

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOLAVANAHALLI KESHAVA-
PRASAD, M.D. AND H. KESHAVA
PRASAD, MD, PLLC,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
ex rel. THE COUNTY OF CLARK, AND
THE HONORABLE JUDGE GLORIA
STURMAN,

Respondent,

and

LASHAWANDA WATTS,

Real Party in Interest,

and

VALLEY HEALTH SYSTEM, LLC d/b/a
DESERT SPRINGS HOSPITAL; ABDUL
TARIQ, D.O.; NEUROLOGY CLINICS
OF NEVADA LLC; AMIR QURESHI,
M.D.; ROE AMIR QURESHI, M.D.
EMPLOYER; ALI HAQ, M.D.; ROE ALI
HAQ, M.D. EMPLOYER; CHARLES
KIM DANISH, D.O.; PLATINUM
HOSPITALISTS, LLP; DOES 1-35; ROE
CORPORATIONS 1-35, inclusive,

Additional Parties in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR WRIT OF MANDAMUS

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NRAP 26.1 DISCLOSURE

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

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None
2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court: Lewis Brisbois Bisgaard & Smith LLP; Brenske Andreevski & Krametbauer; McBride Hall; Hall Prangle & Schoonveld, LLC; Collinson, Daehnke, Inflow & Greco; John H. Cotton & Associates, LTD.
3. If litigant is using a pseudonym, the litigant's true name: N/A

Dated this 20th day of June 2022.

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/s/ Shady Sirsy

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TABLE OF CONTENTS

	<u>Page</u>
I. RELIEF SOUGHT.....	1
II. ROUTING STATEMENT	1
III. ISSUE PRESENTED.....	1
Should Respondent have dismissed Plaintiff’s professional negligence claim against Petitioner based on a violation of N.R.S. 41A.071 when Plaintiff’s medical experts’ affidavits are authored by a Rheumatologist and General Surgeon who do not practice in an area that is substantially similar to the type of practice engaged by Petitioner (Hematology) at the time of the alleged professional negligence?	1
IV. INTRODUCTION	2
A. Relevant Procedural History.....	2
B. Statement of Relevant Facts	5
V. STATEMENT OF REASONS THE WRIT SHOULD ISSUE	12
A. Standard for Writ of Mandamus.....	12
B. Respondent Manifestly Abused its Discretion by Denying Petitioner’s Motion to Dismiss Based on Plaintiff’s Failure to Comply with N.R.S. 41A.071	14
1. An Expert Affidavit Supporting the Allegations Contained in the Complaint is Required by N.R.S. 41A.071	15
2. A Substantial Similarity in Practice Areas is Required by N.R.S. 41A.071	17
VI. CONCLUSION.....	26

TABLE OF AUTHORITIES

Federal Cases

<i>Cunningham v. Arizona</i> , 2013 U.S. Dist LEXIS 92752	18, 25
--	--------

State Cases

<i>Borger v. Eighth Judicial District Court</i> , 120 Nev. 1021, 102 P.3d 600 (2004).....	15, 20
<i>Carnes v. Wairimu</i> , 2011 Nev. Unpub. LEXIS 504	20, 23
<i>Cote H. v. Eighth Judicial Dist. Court</i> , 175 P.3d 906 (Nev. 2008).....	12
<i>Gaston v. Hunter</i> , 121 Ariz. 33, 588 P.2d 326 (1978)	18, 25
<i>Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.</i> , 124 Nev. 193, 179 P.3d 556 (2008).....	12
<i>Lowe Enters. Residential Ptnrs., L.P. v. Eighth Judicial Dist. Court</i> , 118 Nev. 92 (2002)	13
<i>Smith v. Eighth Judicial Dist. Ct.</i> , 107 Nev. 674, 818 P.2d 849 (1991).....	14
<i>Staccato v. Valley Hosp.</i> , 123 Nev. 526, 170 P.3d 503 (2007).....	18
<i>Estate of Stacy Briggs v. Univ. Med. Ctr.</i> , 2010 Nev. Dist. LEXIS 666 (Eighth Jud. Dist. Ct., June 30, 2010, Case No. A610310, Dept. No. 15).....	18, 19
<i>State v. Eighth Judicial Dist. Ct. (Anzalone)</i> , 118 Nev. 140, 42 P.3d 233 (2002).....	13
<i>State v. Eighth Judicial Dist. Ct. (Armstrong)</i> , 127 Nev. 927, 267 P.3d 777 (2011).....	12

<i>Washoe Med. Ctr. v. Second Jud. Dist. Ct.</i> , 122 Nev. 1298, 145 P.3d 790 (2006).....	15, 25, 26
---	------------

Constitutions

Nev. Const. Article VI, § 4	1
-----------------------------------	---

Statutes

N.R.S. 34.160	12
N.R.S. 34.170	14
N.R.S. 41A.071 1, 2, 3, 4, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26	
N.R.S. 41A.071(2)	24
Nev. Rev. Stat. § 34.150 et seq.	1

Court Rules

Nev. R. App. P. 21	1
Nev. R. App. P. 21(a)(5)	27
Nev. R. App. P. 21(a)(5)	28
Nev. R. App. P. 21(d).....	28
Nev. R. App. P. 32(c)(2)	28
NRAP 17(a)(12).....	2
N.R.A.P. 36(c)(2).....	20, 23
Supreme Court Rule 123.....	20, 23

I. RELIEF SOUGHT

Petitioner Holavanahalli Keshava-Prasad, M.D. respectfully requests that this Court issue a Writ of Mandamus pursuant to Nev. Rev. Stat. § 34.150 et seq., Nev. R. App. P. 21 and Nev. Const. art. VI, § 4, directing Respondent to grant Petitioner's Motion to Dismiss based on Real Party in Interest Lashawanda Watts' ("Plaintiff") failure to fulfill the requirements of N.R.S. 41A.071. Respondent improperly found that Plaintiff's proffered medical experts, who specialize in the area of Rheumatology and General Surgery, are qualified to render standard of care and causation opinions regarding the actions of Petitioner who specializes in the area of Hematology and Oncology.

II. ROUTING STATEMENT

This matter is presumptively retained by the Nevada Supreme Court pursuant NRAP 17(a)(12). The Petition raises as a principal issue a question of statewide public importance.

III. ISSUE PRESENTED

Should Respondent have dismissed Plaintiff's professional negligence claim against Petitioner based on a violation of N.R.S. 41A.071 when Plaintiff's medical experts' affidavits are authored by a Rheumatologist and General Surgeon who do not practice in an area that is substantially similar to the type of practice engaged by Petitioner (Hematology) at the time of the alleged professional negligence?

IV. INTRODUCTION

A. Relevant Procedural History

Petitioner is a Defendant in the underlying matter. The Complaint was filed on July 22, 2021.¹ Plaintiff alleged the following cause of action against Petitioner: professional medical negligence. Plaintiff further alleged vicarious liability as a cause of action against Petitioner's professional limited liability company.

On August 19, 2021, Petitioner filed his Motion to Dismiss Plaintiff's Complaint on the basis Plaintiff failed to fulfill the requirements of N.R.S. 41A.071.²

On August 23, 2021, Defendant Valley Health System, LLC doing business as Desert Springs Hospital filed its Joinder to Petitioner's Motion to Dismiss.³ Later that day, Defendants Ali Haq, M.D., Charles Kim Danish, D.O. and Platinum Hospitalists, LLP filed their substantive joinder to Petitioner's Motion to Dismiss.⁴

On August 26, 2021, Defendant Valley Health System, LLC doing business as Desert Springs Hospital filed its Joinder to Defendants Ali Haq, M.D., Charles Kim Danish, D.O. and Platinum Hospitalists, LLP's Substantive Joinder and

¹ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 002-054.

² Petitioner's Appendix, Vol. I, Exhibit 2, pp. 056-128.

³ Petitioner's Appendix, Vol. I, Exhibit 3, pp. 130-132.

⁴ Petitioner's Appendix, Vol. I, Exhibit 4, pp. 134-136.

Defendant Amir Qureshi, M.D.’s Joinder to Petitioner’s Motion to Dismiss.⁵

Plaintiff filed her Opposition to Petitioner’s Motion to Dismiss and all Joinders thereto on August 27, 2021.⁶

On September 3, 2021, Defendants Abdul Tariq, D.O. and Neurology Clinics of Nevada LLC filed a separate Motion to Dismiss based on Plaintiff’s failure to fulfill the requirements of N.R.S. 41A.071.⁷

On September 14, 2021, Petitioner filed his Reply in Support of his Motion to Dismiss.⁸ On September 15, 2021, Defendants Ali Haq, M.D., Charles Kim Danish, D.O. and Platinum Hospitalists, LLP filed their substantive joinder to the Petitioner’s Reply.⁹

On September 23, 2021, Plaintiff filed her opposition to Defendants Abdul Tariq, D.O. and Neurology Clinics of Nevada LLC Motion to Dismiss.¹⁰

On October 4, 2021, Defendant Amir Qureshi, M.D. filed his Substantive Joinder to Petitioner’s Motion to Dismiss.¹¹

On October 5, 2021, Defendants Abdul Tariq, D.O. and Neurology Clinics of Nevada LLC filed their Reply to Plaintiff’s Opposition to their Motion to

⁵ Petitioner’s Appendix, Vol. I, Exhibit 5, pp. 138-141.

⁶ Petitioner’s Appendix, Vol. I, Exhibit 6, pp. 143-158.

⁷ Petitioner’s Appendix, Vol. I, Exhibit 7, pp. 160-222.

⁸ Petitioner’s Appendix, Vol. I, Exhibit 8, pp. 224-285.

⁹ Petitioner’s Appendix, Vol. I, Exhibit 9, pp. 287-289.

¹⁰ Petitioner’s Appendix, Vol. I, Exhibit 10, pp. 291-296.

¹¹ Petitioner’s Appendix, Vol. I, Exhibit 11, pp. 298-302.

Dismiss.¹²

A hearing on Petitioner's Motion to Dismiss and Defendants Abdul Tariq, D.O. and Neurology Clinics of Nevada LLC Motion to Dismiss was held on October 12, 2021.¹³ Respondent verbally denied Petitioner's Motion to Dismiss Plaintiff's claims premised on a failure to fulfill the requirements of N.R.S. 41.071.¹⁴ Respondent further denied all Joinders to the Motion to Dismiss. A written order denying Petitioner's Motion to Dismiss due to Plaintiff's failure to comply with N.R.S. 41A.071, Defendants Abdul Tariq, D.O. and Neurology Clinics of Nevada LLC Motion to Dismiss, and all Joinders, was issued on January 26, 2022¹⁵, and served with notice of entry on January 27, 2022.¹⁶

Respondent found that Plaintiff's medical experts' affidavits were "compliant"¹⁷ and "adequate"¹⁸ to meet NRS 41A.071, reasoning that Plaintiff was not criticizing the hematological care provided by Dr. Keshava-Prasad.¹⁹ Rather, Plaintiff's criticisms rise from an alleged duty to refer Plaintiff to an appropriate specialist, regardless of the treating specialist's function at the time or reason as to

¹² Petitioner's Appendix, Vol. I, Exhibit 12, pp. 304-313.

¹³ Petitioner's Appendix, Vol. I, Exhibit 13, pp. 315-335.

¹⁴ Petitioner's Appendix, Vol. I, Exhibit 13, p. 334.

¹⁵ Petitioner's Appendix, Vol. I, Exhibit 14, pp. 337-351.

¹⁶ Petitioner's Appendix, Vol. I, Exhibit 15, pp. 353-371.

¹⁷ Petitioner's Appendix, Vol. I, Exhibit 13, p. 328.

¹⁸ Petitioner's Appendix, Vol. I, Exhibit 13, p. 328.

¹⁹ Petitioner's Appendix, Vol. I, Exhibit 13, pp. 317-318.

why they are asked to consult on a patient.²⁰

B. Statement of Relevant Facts

Lashawanda Watts was an inpatient at Defendant Desert Springs Hospital from July 20, 2020 to July 27, 2020.²¹ She presented to Desert Springs Hospital complaining of increasing discomfort and discoloration of both her feet.²²

Defendant Charles Kim Danish, D.O., a hospitalist, served as Ms. Watts's attending physician throughout her admission at Desert Springs Hospital.²³ Ms. Watts also received consults from providers in specialties during her stay at Desert Springs Hospital, including Defendants Ali Haq, M.D., internal medicine; Abdul Tariq, D.O., neurology; Amir Qureshi, M.D., infectious diseases; and Petitioner Dr. Keshava-Prasad, hematology/oncology.²⁴ On July 23, 2020, Dr. Tariq ordered a "vasculitis panel." Ms. Watts subsequently received intravenous steroids, in addition to other treatments.²⁵

Dr. Keshava-Prasad consulted on Ms. Watts's case on July 26, 2020²⁶ and

²⁰ Petitioner's Appendix, Vol. I, Exhibit 13, p. 318.

²¹ Petitioner's Appendix, Vol. I, Exhibit 1, p. 007.

²² Petitioner's Appendix, Vol. I, Exhibit 1, p. 006.

²³ Petitioner's Appendix, Vol. I, Exhibit 1, p. 007.

²⁴ Petitioner's Appendix, Vol. I, Exhibit 1, p. 009.

²⁵ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 009-010.

²⁶ Dr. Keshava-Prasad consulted on Ms. Watt's case on two separate occasions at her stay at Desert Springs Hospital. While immaterial to the issues presented by this Writ, Defendant's subject Motion to Dismiss makes mention of only one occasion.

July 27, 2020²⁷, the day of her discharge from Desert Springs Hospital. On July 26, 2020 he assessed Ms. Watts, noted ongoing pain and discoloration of her toes, and referenced in his note the tentative diagnosis, “probable vasculitis.”²⁸ As a hematologist consultant, he suggested additional testing and pharmaceutical therapies and agreed with the steroids already ordered.²⁹ On July 27, 2020, Dr. Keshava-Prasad noted no significant skin lesions were present.³⁰ That same day, Ms. Watts was discharged to Encompass Health Rehabilitation Hospital of Henderson.³¹ Ms. Watts was later transferred to University Medical Center and then to Dixie Regional Medical Center in Utah, where the vasculitis diagnosis was confirmed, and treatment continued.³² Eventually, Ms. Watts lost four of her toes to amputation and others autoamputated.³³

Five days prior to expiration of the statute of limitations, Plaintiff filed the current lawsuit against Valley Health System, LLC doing business as Desert Springs Hospital, Abdul Tariq, D.O., Neurology Clinics of Nevada LLC, Amir Qureshi, M.D., his employer, Ali Haq, M.D., his employer, Charles Kim Danish, D.O., Platinum Hospitalists, LLP, and Petitioners Dr. H. Keshava Prasad, M.D.,

²⁷ Petitioner’s Appendix, Vol. I, Exhibit 1, pp. 007-008.

²⁸ Petitioner’s Appendix, Vol. I, Exhibit 1, p. 007.

²⁹ Petitioner’s Appendix, Vol. I, Exhibit 1, pp. 007-008.

³⁰ Petitioner’s Appendix, Vol. I, Exhibit 1, pp. 007-008.

³¹ Petitioner’s Appendix, Vol. I, Exhibit 1, p. 007.

³² Petitioner’s Appendix, Vol. I, Exhibit 1, p. 008.

³³ Petitioner’s Appendix, Vol. I, Exhibit 1, p. 008.

and H. Keshava Prasad, MD, PLLC.³⁴ The Complaint contains eleven causes of action but raises two legal issues: (1) medical malpractice (against each provider individually); and (2) vicarious liability (against Desert Springs Hospital and each provider's professional corporation).³⁵ The entirety of Plaintiff's allegations was supported by Rebecca M. Shepherd, M.D., a rheumatologist, and Mark A. Smith, M.D., a general surgeon.³⁶

According to the Complaint, and reiterated in the affidavit of Dr. Shepherd, Dr. Keshava-Prasad "neglected to provide appropriate treatment for vasculitis when the diagnosis of vasculitis was initially suspected."³⁷ She declares that IV methylprednisolone is the established "standard of care in the initial management of small vessel vasculitis" and that Dr. Keshava-Prasad had the "training and capability to initiate IV corticosteroids"³⁸ She also alleges that "Dr. Keshava-Prasad considered the diagnosis of vasculitis from 7/23/20 but did not have the expertise to manage the vasculitis."³⁹ This allegation is made by Dr. Shepherd despite the fact the Complaint notes that Dr. Keshava-Prasad was called in on July 26, 2020, the day before Ms. Watt's discharge, after which IV steroids had already been prescribed and administered.

³⁴ Petitioner's Appendix, Vol. I, Exhibit 1 pp. 002-054.

³⁵ Petitioner's Appendix, Vol. I, Exhibit 1, p. 008.

³⁶ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 035-054.

³⁷ Petitioner's Appendix, Vol. I, Exhibit 1, p. 016.

³⁸ Petitioner's Appendix, Vol. I, Exhibit 1, p. 016.

³⁹ Petitioner's Appendix, Vol. I, Exhibit 1, p. 017.

The allegations made by Dr. Shepherd and agreed to by Dr. Smith are leveled against all physicians, regardless of the scope of their interactions with Ms. Watts' care. She insists that all providers were equally responsible to transfer her to a higher level of care "so as to prevent progressive damage to imperiled tissues."⁴⁰ She also quotes, then promptly ignores Dr. Keshava-Prasad's recommendation of "ANA rheumatoid factor and autoimmune profile and rheumatology evaluation" and "calcium channel blockers to improve circulation to the steroids" that were already being administered.⁴¹ No particular Defendant was identified as being responsible for Plaintiff's care at a time where a provider should have allegedly sought expertise from rheumatology or where a transfer should have occurred.

Dr. Shepherd does not practice, and has not practiced, in an area of medicine substantially similar to the type engaged in by Dr. Keshava-Prasad at the time of the alleged professional negligence, *i.e.* Hematology. Alternatively, Dr. Shepherd's specialty is Rheumatology and Internal Medicine. Dr. Shepherd's declaration states in pertinent part:

I, Rebecca M. Shepherd MD, am a licensed physician Board Certified in Rheumatology and Internal Medicine. I am licensed to practice medicine in Pennsylvania. I currently practice in areas of medicine applicable in this case. I am familiar with the standards of care for medical

⁴⁰ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 011, 014, 017, 021, 024, and 027.

⁴¹ Petitioner's Appendix, Vol. I, Exhibit 1, p. 007.

practices that currently relate to issues of care and treatment of patients such as Lashawanda Watts (Date of birth 4/9/90). Patient is also referenced as Lashawnda and Lashawanda. I am familiar with the standards of care in this case by virtue of my training, education, and experience of 15 years in the field of rheumatology. I can fairly evaluate the quality of care that was provided. Attached is a copy of my current curriculum vitae.⁴²

Dr. Shepherd's curriculum vitae was attached to her declaration and outlines her area of specialty and experience which is limited to rheumatology and internal medicine.⁴³ Nowhere in her declaration or her CV is there any indication that Dr. Shepherd possesses the background, knowledge, or experience to opine as to the standard of care applicable to a hematology specialist and their role in the care and treatment of a patient during a consult in a hospital setting.

Moreover, Dr. Smith does not practice, and has not practiced, in an area of medicine substantially similar to the type engaged in by Dr. Keshava-Prasad at the time of the alleged professional negligence. Even more dissimilar, Dr. Smith's specialty is limited to Surgery. Dr. Smith's declaration states in pertinent part:

I am a licensed physician Board Certified in General Surgery and Vascular Surgery. I am licensed to practice *medicine in California*. I *currently* practice in areas of medicine applicable in this case. Attached is a copy of my current curriculum vitae.⁴⁴

Dr. Smith's curriculum vitae also attached to his declaration outlines his area

⁴² Petitioner's Appendix, Vol. I, Exhibit 1, p. 035.

⁴³ Petitioner's Appendix, Vol. I, Exhibit 1, p. 035-043.

⁴⁴ Petitioner's Appendix, Vol. I, Exhibit 1, p. 045.

of specialty and experience which is limited to general and vascular surgery.⁴⁵ Similar to Dr. Shepherd, nowhere in Dr. Smith's CV is there an indication that Dr. Smith possesses the background, knowledge, or experience to opine as to the standard of care applicable to a hematology specialist and their role in the care and treatment of a patient during a consult in a hospital setting.

Based on the glaring differences in the specialty areas of Dr. Keshava-Prasad and Plaintiff's proffered medical experts, Dr. Keshava-Prasad filed a Motion to Dismiss Plaintiff's Amended Complaint Based on a Violation of N.R.S. 41A.071.⁴⁶ Plaintiff opposed the Motion and opted to ignore the language of N.R.S. 41A.071 and Nevada case law, instead arguing that she "was not in the hospital because she had cancer or a blood disorder . . . She was in the hospital because her feet were painful and were turning blue."⁴⁷

Focus is further detracted from the ultimate issue of a deficient affidavit by indicating that all her providers, regardless of specialty, had the same duty—to refer her to a rheumatologist—and because they all allegedly breached that duty, it was permissible for a medical expert from *any* specialty to provide an affidavit per NRS 41A.071.⁴⁸ This is in complete contravention of NRS 41A.071 and a material misstatement of the law.

⁴⁵ Petitioner's Appendix, Vol. I, Exhibit 1, p. 045-054.

⁴⁶ Petitioner's Appendix, Vol. I, Exhibit 2, pp. 056-128.

⁴⁷ Petitioner's Appendix, Vol. I, Exhibit 6, pp. 145-146.

⁴⁸ Petitioner's Appendix, Vol. I, Exhibit 6, p. 146.

Plaintiff failed to support that Drs. Shepherd and Smith are qualified to render standard of care opinions for all the defendant health care providers. Plaintiff has implicated Dr. Keshava-Prasad's specialty by bringing forth a professional negligence action with allegations of breach to the standard of care. No information was provided to support a finding that Drs. Shepherd and Smith's present or former practice reasonably relates to Dr. Keshava-Prasad's practice area, or that Dr. Shepherd and Smith holds certifications pertaining to hematology and understanding the complexities of conditions and treatment plans in this specialty. Plaintiff's Opposition states merely that "failing to refer Ms. Watts to rheumatologist"⁴⁹ falls below the minimum standard of care, and the affidavits and the physicians who authored them are sufficient pursuant to NRS 41A.071 against all Defendants.

Following arguments from Petitioner and Plaintiff, Respondent denied the Motion to Dismiss and ruled that Plaintiff's medical expert affidavit was sufficient and met the standards of N.R.S. 41A.071.⁵⁰ Respondent made specific mention that the statute states substantially similar, not identical, without an explanation as to what should and should not be considered substantially similar.⁵¹ Respondent ultimately reasoned that Plaintiff's experts are not attacking care but are criticizing

⁴⁹ Petitioner's Appendix, Vol. I, Exhibit 6, p. 147.

⁵⁰ Petitioner's Appendix, Vol. I, Exhibit 13, p. 332.

⁵¹ Petitioner's Appendix, Vol. I, Exhibit 13, p. 327.

an appropriate referral to a specialist, rendering their affidavits “adequate.”⁵² Respondent issued this finding despite Plaintiff’s many allegations of breaches in the standard of care substantiated by Drs. Shepherd and Smith, and contrary to the underlying purpose of NRS 41A.071.

V. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

A. Standard for Writ of Mandamus

A writ of mandamus is an extraordinary remedy that may be issued to compel an act that the law requires. *Cote H. v. Eighth Judicial Dist. Court*, 175 P.3d 906, 907-08, 124 (Nev. 2008). It is available to compel the performance of an act that the law requires...or to control an arbitrary or capricious exercise of discretion. *Int’l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 179 P.3d 556, 558 (2008); *see also* N.R.S. 34.160. In that regard, this Court looks to whether the district court misinterpreted or misapplied a law or otherwise reached a decision that was founded on prejudice or contrary to the evidence or rule of law. *State v. Eighth Judicial Dist. Ct. (Armstrong)*, 127 Nev. 927, 267 P.3d 777, 779 (2011). The determination of whether to consider a petition is solely within this Court’s discretion.

Although this Court generally declines to entertain writ petitions challenging the denial of a motion to dismiss, it may nevertheless review such an order when:

⁵² Petitioner’s Appendix, Vol. I, Exhibit 13, p. 327.

“(1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule; or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.” *State v. Eighth Judicial Dist. Ct. (Anzalone)*, 118 Nev. 140, 42 P.3d 233, 238 (2002). Both scenarios are present in the instant matter. There are no factual disputes, the legal issue is dispositive, and Respondent was obligated to dismiss Plaintiff’s claims based on clear statutory authority. No factual dispute exists that Plaintiff failed to support allegations specific to each individual provider, and no dispute exists as to whether Drs. Shepherd and Smith do not currently practice, and have never practiced, in a substantially similar area to the type engaged in by Petitioner at the time of the alleged professional negligence.

This Petition also addresses a recurring and important issue of the statutory scheme regarding professional negligence actions as well as pressing public policy issues regarding the protection of medical providers in this state. “We have previously stated that where an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified.” *Lowe Enters. Residential Ptnrs., L.P. v. Eighth Judicial Dist. Court*, 118 Nev. 92, 97 (2002). Petitioner also has no plain, speedy, and adequate remedy in the ordinary course of law, necessitating this Court’s intervention to prevent continued prejudice to

Petitioner. *See* N.R.S. 34.170; *see also Smith v. Eighth Judicial Dist. Ct.*, 107 Nev. 674, 818 P.2d 849, 851 (1991).

B. Respondent Manifestly Abused its Discretion by Denying Petitioner's Motion to Dismiss Based on Plaintiff's Failure to Comply with N.R.S. 41A.071

The requirements for expert medical affidavits in a professional negligence matter are set forth in N.R.S. 41A.071. The statute mandates a court must dismiss a complaint if the affidavit does not meet its specific requirements. The requirements are set forth as follows:

If an action for professional negligence is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit that:

1. Supports the allegations contained in the action;
2. Is submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence;
3. Identifies by name, or describes by conduct, each provider of health care who is alleged to be negligent; and
4. Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.

N.R.S. 41A.071 (emph. added).

NRS 41A.071 establishes a prerequisite for maintaining an action for medical malpractice in Nevada and is a condition precedent to ensure that medical malpractice actions are filed in good faith based upon competent expert medical

opinions. *See Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1304, 145 P.3d 790, 794 (2006). The submission of a sufficient expert affidavit is a prerequisite for maintaining an action for medical malpractice in Nevada. *Washoe Medical Center v. Second Judicial District Court*, 122 Nev. 1298, 148 P.3d 790, 794 (2006); *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 102 P.3d 600, 604 (2004). “A complaint that does not comply with N.R.S. 41A.071 is void and must be dismissed; no amendment is permitted.” *Washoe Medical Center*, 148 P.3d at 794. “Because in Nevada, noncompliance with N.R.S. 41A.071’s affidavit requirement renders a complaint void *ab initio*,” and “amendment is not permitted and dismissal is required.” *Id.* at 795. Here, the lack of a properly interposed expert affidavit violates the very purpose for which the requirement was imposed and necessitates dismissal of the action.

1. **An expert affidavit supporting the allegations contained in the Complaint is required by N.R.S. 41A.071**

Plaintiff’s experts’ declarations fail to set forth factually a specific act or acts of alleged negligence **separately** as to each defendant in simple, concise, and direct terms. The allegations against all of the defendants, including Dr. Keshava-Prasad, were not only made collectively, without regard to the requirement that the specific negligence alleged as to each must be clearly specified, but neither the

Complaint⁵³, nor Drs. Shepherd⁵⁴ and Smith's⁵⁵ declarations, nor the combination of the three, demonstrate (1) a specific breach in the standard of care as to each defendant, (2) specify which specific duty was owed by each defendant, and (3) define which specific alleged breach occurred, all in derogation of NRS 41A.071's requirements.

In our case, Plaintiff's Complaint together with Drs. Shepherd and Smith's declarations do not support specific breaches of standards of care to each provider. Drs. Shepherd and Smith not only failed to set forth the standard of care as it related to each individual provider, but they also fail to demonstrate how Dr. Keshava-Prasad departed from it. In fact, Drs. Shepherd and Smith attempt to validate Plaintiff's allegations by leveling the same departures in care against all providers, namely "[Provider] fell below the standard of care for Miss Watts by not seeking expertise from rheumatology or transferring the patient to a higher level of care at a tertiary care center as soon as the diagnosis of vasculitis was being considered."⁵⁶ Further, Plaintiff's boilerplate allegations against Dr. Keshava-Prasad indicate that Dr. Keshava-Prasad considered the diagnosis of vasculitis on July 23, 2020.⁵⁷ This same allegation, levied against every other Defendant,

⁵³ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 002-054.

⁵⁴ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 035-043.

⁵⁵ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 045-054.

⁵⁶ Petitioner's Appendix, Vol. I, Exhibit 1, pp. 014, 017, 020, 023, and 027.

⁵⁷ Petitioner's Appendix, Vol. I, Exhibit 1, p. 007.

contradicts Plaintiff's factual allegations that Dr. Keshava-Prasad saw Ms. Watts on July 27, 2020, her last day of treatment.

Dr. Keshava-Prasad contested the legal sufficiency of Plaintiff's experts' medical declarations in a Motion to Dismiss. In response, Plaintiff argued that she "was not in the hospital because she had cancer or a blood disorder . . . She was in the hospital because her feet were painful and were turning blue."⁵⁸ She further argued that every provider, regardless of their specialty, had the same duty – to refer her to a rheumatologist—and because they all allegedly breached that duty, it was permissible for a medical expert from *any* specialty to provide an affidavit per NRS 41A.071⁵⁹. However, Plaintiff makes no showing as to why a referral to a rheumatologist implicates the specialty and standard of care of a hematologist during a hospital consultation. Plaintiff expected that Respondent would simply assume Drs. Shepherds and Smith possess the degree of knowledge and experience to opine as to the standard of care applicable to Dr. Keshava-Prasad. Unfortunately, Plaintiff's expectation proved correct, and Respondent denied the Motion in the absence of any factual or legal basis.

2. A substantial similarity in practice areas is required by N.R.S. 41A.071

"The mere fact that two specialties may treat the same symptoms or perform

⁵⁸ Petitioner's Appendix, Vol. I, Exhibit 6, pp. 145-146.

⁵⁹ Petitioner's Appendix, Vol. I, Exhibit 6, p. 146.

the same operations does not imply that a physician's conduct will no longer be tested by the standards of his own school or his own specialty.” *Gaston v. Hunter*, 121 Ariz. 33, 55, 588 P.2d 326, 347 (1978). “To qualify an expert to express an opinion on what the standard of care is for the defendant medical personnel, plaintiff must show that the expert has 'more than a casual familiarity with the specialty of the defendant physician.’” *Cunningham v. Arizona*, 2013 U.S. Dist. LEXIS 92752; 2013 WL 3335190 (D. Ariz. 2013) citing *Gaston v. Hunter*, *supra*.

In rendering its decision, the *Clark Memorial Hospital* court clarified that the relevant inquiries for deciding whether an expert is qualified are whether (1) the subject matter is distinctly related to some scientific field or profession beyond the average person's knowledge; and (2) the witness has sufficient skill, knowledge, or experience in the area at issue so that the opinion will aid the jury. Because Nevada's statutes provide requirements similar to Indiana's evidentiary rules with respect to the admissibility of expert testimony, and because Nevada does not require that a witness be licensed in the same discipline as the defendant in order to be qualified as an expert, we adopt the Indiana approach as a means for evaluating whether a witness qualifies as an expert in a medical malpractice action.

Staccato v. Valley Hosp., 123 Nev. 526, 533, 170 P.3d 503, 507-08 (2007).

Similarly, in *Estate of Stacy Briggs v. Univ. Med. Ctr.*, 2010 Nev. Dist. LEXIS 666 (Eighth Jud. Dist. Ct., June 30, 2010, Case No. A610310, Dept. No. 15), the Court noted that it was required to dismiss any malpractice complaint failing to meet the NRS 41A.071 requirement of submitting a medical affidavit or declaration from a

physician who practices in the same or similar specialty to the type of practice engaged in at the time of the alleged malpractice. *See, Id.* In *Briggs*, Plaintiff alleged medical malpractice associated with defendant's alleged failure to properly test and diagnose the decedent's neurological problems. Plaintiff submitted the affidavit of Simone Russo, M.D., a physician board certified in Family Practice, who also performed work as a general surgeon. Dr. Russo further indicated that he did a one-year neurosurgical residency 36 years prior to the submission of his affidavit. In noting that Dr. Russo did not practice in the precise or a substantially similar field of neurology or neurosurgery at the time of the alleged malpractice, the District Court held that Dr. Russo was not qualified to proffer opinions on issues pertaining to neurology. In so finding, the *Briggs* Court dismissed Plaintiff's complaint since it was not supported by an affidavit or declaration which comported with NRS 41A.071.

N.R.S. 41A.071 provides certain fundamental requirements that, if not met, render the proposed affidavit inherently deficient. The cornerstone of these requirements is that the affidavit must be submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in by the defendant at the time of the alleged professional negligence. Drs. Shepherd and Smith's declarations fail to fulfill this essential prerequisite.

While the inquiry does not necessarily turn on the classification of the

proposed expert, the expert must be qualified to perform or render the medical procedure or treatment being challenged as negligent. *See Carnes v. Wairimu*, 2011 Nev. Unpub. LEXIS 504, at *7.⁶⁰ In the instant matter, Drs. Shepherd and Smith’s declarations make no showing that they are qualified to challenge the sufficiency of care and treatment provided by a hematology specialist during a hospital consultation.

Instructive on this issue is this Court’s decision in *Borger, supra* in which this Court recognized that the Legislature offered no guidance as to whether an affiant practices in an area that is “substantially similar to the type of practice engaged in at the time of the alleged malpractice” as required by NRS 41A.071. In rendering the *Borger* decision, this Court held that “ . . . the legislation allows medical experts to testify in medical malpractice cases where their present or former practice reasonably relates to that engaged in by the defendant at the time of the alleged professional negligence.” *Borger, supra*, 120 Nev. at 1028. This Court went further to state that whether an area of practice is substantially similar to that of the named physician, depends on whether the diagnosis and treatment rendered by the named physician implicates the area of expertise of the plaintiff’s proffered expert. *See, Id.*

⁶⁰ Per N.R.A.P. 36(c)(2), on or after January 1, 2016, an unpublished decision may be cited for its persuasive value, if any. Supreme Court Rule 123 prohibiting citation to unpublished decisions was repealed on November 12, 2015.

In the case at bar, Plaintiffs fail to demonstrate how Dr. Shepherd, a rheumatologist, who admittedly only practices medicine in the field of Rheumatology, is Board Certified in Rheumatology, and is only familiar with the standard of care as it applies to Rheumatology,⁶¹ is even qualified to render an opinion concerning the care and treatment of the Petitioner, a hematologist, and the standard of care and obligations imposed upon a hematologist as a consultant. Likewise, Plaintiffs fail to demonstrate how Dr. Smith, a general surgeon who is Board Certified in General and Vascular Surgery,⁶² is qualified to render an opinion concerning the care and treatment of the Petitioner, a hematologist, and the standard of care and obligations imposed upon hematologist as a consultant. Drs. Shepherd and Smith are not qualified to challenge the sufficiency of care and treatment provided by a hematology specialist. Similarly, Dr. Keshava-Prasad is not qualified to challenge the sufficiency of care provided by a Rheumatologist and General Surgeon.

Dr. Keshava-Prasad is an experienced practitioner with impressive credentials in several medical specialties.⁶³ He is a Member of the Royal Colleges of Physicians, UK; American College of Physicians; and American Society of

⁶¹ Petitioner's Appendix, Vol. I, Exhibit 2, pp. 103.

⁶² Petitioner's Appendix, Vol. I, Exhibit 1, p. 045-054.

⁶³ Petitioner's Appendix, Vol. I, Exhibit 2, pp. 124-128.

Hematology.⁶⁴ He is also a Fellow of the Royal College of Pathologists, UK. Finally, he is a Diplomate of American Boards of Internal Medicine, Hematology, Medical Oncology, and Hospice and Palliative Medicine.⁶⁵ His specialty focuses on hematological management and the designing of comprehensive, patient-centered treatment plans. He was asked by the attending physician at Desert Springs Hospital to consult on Ms. Watts' care, specifically to see if potential hematological management was warranted. He assessed Ms. Watts, noted ongoing pain and discoloration of her toes, and referenced in his note the tentative diagnosis, "probable vasculitis."⁶⁶ As a consultant in hematology, he suggested additional testing and pharmaceutical therapies and agreed with the steroids already ordered.

In light of the specific nature of Dr. Keshava-Prasad's practice, the Legislature placed requirements on the scope of practice of expert witnesses proffered by medical malpractice plaintiffs to support the allegations in their complaints. *See* N.R.S. 41A.071. In the current matter, Plaintiff was required to support her allegations against Dr. Keshava-Prasad by an expert who practices, or has practiced, in the area of Hematology or one who was similarly credentialed as Dr. Keshava-Prasad. Plaintiff failed to fulfill this requirement. Instead,

⁶⁴ Petitioner's Appendix, Vol. I, Exhibit 2, pp. 124-128.

⁶⁵ Petitioner's Appendix, Vol. I, Exhibit 2, pp. 124-128.

⁶⁶ Petitioner's Appendix, Vol. I, Exhibit 1, p. 007.

Respondent chose to focus on Plaintiff's allegation that all providers neglected to provide Plaintiff with a timely referral to another specialist, in complete disregard of N.R.S. 41A.071's requirements.⁶⁷

Dr. Keshava-Prasad's Motion to Dismiss provided Plaintiff the opportunity to establish for Respondent the reason Drs. Shepherd and Smith qualify as an expert under N.R.S. 41A.071. Plaintiff failed to do so and instead proffered a diminished and essentially meaningless interpretation of N.R.S. 41A.071 whereby any physician can render standard of care and causations opinions, regardless of experience, background and training which is antithetical to the purpose of the affidavit requirement. While the inquiry does not necessarily turn on the classification of the proposed expert, the expert must be qualified to perform or render the medical procedure or treatment being challenged as negligent. *See Carnes v. Wairimu*, 2011 Nev. Unpub. LEXIS 504, at *7.⁶⁸

Plaintiff appears to view this case as involving a catch all standard of care that applies to all specialties, regardless of the provider. Under this limited view, and as stated by Plaintiff in her Opposition, anyone who completes medical school, regardless of their specialty, is qualified to criticize the acts of Dr. Keshava-Prasad because he consulted on Ms. Watts case during admission at Desert Springs

⁶⁷ Petitioner's Appendix, Vol. I, Exhibit 13, p. 318.

⁶⁸ Per N.R.A.P. 36(c)(2), on or after January 1, 2016, an unpublished decision may be cited for its persuasive value, if any. Supreme Court Rule 123 prohibiting citation to unpublished decisions was repealed on November 12, 2015.

Hospital. This position is improperly narrow, self-serving, and precisely highlights the importance of the requirements set forth in N.R.S. 41A.071.

Practicing specialists are required to exercise that degree of care and skill expected of a reasonably competent practitioner in his specialty acting in the same or similar circumstances; *i.e.* the applicable “standard of care”. A potential expert witness must have the degree of skill, education and experience to evaluate the actions of a defendant/physician under the *entirety* of circumstances. It is improper for Plaintiff, and her general surgeon and rheumatology experts, to extrapolate a single thread from the complex network of Ms. Watt’s medical care in an effort to dilute it down to an issue that any physician, regardless of specialty, is capable of addressing. There is no exception in N.R.S. 41A.071(2) for cases that allegedly involve simplistic matters of medical care and treatment.

Given the lack of any substantiation by Plaintiffs, Respondent could not have made such a finding that Drs. Shepherd and Smith’s specialties of rheumatology, and general and vascular surgery, are substantially similar to Dr. Keshava-Prasad’s hematology specialty. Drs. Shepherd and Smith do not specify how their medical practice qualifies them to render an opinion concerning anything in this case regarding Petitioner or any specialist in this matter, or whether they have any specific skills, knowledge, or experience in hematology which will aid the court and any prospective jury. In short, Respondent arbitrarily determined that Drs. Shepherd and Smith’s qualifications as experts in this matter are

sufficient to fulfill NRS 41A.071's requirements as against Petitioner, the specific alleged standards of care pertaining to hematology, and how Petitioner supposedly deviated therefrom. Plaintiffs failed to qualify Drs. Shepherd and Smith as hematology experts to express an opinion on what the standard of care is for hematologists and their obligations in a hospital setting during a consultation, and further failed to demonstrate that Drs. Shepherd and Smith have more than a casual familiarity with Petitioner's specialty in derogation of *Cunningham v. Arizona, supra.* and *Gaston v. Hunter, supra.* The declarations do not support the allegations in the action, nor does it "set forth factually a specific act or acts of allege negligence separately as to each defendant in simple, concise terms." Further, Drs. Shepherd and Smith do not currently practice, and have never practiced, in a substantially similar area to the type engaged in by Petitioner at the time of the alleged professional negligence, in derogation of NRS 41A.071's requirements.

Just as in *Alemi v. Eighth Judicial Dist. Ct., supra*, Drs. Shepherd and Smith fail to set forth the applicable standard of care that was allegedly breached by the Dr. Keshava-Prasad. Plaintiff's Complaint and the expert declarations thus fail to comply with NRS 41A.071's dictates, it is void *ab initio*, and must be dismissed without leave to amend. See, *Washoe Medical Center v. Second Judicial Dist. Court*, 122 Nev 1298, 1304, 148 P.3d 790, 794 (2006). Because Plaintiff's Complaint did not fulfill the requirements of N.R.S. 41A.071, it is void and should

have been dismissed by Respondent. *Washoe Medical Center*, 148 P.3d at 794.

By Respondent ignoring these glaring deficiencies, it was a manifest abuse of discretion. A Writ of Mandamus is the proper remedy to address it.

VI. CONCLUSION

In accordance with the above, Petitioner respectfully requests that this Court grant its Petition for Writ of Mandamus and order the Respondent to grant Petitioner's Motion to Dismiss.

Dated this 20th day of June, 2022.

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**AFFIDAVIT AND VERIFICATION IN SUPPORT OF PETITION FOR
WRIT OF MANDAMUS**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Shady Sirsy, Esq., duly sworn, deposes and says:

1. I am an attorney of record for Petitioner and make this declaration pursuant to Nev. R. App. P. 21(a)(5).
2. The facts and procedural history contained in the foregoing Petition for Writ of Mandamus are based upon personal knowledge as counsel for Petitioner. This declaration is not made by Petitioner personally because the salient issues involve procedural developments and legal analysis.
3. The contents of the foregoing Petition for Writ of Mandamus and are true and based upon my personal knowledge, except as to those matters stated on information and belief.
4. All documents contained in the Petitioner's Appendix, filed herewith, are true and correct copies of the pleadings and documents they are represented to be in the foregoing Writ of Mandamus.

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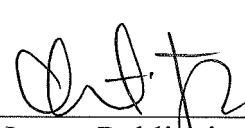
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5. This Petition complies with Nev. R. App. P. 21(a)(5), 21(d) and 32(c)(2).

FURTHER AFFIANT SAYETH NAUGHT.


SHADY SIRSY, ESQ.

Subscribed and sworn before me
this 20th day of June 2022.


Notary Public, in and for said County
And State



CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point type.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,613 words.

3. I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, and that it complies with all applicable Nevada Rules of Appellate Procedure.

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4. I understand that I may be subject to sanctions if the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 20th day of June, 2022.

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CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of June, 2022, I served the foregoing **PETITION FOR WRIT OF MANDAMUS** upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

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