorizes you to affix his signature on your proposed orders.

Thank you for your prompt attention to this matter.



**Isela Arauz**  
**Legal Assistant**

325 S. Maryland Parkway Las Vegas, Nevada 89101

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---

**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Thursday, January 13, 2022 2:06 PM

**To:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** Re: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Good Afternoon Ms. Arauz,

Please advise if we may use Mr. O'Reilly's electronic signature on the proposed Order regarding Defendant's Motions in Limine. If we do not hear back regarding any proposed changes to Defendants' Order, we will submit it for the Court's consideration as written tomorrow, January 14,

2022, at 12:00 p.m.

In reviewing Plaintiffs' proposed Order on Plaintiffs' Motions in Limine (1-8), we have a number of issues and are requesting changes in the proposed Order consistent with these issues:

1. On page 3, line 2 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 1 - please change the word "payment" to "\$30,000 gift."
- 2.
3. On page 3 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 2 - please revise to state "Plaintiff's Motion in Limine No. 2 is granted because there is no report or deposition testimony by the defense experts that criticizes Drs. Michael Jacobs or Brent Burnette. However, if the Defense believes the door has been opened at the time of trial, objections can be raised outside the presence of the jury."
- 4.
5. On page 3, line 1 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 3 - please revise Plaintiffs' "MMIL No. 3" to "Plaintiffs' MIL No. 3 is denied because while it appears that Dr. Aragon, a Cardiologist, and Dr. Klancke, an Interventional Cardiologist, are similar, they are not the same in terms of background or qualifications and their opinions are not overly cumulative. However, objections may be raised at the time of trial."
- 6.
7. On page 3 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 4 - please revise to read "Plaintiffs' MIL No. 4 is granted. Dr. Stahl can testify as to his opinions formed in the course and scope of treatment, opinions disclosed in his deposition, opinions disclosed in the medical records and opinions disclosed during discovery."
- 8.
9. Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 8 - please remove the sentence "It is not clear to the Court that Dr. Fishbein's disclosure is a rebuttal disclosure in contrast to an initial disclosure." The Court found that Dr. Fishbein was not a rebuttal expert.

We would appreciate you making these changes, and then we would be able to electronically sign the proposed Order as to form and content.

Very truly yours,

Charlotte

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---

**From:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>

**Sent:** Wednesday, January 12, 2022 5:49 PM

**To:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>; Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** RE: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Good afternoon Ms. Buys,

Attached please find Plaintiffs' Proposed Orders on Motions in Limine 1-8. Let us know if you have changes or if we may affix your esignature on said orders.

Your prompt attention to this matter is greatly appreciated.



**Isela Arauz**  
**Legal Assistant**

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**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Wednesday, January 12, 2022 8:53 AM

**To:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** Re: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Tim,

Sounds good. Thank you.

Sincerely,

Charlotte

T. Charlotte Buys, Esq.

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---

**From:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>

**Sent:** Wednesday, January 12, 2022 8:50 AM

**To:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** RE: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Charlotte,

Will review and get back with you today.

Tim

---

**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Tuesday, January 11, 2022 8:20 AM

**To:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Dear Tim and Jerry,

Enclosed please find the proposed Order Regarding Defendants' Motions in Limine in the Schrage, et al. v. Allan Stahl, M.D., et al. matter. Please advise if you have any changes or if we may use your electronic signature by 12:00 p.m. tomorrow, January 12, 2022, so that we may get this submitted timely to the Court.

Very truly yours,

Charlotte

T. Charlotte Buys, Esq.

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Kristina Schrage, Plaintiff(s)

CASE NO: A-17-762364-C

7 vs.

DEPT. NO. Department 15

8 Allan Stahl, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 1/18/2022

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24 Adam Knecht

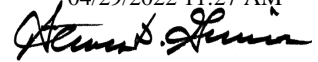
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CLERK OF THE COURT

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**ORDR**

TIMOTHY R. O'REILLY, ESQ.  
Nevada Bar No. 8866

**TIMOTHY R. O'REILLY, CHTD.**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

KRISTINA DANICA SCHRAGE,  
Individually and as spouse as natural heir of  
JOSEPH PATRICK SCHRAGE, JR., and on  
behalf 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,

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
DOES 1 through 10, inclusive; ROE  
ENTITIES 1 through 10, inclusive,

Defendant.

CASE NO.: A-17-762364-C  
DEPT. NO.: XV

**ORDER ON DEFENDANTS' (1)**  
**MOTION FOR LEAVE AND (2)**  
**MOTION FOR PARTIAL SUMMARY**  
**JUDGMENT TO DISMISS PLAINTIFFS'**  
**CLAIM FOR PUNITIVE DAMAGES**

Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages, came before this Court on March 28, 2022 in Department 15 of this Honorable Court, Plaintiffs appearing by Gerald I. Gillock, Esq. and Defendants appeared by T. Charlotte Buys, Esq. The Court having considered the Motion, Opposition, and Reply, along with supporting documents, as well as the pleadings and papers on file in this matter, and having heard the arguments of counsel at the time of hearing, this Court orders the following:

IT IS HEREBY ORDERED that Defendants' Motion for Leave is hereby granted as the trial date in this matter was moved to June 6, 2022, and Defendants' Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages is denied without prejudice. This Order does not preclude Defendants from renewing the Motion to Dismiss Plaintiffs' Claim for Punitive Damages after the close of Plaintiff's case in chief at the time of trial.

**IT IS SO ORDERED.**

Dated this 29th day of April, 2022



Submitted by:

**TIMOTHY R. O'REILLY, CHTD.**

**3A9 944 E39F 2D2B  
Joe Hardy  
District Court Judge**

By: /s/ Timothy R. O'Reilly

Timothy R. O'Reilly, Esq.  
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Las Vegas, Nevada 89101  
and  
Gerald I. Gillock, Esq.  
Nevada Bar No. 51  
GERALD I. GILLOCK & ASSOCIATES  
428 South Fourth Street  
Las Vegas, NV 89101

*Attorneys for Plaintiffs*

1 Approved as to form and content:

2 **McBRIDE HALL**

3  
4 By: /s/ T. Charlotte Buys

5 ROBERT C. MCBRIDE, ESQ.

6 Nevada Bar No. 7082

7 T. CHARLOTTE BUYS, ESQ.

8 Nevada Bar No. 14845

9 8329 W. Sunset Road, Suite 260

10 Las Vegas, Nevada 89113

11 *Attorneys for Defendants*

**From:** [Teyla Charlotte Buys](#)  
**To:** [Isela Arauz](#)  
**Cc:** [Timothy R. O'Reilly](#); [Gerald Gillock](#); [Michael Coggeshall](#); [Gaby Chavez](#); [Candace P. Cullina](#); [Natalie Jones](#); [Robert McBride](#); [Kristine Herpin](#)  
**Subject:** RE: Schrage, Krista / Medical Malpractice (60010-00001) adv Stahl - A-17-762364-C  
**Date:** Wednesday, April 27, 2022 5:25:37 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Thank you, Ms. Arauz. You may use my electronic signature on the revised Order.

I believe the Pre-Trial Memo is due to the Court by 4:00 p.m. on Friday, April 29, 2022, and would greatly appreciate being able to see the proposed Joint Pre-Trial Memo in advance of that deadline. Thank you.

Very truly yours,

Charlotte

T. Charlotte Buys, Esq.  
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**MCBRIDE HALL**  
**ATTORNEYS AT LAW**

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---

**From:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>

**Sent:** Wednesday, April 27, 2022 4:02 PM

**To:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Cc:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>; Michael Coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>

**Subject:** RE: Schrage, Krista / Medical Malpractice (60010-00001) adv Stahl - A-17-762364-C

Good afternoon Ms. Buys,

Mr. O'Reilly has accepted your redlines, could we affix your electronic signature and submit to court?

As to the Pre-Trial Memo we are hoping to circulate it by the end of the week.



**Isela Arauz**  
**Legal Assistant**

325 S. Maryland Parkway Las Vegas, Nevada 89101

**P:** 702-382-2500 | **F:** 702-384-6266

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**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Tuesday, April 26, 2022 2:01 PM

**To:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>

**Cc:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>; Michael Coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>

**Subject:** RE: Schrage, Krista / Medical Malpractice (60010-00001) adv Stahl - A-17-762364-C

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Good Afternoon Ms. Arauz,

Thank you for preparing the proposed Order. Enclosed please find a redlined version of the Order with proposed edits by Defendants. Specifically, Judge Hardy stated during the hearing that Defendants may renew the motion at the close of Plaintiffs' case-in-chief. Additionally, I believe the Pre-Trial Memo for this matter is due to the Court this week. Could you please advise when



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Kristina Schrage, Plaintiff(s)

CASE NO: A-17-762364-C

7 vs.

DEPT. NO. Department 15

8 Allan Stahl, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/29/2022

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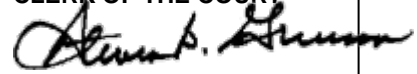
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Attorneys for Defendants,  
*Allan J. Stahl, M.D.*  
and *Allan J. Stahl, M.D., P.C.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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, 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;

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C**  
**DEPT NO.: XV**

**NOTICE OF ENTRY OF ORDER  
REGARDING DEFENDANTS  
ALLAN J. STAHL, M.D. AND ALLAN J.  
STAHL, M.D., P.C.'S MOTIONS IN  
LIMINE (1 – 10)**

PLEASE TAKE NOTICE that an ORDER REGARDING DEFENDANTS ALLAN J.  
STAHL, M.D. AND ALLAN J. STAHL, M.D., P.C.'S MOTIONS IN LIMINE (1 – 10) was filed

1 on the 18<sup>th</sup> day of January 2022, copy of which is attached hereto.

2

3 DATED this 19<sup>th</sup> day of January, 2022.

McBRIDE HALL

4

5

/s/ T. Charlotte Buys

6

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

7

T. CHARLOTTE BUYS, ESQ.

Nevada Bar No.: 114845

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8329 W. Sunset Road, Suite 260

9

Las Vegas, Nevada 89113

10

Attorneys for Defendants,

*Allen J. Stahl, M.D.*

11

*and Allen J. Stahl, M.D., P.C.*

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1  
2 **CERTIFICATE OF SERVICE**

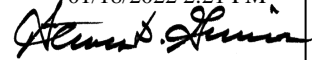
3 I HEREBY CERTIFY that on the 19<sup>th</sup> day of January 2022, I served a true and correct copy  
4 of the foregoing NOTICE OF ENTRY OF ORDER REGARDING DEFENDANTS ALLAN J.  
5 STAHL, M.D. AND ALLAN J. STAHL, M.D., P.C.'S MOTIONS IN LIMINE (1 – 10) addressed  
6 to the following counsel of record at the following address(es):  
7

- 8  
9 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
service attached to any copy filed with the Court; or  
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11 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
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12 States mail at Las Vegas, Nevada; or  
13 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
indicated on the service list below.  
14

15 Timothy R. O'Reilly, Esq.  
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-and-  
18 Gerald I. Gillock, Esq.  
GERALD I. GILLOCK & ASSOCIATES  
19 428 South Fourth Street  
20 Las Vegas, Nevada 89101  
Attorneys for Plaintiffs  
21  
22

23 /s/ Natalie A. Jones  
24 An Employee of McBRIDE HALL  
25  
26  
27  
28



  
CLERK OF THE COURT

**ORDR**

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Attorneys for Defendants  
*Allan J. Stahl, M.D.*  
*and Allan J. Stahl, M.D., P.C.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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, 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;

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
ALLAN J. STAHL, M.D., P.C., a Nevada  
Professional Corporation; DOES 1 through  
10, inclusive; ROE ENTITIES 1 through 10,  
inclusive,

Defendant.

**CASE NO.: A-17-762364-C  
DEPT NO.: XV**

**ORDER REGARDING DEFENDANTS  
ALLAN J. STAHL, M.D. AND ALLAN J.  
STAHL, M.D., P.C.'S MOTIONS IN  
LIMINE ( 1 – 10)**

**Date of Hearing: January 5, 2022  
Time of Hearing: 9:00 a.m.**

This cause having come on for hearing on January 5, 2022, upon Defendants, ALLAN J. STAHL, M.D. and ALLAN J. STAHL, M.D., P.C.'s Motions in Limine 1-10; and Plaintiffs being

1 represented by attorney TIMOTHY O'REILLY, ESQ. of the law firm of TIMOTHY R.  
2 O'REILLY, CHTD., and GERALD I. GILLOCK, ESQ. of the law firm of GERALD I. GILLOCK  
3 & ASSOCIATES, and Defendants being represented by ROBERT C. MCBRIDE, ESQ. and T.  
4 CHARLOTTE BUYS, ESQ. of the law firm of MCBRIDE HALL; and the Court having reviewed  
5 the papers and pleadings on file herein and having heard argument of counsel and otherwise being  
6 duly advised in the premises, hereby issues the following Order:

7 **GENERAL LANGUAGE REQUESTED BY THE COURT**

8 Rulings on Motions in Limine are provisional in nature and are made without prejudice,  
9 subject to revisions up to and during the time of trial. Additionally, evidence that is ruled to be  
10 excluded during hearing of the Parties' Motions in Limine, may be included at the time of trial,  
11 subject to the "opening of the door." However, if the Parties want excluded evidence to come in  
12 at the time of trial, they are reminded to raise that issue with the Court outside the presence of the  
13 jury. The Court also reminds the Parties to preserve any and all objections at the time of the trial  
14 regardless of the Court's rulings on the Parties' Motions in Limine.

15 **DEFENDANTS' MOTIONS IN LIMINE**

16  
17 ***Motion in Limine No. 1 – To Exclude Any Evidence of Argument in Furtherance of***  
18 ***Plaintiffs' Ordinary/ "Corporate" Negligence Claim and to Cap Hedonic Damages***  
***Pursuant to NRS 41A.035***

19 Ruling on Defendants Allan J. Stahl, M.D., and Allan J. Stahl, M.D., P.C.'s Motion in  
20 Limine No. 1 to exclude evidence or argument in furtherance of Plaintiffs' ordinary/ "corporate"  
21 negligence claim and to cap hedonic damages pursuant to NRS 41A.035 shall be DEFERRED  
22 until after the Plaintiffs' case-in-chief or after all of the evidence is heard at the conclusion of trial.

23 Defendants, Dr. Stahl and Allan J. Stahl, M.D., P.C., seek to preclude and/or dismiss any  
24 reference to any ordinary/ "corporate" negligence as alleged against Defendants in Plaintiffs'  
25 "Negligent Hiring, Training, and Supervision" claim, since such claim arises out of and is  
26 inherently linked to Plaintiffs' professional negligence claim. Plaintiffs' contend that their claim  
27 for "Negligent Hiring, Training, and Supervision" is a separate claim for ordinary negligence.  
28 Defendants contend that such claim for "Negligent Hiring, Training, and Supervision" arises out

1 of a contention sufficiency and/or existence of the training of a medical assistant performing a  
2 medical cardiac stress test of Plaintiffs' Decedent, Joseph Schrage, Jr, in a medical office and  
3 alleges the same medical injury, and is therefore subsumed into Plaintiffs' claim for professional  
4 negligence and subject to the requirements and limitations of NRS Chapter 41A, (including the  
5 cap on non-economic damages per NRS 41A.035), pursuant to *Montanez v. Sparks Family Hosp.*,  
6 137 Nev. Adv. Op. 77 at \*7 (Dec. 9, 2021), the *Estate of Mary Curtis, et al., v. Life Care Center*  
7 *of So. Las Vegas, et. al.*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (Nev. 2020); *Zhang, M.D. v. Barnes*,  
8 832 P.3d 878 (Nev. 2016) (unpublished); *Schwartz v. Univ. Med. Ctr. of S. Nevada*, 460 P.3d 25,  
9 No. 77554, No. 77666, 2020 WL 1531401 (Mar. 28, 2020); and *Turner v. Renown Reg'l Med. Ctr.*,  
10 461 P.3d 163 No. 77312, No. 77841, 2020 WL 1972790 (April 23, 2020).

11 ***Motion in Limine No. 2 – To Include Others on the Verdict Form***

12 Ruling on Defendants' Motion in Limine No. 2 to Include Others on the Verdict Form has  
13 been DEFERRED until the presentation of evidence at the time of trial.

14 Defendants' Motion seeks to include non-parties on the verdict form pursuant to *Piroozi v.*  
15 *Eighth Jud. Dist. Ct.*, 131 Nev. 1004, 363 P.3d 1168 (2015) and *Bhatia v. Eighth Jud. Dist. Ct.*,  
16 2018 Nev. Unpub. LEXIS 394, 417 P.3d 352 (May 9, 2018). Specifically, Defendants note that  
17 Plaintiffs' expert Dr. Moran opined in an expert Declaration that Plaintiffs' Decedent's treating  
18 primary care physician, Dr. Michael Jacobs, breached the standard of care and that Dr. Moran was  
19 familiar with the standard of care for a primary care physician. However, Dr. Moran later testified  
20 in his deposition that he was not familiar with the standards of care for a primary care physician.  
21 The Court does note that Plaintiffs' expert, Michael Moran, M.D., in his August 12, 2018  
22 Declaration does appear to aver about his familiarity with a primary care physician and standard  
23 of care as to Dr. Jacobs and Dr. Stahl, both.

24  
25 ***Motion in Limine No. 3 – To Exclude Conversations Between Plaintiff Kristina Schrage,***  
26 ***Dr. Pitor Kubiczek, and Dr. Marc Ovadia***

27 Defendants' Motion to Exclude Conversations between Plaintiff Kristina Schrage and Dr.  
28 Pitor Kubiczek is hereby GRANTED. Plaintiffs may not introduce statements from Ms. Kristina

1 Schrage's conversation with Dr. Pitor Kubiczek regarding whether Mr. Schrage's death was  
2 preventable and her conversations with her son's Cardiologist, Dr. Marc Ovadia, who did not treat  
3 Mr. Schrage, regarding the quality of Dr. Stahl's medical care, as such statements are inadmissible  
4 hearsay being offered for the truth of the matter asserted pursuant to NRS 51.065.

5  
6 ***Motion in Limine No. 4 – To Exclude Autopsy Photographs***

7 DEFERRED Ruling to address specific issues that may arise at trial.

8 ***Motion in Limine No. 5 – To Require Expert Testimony to Establish Medical Negligence***  
9 ***and to Exclude Evidence Not in Compliance with NRS 41A.100***

10 Defendants' Motion to Require Expert Testimony to Establish Medical Negligence and to  
11 Exclude Evidence Not in Compliance with NRS 41A.100 is DENIED IN PART and GRANTED  
12 IN PART. The Court orders that only experts will be allowed to establish a breach of the standard  
13 of care and causation at the time of trial. Lay witnesses, however, may offer opinions based upon  
14 their perceptions as set forth under NRS 50.265. To the extent a question or an answer appears to  
15 be in violation in the limitations of lay witness testimony per NRS 50.265, the parties may object  
16 or move to strike such testimony and the specific issue will be ruled upon at the time of trial.

17  
18 ***Motion in Limine No. 6 – To Introduce Evidence of Collateral Sources Under NRS***  
19 ***42.021***

20 Defendants' Motion in Limine No. 6 to Introduce Evidence of Collateral Sources Under  
21 NRS 42.021 is GRANTED IN PART and DENIED IN PART. Although Defendants' Motion in  
22 Limine No. 6 was unopposed by Plaintiffs, the Court allowed verbal opposition argument in light  
23 of Plaintiffs' Motion in Limine No. 1. The Court holds that Defendants, who are statutory providers  
24 of health care as such is defined in NRS 41A.017, may introduce evidence of collateral source  
25 payments from Social Security, any type of medical insurance and any accident insurance with  
26 proper foundation. Evidence of Plaintiffs' life insurance payments and student loan forgiveness  
27 shall be excluded, but the Court's decision to exclude such payments may be subject to revision in  
28 light of additional briefing, if any.

1  
2 ***Motion in Limine No. 7 – To Preclude Plaintiffs from Eliciting Testimony Regarding***  
3 ***Any Deviation from the Standard of Care that Did Not Cause or Contribute to Any of***  
4 ***Plaintiff’s Injuries***

5 Defendant’s Motion in Limine No. 7 to preclude Plaintiffs from eliciting testimony  
6 regarding any deviation from the standard of care that did not cause or contribute to any of  
7 Plaintiffs’ alleged injuries is DENIED, as the Motion is overly broad. The Court will welcome  
8 particularized objections or motions to strike testimony on a question-by-question and/or answer-  
9 by-answer basis at the time of trial.

10 ***Motion in Limine No. 8 – To Exclude Photographs and Videos Disclosed in Plaintiffs’***  
11 ***Second Supplemental 16.1 Disclosure from Evidence***

12 DEFERRED Ruling to address specific issues that may arise at trial.

13 ***Motion in Limine No. 9 – To Preclude Jeffrey Silvestri, Esq. from Providing “Expert”***  
14 ***Opinions***

15 Defendants’ Motion in Limine to exclude certain “expert” opinions of Jeffrey Silvestri,  
16 Esq. is DENIED, as Mr. Silvestri was disclosed as a non-retained expert witness, was deposed,  
17 and due to his status as a managing partner of a law firm. However, admission of Mr. Silvestri’s  
18 testimony at the time of trial is subject to the laying of proper foundation.

19  
20 ***Motion in Limine No. 10 – To Exclude Economic Opinions of Plaintiffs’ Expert David***  
21 ***Swanson***

22 Defendants’ Motion in Limine to exclude the economic opinions of Plaintiffs’ expert David  
23 Swanson is DENIED IN PART and GRANTED IN PART. Defendants contend that Mr.  
24 Swanson’s economic opinions are speculative and will not assist the trier of fact pursuant to  
25 *Hallmark v. Eldridge*, 124 Nev. 189 P.3d 636 (Nev. 2008). Defendants also contend that Mr.  
26 Swanson’s March 6, 2020 report was an untimely expert disclosure. During oral argument,  
27 Plaintiffs’ counsel agreed to withdraw Mr. Swanson’s untimely March 6, 2020 report. The Court  
28 therefore DENIES IN PART Defendants’ Motion in Limine No. 10, as the issue raised as to



whether Mr. Swanson's economic opinions are speculative and will assist the trier of fact goes to the weight of his testimony. However, Mr. Swanson's testimony must be subject to proper foundation and will be subject to cross-examination and impeachment at the time of trial.

**IT IS SO ORDERED.**

Dated this 18th day of January, 2022



**A8A FDC 83C6 94B0**  
**Joe Hardy**  
**District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

DATED this 14<sup>th</sup> day of January, 2022.

DATED this 14<sup>th</sup> day of January, 2022.

/s/ T. Charlotte Buys

ROBERT C. McBRIDE, ESQ.  
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T. CHARLOTTE BUYS, ESQ.  
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/s/Timothy R. O'Reilly

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**To:** [Teyla Charlotte Buys](#); [Timothy R. O'Reilly](#); [Gerald Gillock](#)  
**Cc:** [Robert McBride](#); [Kristine Herpin](#); [Natalie Jones](#); [Candace P. Cullina](#); [Gaby Chavez](#); [Michael coggeshall](#)  
**Subject:** RE: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine  
**Date:** Friday, January 14, 2022 10:57:13 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[Pltfs" proposed orders on MILs 1-8.pdf](#)

---

Good morning Ms. Buys,

Attached are our revised proposed orders. Please advise if we may affix your electronic signature on these.

Also, Mr. O'Reilly authorizes you to affix his signature on your proposed orders.

Thank you for your prompt attention to this matter.



**Isela Arauz**  
**Legal Assistant**

325 S. Maryland Parkway Las Vegas, Nevada 89101

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---

**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Thursday, January 13, 2022 2:06 PM

**To:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** Re: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Good Afternoon Ms. Arauz,

Please advise if we may use Mr. O'Reilly's electronic signature on the proposed Order regarding Defendant's Motions in Limine. If we do not hear back regarding any proposed changes to Defendants' Order, we will submit it for the Court's consideration as written tomorrow, January 14,

2022, at 12:00 p.m.

In reviewing Plaintiffs' proposed Order on Plaintiffs' Motions in Limine (1-8), we have a number of issues and are requesting changes in the proposed Order consistent with these issues:

1. On page 3, line 2 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 1 - please change the word "payment" to "\$30,000 gift."
- 2.
3. On page 3 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 2 - please revise to state "Plaintiff's Motion in Limine No. 2 is granted because there is no report or deposition testimony by the defense experts that criticizes Drs. Michael Jacobs or Brent Burnette. However, if the Defense believes the door has been opened at the time of trial, objections can be raised outside the presence of the jury."
- 4.
5. On page 3, line 1 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 3 - please revise Plaintiffs' "MMIL No. 3" to "Plaintiffs' MIL No. 3 is denied because while it appears that Dr. Aragon, a Cardiologist, and Dr. Klancke, an Interventional Cardiologist, are similar, they are not the same in terms of background or qualifications and their opinions are not overly cumulative. However, objections may be raised at the time of trial."
- 6.
7. On page 3 of Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 4 - please revise to read "Plaintiffs' MIL No. 4 is granted. Dr. Stahl can testify as to his opinions formed in the course and scope of treatment, opinions disclosed in his deposition, opinions disclosed in the medical records and opinions disclosed during discovery."
- 8.
9. Plaintiffs' proposed Order regarding Plaintiffs' Motion in Limine No. 8 - please remove the sentence "It is not clear to the Court that Dr. Fishbein's disclosure is a rebuttal disclosure in contrast to an initial disclosure." The Court found that Dr. Fishbein was not a rebuttal expert.

We would appreciate you making these changes, and then we would be able to electronically sign the proposed Order as to form and content.

Very truly yours,

Charlotte

T. Charlotte Buys, Esq.  
[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com) | [mcbridehall.com](http://mcbridehall.com)  
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# MCBRIDE HALL

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---



**From:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>  
**Sent:** Wednesday, January 12, 2022 5:49 PM  
**To:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>; Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>  
**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>  
**Subject:** RE: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Good afternoon Ms. Buys,

Attached please find Plaintiffs' Proposed Orders on Motions in Limine 1-8. Let us know if you have changes or if we may affix your esignature on said orders.

Your prompt attention to this matter is greatly appreciated.



**Isela Arauz**  
**Legal Assistant**  
325 S. Maryland Parkway Las Vegas, Nevada 89101  
**P:** [702-382-2500](tel:7023822500) | **F:** [702-384-6266](tel:7023846266)  
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**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Wednesday, January 12, 2022 8:53 AM

**To:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** Re: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Tim,

Sounds good. Thank you.

Sincerely,

Charlotte

T. Charlotte Buys, Esq.

[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com) | [mcbridehall.com](http://mcbridehall.com)

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---

**From:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>



**Sent:** Wednesday, January 12, 2022 8:50 AM

**To:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** RE: Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Charlotte,

Will review and get back with you today.

Tim

---

**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Tuesday, January 11, 2022 8:20 AM

**To:** Timothy R. O'Reilly <[tor@oreillylawgroup.com](mailto:tor@oreillylawgroup.com)>; Gerald Gillock <[gillock@gmk-law.com](mailto:gillock@gmk-law.com)>

**Cc:** Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Kristine Herpin <[kherpin@mcbridehall.com](mailto:kherpin@mcbridehall.com)>; Natalie Jones <[njones@mcbridehall.com](mailto:njones@mcbridehall.com)>; Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>; Gaby Chavez <[GChavez@gmk-law.com](mailto:GChavez@gmk-law.com)>; Michael coggeshall <[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)>

**Subject:** Schrage v. Stahl, M.D., Order Regarding Defendants' Motions in Limine

Dear Tim and Jerry,

Enclosed please find the proposed Order Regarding Defendants' Motions in Limine in the Schrage, et al. v. Allan Stahl, M.D., et al. matter. Please advise if you have any changes or if we may use your electronic signature by 12:00 p.m. tomorrow, January 12, 2022, so that we may get this submitted timely to the Court.

Very truly yours,

Charlotte

T. Charlotte Buys, Esq.

[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com) | [mcbridehall.com](http://mcbridehall.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Kristina Schrage, Plaintiff(s)

CASE NO: A-17-762364-C

7 vs.

DEPT. NO. Department 15

8 Allan Stahl, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 1/18/2022

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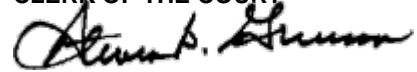
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1 **NEOJ**

2 TIMOTHY R. O'REILLY, ESQ.

3 Nevada Bar No. 8866

4 **TIMOTHY R. O'REILLY, CHTD.**

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6 Las Vegas, Nevada 89101

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11 Nevada Bar No. 51

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13 Nevada Bar No. 14502

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20 [mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**

23 **CLARK COUNTY NEVADA**

24 KRISTINA DANICA SCHRAGE,

25 Individually and as spouse as natural heir of

26 JOSEPH PATRICK SCHRAGE, JR., and on

27 behalf of the ESTATE OF JOSEPH

28 PATRICK SCHRAGE, JR.; JOSEPH

29 PATRICK SCHRAGE, III, AND MILA

30 DANICA SCHRAGE, minors, each

31 individually and as children and natural heirs

32 of JOSEPH PATRICK SCHRAGE, JR., by

33 and through their Natural Parent and

34 Guardian KRISTINA DANICA SCHRAGE,

35 Plaintiff,

36 vs.

37 ALLAN J. STAHL, M.D.; an individual;

38 DOES 1 through 10, inclusive; ROE

39 ENTITIES 1 through 10, inclusive,

40 Defendant.

CASE NO.: A-17-762364-C

DEPT. NO.: XV

**NOTICE OF ENTRY OF ORDER ON**  
**DEFENDANTS' (1) MOTION FOR**  
**LEAVE AND (2) MOTION FOR**  
**PARTIAL SUMMARY JUDGMENT TO**  
**DISMISS PLAINTIFFS' CLAIM FOR**  
**PUNITIVE DAMAGES**

1 PLEASE TAKE NOTICE that the Order on Defendants' (1) Motion for Leave and (2)  
2 Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages was  
3 entered and filed on the 29<sup>th</sup> day of April, 2022, a copy of which is attached hereto.

4 DATED: this 3<sup>rd</sup> day of May, 2022

**TIMOTHY R. O'REILLY, CHTD.**

6 By: /s/ Timothy R. O'Reilly  
7 Timothy R. O'Reilly, Esq.  
8 Nevada Bar No. 8866  
9 325 South Maryland Parkway  
10 Las Vegas, Nevada 89101  
11 and  
12 Gerald I. Gillock, Esq.  
13 Nevada Bar No. 51  
14 GERALD I. GILLOCK & ASSOCIATES  
15 428 South Fourth Street  
16 Las Vegas, NV 89101

*Attorneys for Plaintiffs*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the law offices of TIMOTHY R. O'REILLY, CHTD. and that, on this 3<sup>rd</sup> day of May, 2022, I served the above and foregoing **NOTICE OF ENTRY OF ORDER ON DEFENDANTS' (1) MOTION FOR LEAVE AND (2) MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES** pursuant to N.R.C.P. 5(b) by:

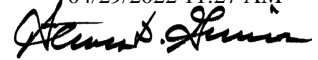
- ☒ Electronic transmission through E-Service (EFS) of the Eighth Judicial District Court to the email address(es) of the parties listed below:
- ☐ U.S. Mail by placing a copy of same in a sealed envelope, with postage fully prepaid thereon, to the parties listed below:
- ☐ Facsimile transmission to the fax number(s) of the parties listed below:

**McBRIDE HALL**

Robert C. McBride, Esq. – rcmcbride@mcbridehall.com  
T. Charlotte Buys, Esq. – tcbuys@mcbridehall.com  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys for Defendants  
*Allan J. Stahl, M.D. and Allan J. Stahl, M.D., P.C.*



\_\_\_\_\_  
An Employee of TIMOTHY R. O'REILLY, CHTD.

  
CLERK OF THE COURT

TIMOTHY R. O'REILLY, CHTD.  
325 South Maryland Parkway • Las Vegas, Nevada 89101  
Telephone (702) 382-2500 • Facsimile (702) 384-6266

**ORDR**

TIMOTHY R. O'REILLY, ESQ.  
Nevada Bar No. 8866

**TIMOTHY R. O'REILLY, CHTD.**

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Las Vegas, Nevada 89101  
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GERALD I. GILLOCK, ESQ.  
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MICHAEL H. COGGESHALL, ESQ.  
Nevada Bar No. 14502

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[mcoggeshall@gmk-law.com](mailto:mcoggeshall@gmk-law.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

KRISTINA DANICA SCHRAGE,  
Individually and as spouse as natural heir of  
JOSEPH PATRICK SCHRAGE, JR., and on  
behalf 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,

Plaintiff,

vs.

ALLAN J. STAHL, M.D.; an individual;  
DOES 1 through 10, inclusive; ROE  
ENTITIES 1 through 10, inclusive,

Defendant.

CASE NO.: A-17-762364-C  
DEPT. NO.: XV

**ORDER ON DEFENDANTS' (1)**  
**MOTION FOR LEAVE AND (2)**  
**MOTION FOR PARTIAL SUMMARY**  
**JUDGMENT TO DISMISS PLAINTIFFS'**  
**CLAIM FOR PUNITIVE DAMAGES**

Defendants' (1) Motion for Leave and (2) Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages, came before this Court on March 28, 2022 in Department 15 of this Honorable Court, Plaintiffs appearing by Gerald I. Gillock, Esq. and Defendants appeared by T. Charlotte Buys, Esq. The Court having considered the Motion, Opposition, and Reply, along with supporting documents, as well as the pleadings and papers on file in this matter, and having heard the arguments of counsel at the time of hearing, this Court orders the following:

IT IS HEREBY ORDERED that Defendants' Motion for Leave is hereby granted as the trial date in this matter was moved to June 6, 2022, and Defendants' Motion for Partial Summary Judgment to Dismiss Plaintiffs' Claim for Punitive Damages is denied without prejudice. This Order does not preclude Defendants from renewing the Motion to Dismiss Plaintiffs' Claim for Punitive Damages after the close of Plaintiff's case in chief at the time of trial.

**IT IS SO ORDERED.**

Dated this 29th day of April, 2022



Submitted by:

**TIMOTHY R. O'REILLY, CHTD.**

**3A9 944 E39F 2D2B  
Joe Hardy  
District Court Judge**

By: /s/ Timothy R. O'Reilly  
Timothy R. O'Reilly, Esq.  
Nevada Bar No. 8866  
325 South Maryland Parkway  
Las Vegas, Nevada 89101  
and  
Gerald I. Gillock, Esq.  
Nevada Bar No. 51  
GERALD I. GILLOCK & ASSOCIATES  
428 South Fourth Street  
Las Vegas, NV 89101

*Attorneys for Plaintiffs*

1 Approved as to form and content:

2 **McBRIDE HALL**

3  
4 By: /s/ T. Charlotte Buys  
5 ROBERT C. MCBRIDE, ESQ.  
6 Nevada Bar No. 7082  
7 T. CHARLOTTE BUYS, ESQ.  
8 Nevada Bar No. 14845  
9 8329 W. Sunset Road, Suite 260  
10 Las Vegas, Nevada 89113

11 *Attorneys for Defendants*

**From:** [Teyla Charlotte Buys](#)  
**To:** [Isela Arauz](#)  
**Cc:** [Timothy R. O'Reilly](#); [Gerald Gillock](#); [Michael Coggeshall](#); [Gaby Chavez](#); [Candace P. Cullina](#); [Natalie Jones](#); [Robert McBride](#); [Kristine Herpin](#)  
**Subject:** RE: Schrage, Krista / Medical Malpractice (60010-00001) adv Stahl - A-17-762364-C  
**Date:** Wednesday, April 27, 2022 5:25:37 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Thank you, Ms. Arauz. You may use my electronic signature on the revised Order.

I believe the Pre-Trial Memo is due to the Court by 4:00 p.m. on Friday, April 29, 2022, and would greatly appreciate being able to see the proposed Joint Pre-Trial Memo in advance of that deadline. Thank you.

Very truly yours,

Charlotte

T. Charlotte Buys, Esq.  
[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com) | [mcbridehall.com](http://mcbridehall.com)  
8329 West Sunset Road  
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Las Vegas, Nevada 89113  
Telephone: (702) 792-5855  
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**MCBRIDE HALL**  
**ATTORNEYS AT LAW**

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---

**From:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>

**Sent:** Wednesday, April 27, 2022 4:02 PM

**To:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

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**Subject:** RE: Schrage, Krista / Medical Malpractice (60010-00001) adv Stahl - A-17-762364-C

Good afternoon Ms. Buys,

Mr. O'Reilly has accepted your redlines, could we affix your electronic signature and submit to court?

As to the Pre-Trial Memo we are hoping to circulate it by the end of the week.



**Isela Arauz**  
**Legal Assistant**

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**From:** Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Sent:** Tuesday, April 26, 2022 2:01 PM

**To:** Isela Arauz <[ia@oreillylawgroup.com](mailto:ia@oreillylawgroup.com)>

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**Subject:** RE: Schrage, Krista / Medical Malpractice (60010-00001) adv Stahl - A-17-762364-C

Your attachments have been security checked by Mimecast Attachment Protection. Files where no threat or malware was detected are attached.

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Good Afternoon Ms. Arauz,

Thank you for preparing the proposed Order. Enclosed please find a redlined version of the Order with proposed edits by Defendants. Specifically, Judge Hardy stated during the hearing that Defendants may renew the motion at the close of Plaintiffs' case-in-chief. Additionally, I believe the Pre-Trial Memo for this matter is due to the Court this week. Could you please advise when



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Kristina Schrage, Plaintiff(s)

CASE NO: A-17-762364-C

7 vs.

DEPT. NO. Department 15

8 Allan Stahl, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/29/2022

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