

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNA MARIE BALTAR, D.O.,
and MIRIAM SITHOLE, APRN,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT, of the State of Nevada, in
and for the County of Clark; and THE
HONORABLE TARA CLARK
NEWBERRY, District Judge,

Respondents,

and

BARRY HEIFETZ, individually,
SPRING VALLEY HEALTHCARE,
LLC, a foreign limited-liability
company d/b/a SPANISH HILLS
WELLNESS SUITES

Real Parties in Interest.

Electronically Filed
Jul 08 2022 09:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITIONER'S APPENDIX – VOL. I 1-164

District Court Case No. A-20-808436-C

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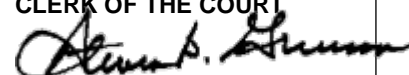
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¹ Documents provided in chronological order of filing pursuant to NRAP 30(c)(1)

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CASE NO: A-20-808436-C
Department 1

COMP

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DISTRICT COURT
CLARK COUNTY, NEVADA

BARRY HEIFETZ, an Individual,

Plaintiff,

v.

SPRING VALLEY HEALTH CARE, LLC, a
foreign limited-liability company, d/b/a
SPANISH HILLS WELLNESS SUITES;
SHANNA MARIE BALTAR, DO; an individual,
MIRIAM SITHOLE, APRN; an individual, DOE
DOCTOR I, an Individual; DOE NURSE I, an
individual; DOES I through X; ROE BUSINESS
ENTITIES XI through XX, inclusive,

Defendants.

CASE NO.:

DEPT NO.:

COMPLAINT

Plaintiff, BARRY HEIFETZ, an individual, by and through his attorneys of record,
CLAGGETT & SYKES LAW FIRM, bring their causes of action against Defendants, SPRING
VALLEY HEALTH CARE, LLC, d/b/a SPANISH HILLS WELLNESS SUITES; SHANNA
MARIE BALTAR, DO; MIRIAM SITHOLE, APRN; DOE DOCTOR I, DOE NURSE I, DOES I
through X; ROE BUSINESS ENTITIES XI through XX; and each of them, and alleges as follows:

JURISDICTION, VENUE, AND PARTIES

1. This court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendant, or any of them, resided in Clark County, Nevada at the commencement of this action.

2. BARRY HEIFETZ (hereinafter “Barry” or “Plaintiff”) was at all times relevant a resident of Clark County, Nevada.

3. SPRING VALLEY HEALTH CARE, LLC, d/b/a SPANISH HILLS WELLNESS SUITES (“Spanish Hills” or “Defendant”), was and is a foreign limited liability company doing business in Clark County, Nevada.

4. At all times relevant herein, Defendant, SHANNA MARIE BALTAR, DO (“Defendant Baltar”) is and was a physician licensed to practice medicine in the State of Nevada pursuant to NRS Chapters 630 and 449, and was at all times relevant a resident of Clark County, Nevada.

5. At all times relevant herein, Defendant MIRIAM SITHOLE, APRN, (“Defendant Sithole”) is and was a licensed advanced practice registered nurse licensed to practice nursing in the State of Nevada pursuant to NRS Chapters 632, and was at all times relevant a resident of Clark County, Nevada.

6. Plaintiff does not know the names or true identities of Defendant DOE Doctor I. Plaintiff is informed and believes, and thereon alleges, that there may have been another supervising physician who acted negligently in monitoring and/or supervising Defendant Baltar’s treatment, and/or was negligent in providing his or her own treatment and care of Plaintiff. Plaintiff will move for leave to amend the Complaint upon learning the true identity of DOE Doctor I.

7. Plaintiff does not know the names or true identities of Defendant DOE Nurse I. Plaintiff is informed and believes, and thereon alleges, that there may have been another nurse or nurse practitioner who acted negligently in monitoring and/or supervising Defendant Sithole’s

1 treatment, and/or was negligent in providing his or her own treatment and care of Plaintiff. Plaintiff
2 will move for leave to amend the Complain upon learning the true identity of DOE Nurse I.

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

14 9. That the true names or capacities of Defendants, ROE BUSINESS ENTITIES XI
15 through XX, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such
16 fictitious names. Defendants designated herein as ROE BUSINESS ENTITIES XI through XX, and
17 each of them, are predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint
18 venture with, and/or serving as an alter ego of, any and/or all Defendants named herein; and/or are
19 entities responsible for the supervision of the individually named Defendants at the time of the events
20 and circumstances alleged herein; and/or are entities employed by and/or otherwise directing the
21 individual Defendants in the scope and course of their responsibilities at the time of the events and
22 circumstances alleged herein; and/or are entities otherwise contributing in any way to the acts
23 complained of and the damages alleged to have been suffered by the Plaintiff herein. Plaintiff is
24 informed and, on that basis believes and thereon alleges, that each of the Defendants designated as
25 a ROE BUSINESS ENTITY is in some manner negligently, vicariously, and/or statutorily
26 responsible for the events and happenings referred to and caused damages to Plaintiff as herein
27 alleged. Plaintiff will seek leave of the Court to amend this Complaint to insert the true names of
28 such Defendants when the same have been ascertained.

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

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

12. Plaintiff is a 79-year-old male who lives in Las Vegas, Nevada.

13. On January 7, 2019, Plaintiff underwent a total left hip replacement at Henderson Hospital.

14. Following the procedure, Henderson Hospital discharged Plaintiff and sent him home.

15. On or about January 12, 2019, days following his hip surgery, Plaintiff's left hip dislocated and came out of the socket as he was standing up.

16. Plaintiff was admitted to Summerlin Hospital Medical Center to repair the left hip dislocation.

17. While at Summerlin Hospital, physicians repaired Plaintiff's hip and placed him in an abductor brace.

18. The abductor brace completely immobilized Plaintiff.

19. On or about January 14, 2019, Summerlin Hospital transferred Plaintiff to Defendant Spanish Hills to undergo intensive physical and occupational therapy on his hip.

20. Upon admission, Defendant Baltar and Defendant Sithole performed a physical examination of Plaintiff.

21. The initial history and physical from January 14, 2019, completed by Dr. Baltar does not reflect any issues with Plaintiff's skin.

22. Following the physical, Defendant Baltar and Defendant Sithole ordered a compression stocking to be placed on Plaintiff's left leg to be worn for 12 hours during the day and 12 hours off during the evening hours.

23. Defendant Spanish Hills also devised a baseline care plan for Plaintiff's stay and rehabilitation.

24. The baseline care plan called for frequent rounds to assess Plaintiff's needs.

25. The baseline care plan was devoid of any offloading procedures to prevent skin ulcers or damage to Plaintiff's skin during his rehabilitation at Spanish Hills.

26. The baseline care plan was also left unsigned by Defendant Spanish Hills.

27. Upon information and belief, from January 16, 2019, thru January 22, 2019, Defendant Spanish Hills; staff of physicians and nurses oversaw Plaintiff's care and rehabilitation following complications due to his hip. (**See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)**)

28. Upon information and belief, from January 16, 2019, thru January 22, 2019, Defendants never removed the compression stocking.

29. On or about January 22, 2019, a member of Plaintiff's family removed the compression stocking from Plaintiff's left leg.

30. Due to Spanish Hills' failure to remove the compression stocking, Plaintiff was severely injured. (**See Ex. 1, Affidavit of Scott Matthew Bolhack, M.D.)**)

31. As a result of Defendants' failure to remove the compression stocking, Plaintiff developed a severe left ulcer on his left heel and suffered a deformity to his left leg. (**See Ex. 1, Affidavit of Scott Matthew Bolhack, M.D.)**)

32. The injury left Plaintiff unable to rehabilitate his left-hip over the next 6-12 months.

33. The injury also forced Plaintiff to wear a wound vacuum device for over 6-12 months following the injury. (**See Ex. 1, Affidavit of Scott Matthew Bolhack, M.D.)**)

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FIRST CLAIM OF RELIEF
(PROFESSIONAL NEGLIGENCE)

Against All Defendants

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

35. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN owed a duty to prevent the occurrence of pressure injuries to Plaintiff by completing a baseline care plan designed to complete and document a risk assessment scale for pressure injuries to Plaintiff. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

36. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN further owed a duty of care to implement appropriate offloading procedures for Plaintiff to prevent the progression of pressure injuries given he was completely immobilized following his hip procedures. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

37. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN breached their respective duties of care by failing to implement a proper baseline care plan, failing to remove Plaintiff's compression stocking every 12 hours as ordered, and/or in some other manner, providing substandard offloading procedures and healthcare to Plaintiff. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

38. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN failed to accurately assess Plaintiff's risk for pressure injuries and/or initiate a care plan for prevention of heel injuries. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

39. At all times relevant herein, Defendants, and each of them, knew or in the exercise of reasonable care should have known, that the provisions of medical care and treatment was of such a nature that, if it was not properly given, was likely to injure the person to whom it was given.

40. Defendants, and each of them, fell below the standard of care for health care providers who possess the degree of professional learning, skill, and ability of other similar health care providers in failing to properly treat Plaintiff resulting in significant injuries. The allegations against SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN are supported by the Affidavits of Dr. Scott Bolhack (“Ex. 1”) and Diana Schmitt, RN (“Ex. 2”).

41. Defendants are vicariously liable for damages resulting from its agents’ and/or employees’ and/or servants’ negligent actions and omissions regarding the injuries to Plaintiff.

42. Plaintiff experienced great pain, suffering, and anxiety to his body and mind, sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

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

44. As a further proximate result of the aforementioned negligence and carelessness of Defendants, Plaintiff was required to, and did, employ physicians and other health care providers to examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges that Plaintiff suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

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

46. Defendants’ refusal to implement a proper baseline care plan, remove Plaintiff’s compression stocking every 12 hours as ordered, and/or in some other manner, undertake the

1 offloading procedures and healthcare to Plaintiff constitutes extreme and outrageous conduct that
2 constitutes a conscious disregard for the safety of Plaintiff. Said conduct justifies the imposition of
3 exemplary and punitive damages against the Defendant pursuant to NRS 42.005.

4 47. The actions of the Defendants forced Plaintiff to retain counsel to represent him in the
5 prosecution of this action, and he is therefore entitled to an award of reasonable attorney fees and
6 costs of suit.

7 **SECOND CLAIM FOR RELIEF**

8 **(VIOLATION OF NRS 41.1395)**

9 **Against All Defendants**

10 48. Plaintiff repeats and realleges the allegations as contained in the preceding
11 paragraphs herein, and incorporate the same herein by reference.

12 49. Defendants are not a “Provider of Health care” as explicitly defined in NRS 41A.017,
13 and as such, the provisions of NRS Chapter 41A do not apply.

14 50. Pursuant to NRS 41.1395, “if a older person or a vulnerable person suffers a personal
15 injury or death that is caused by abuse or neglect ... the person who caused the injury, death or loss
16 is liable to the older person or vulnerable person for two times the actual damages incurred by the
17 older person or vulnerable person.”

18 51. NRS 41.1395 defines “abuse,” among other things, as “willful and unjustified”:
19 failure of a person who assumed legal responsibility or a contractual obligation for caring for an
20 older person or a vulnerable person, or who has voluntarily assumed responsibility for such a
21 person’s care, to provide food, shelter, clothing, or services within the scope of the person’s
22 responsibility or obligation, which are necessary to maintain the physical or mental health of the
23 vulnerable person.”

24 52. Plaintiff is an older person, as he exceeded 60 years of age at the time of his injury.

25 53. Defendants SPANISH HILLS, SHANNA MARIE BALTAR, DO and MIRIAM S.
26 SITHOLE, APRN owed a duty to prevent the occurrence of pressure injuries to Plaintiff by
27 completing a baseline care plan designed to complete and document a risk assessment scale for
28 pressure injuries to Plaintiff.

1 54. Defendants SPANISH HILLS, SHANNA MARIE BALTAR, DO and MIRIAM S.
2 SITHOLE, APRN further owed a duty of care to to implement appropriate offloading procedures
3 for Plaintiff to prevent the progression of pressure injuries given he was completely immobilized
4 following his hip procedures.

5 55. Defendants SPANISH HILLS, SHANNA MARIE BALTAR, DO and MIRIAM S.
6 SITHOLE, APRN abused Plaintiff when they refused to remove Plaintiff's compression stocking
7 every 12 hours as ordered while he was completely immobile resulting in his pressure ulcers and
8 serious injuries.

9 56. That NRS 41.1395 was intended to prevent Defendants acts, which caused Plaintiff
10 severe injuries.

11 57. The acts/and or omissions of Defendants, by abusing and/or neglecting Plaintiff, a
12 "vulnerable person" in violation of NRS 41.1395 were willful and/or wanton, and oppressive, in
13 conscious disregard of his safety, and therefore, an award of punitive damages is appropriate in an
14 amount to be determined at trial.

15 58. As a direct and proximate result of the aforesaid negligence and carelessness of
16 Defendants, Plaintiff was injured, receiving injuries to the tissue and skin of his body. Plaintiff
17 thereby experienced great pain and anxiety to his body and mind, sustaining injuries and damages
18 in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

19 59. The acts/and or omissions of Defendants, by abusing and/or neglecting Plaintiff, a
20 "vulnerable person" in violation of NRS 41.1395 were willful and/or wanton, and oppressive, in
21 conscious disregard of his safety, and therefore, an award of punitive damages is appropriate in an
22 amount to be determined at trial.

23 60. As a direct and proximate result of the aforesaid negligence and carelessness of
24 Defendants, Plaintiff was injured, receiving injuries to the tissue and skin of his body. Plaintiff
25 thereby experienced great pain and anxiety to his body and mind, sustaining injuries and damages
26 in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

27 61. As a further direct and proximate result of the aforesaid negligence and carelessness
28 of Defendants, Plaintiff incurred damages, both general and special, including medical expenses as

1 a result of the necessary treatment of Plaintiff's injuries, and will continue to incur damages for
2 future medical treatment necessitated by the incident-related injuries Plaintiff has suffered.

3 62. As a further proximate result of the aforementioned negligence and carelessness of
4 Defendants, Plaintiff was required to, and did, employ physicians and other health care providers to
5 examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The
6 exact amount of such expenses is unknown at this present time, but Plaintiff alleges that he has
7 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

8 63. The actions of Defendants, and each of them, have forced Plaintiff to retain counsel
9 to represent him in the prosecution of this action, and he is therefore entitled to an award of a
10 reasonable amount as attorney's fees and costs of suit.

11 **THIRD CLAIM FOR RELIEF**

12 **(NEGLIGENCE)**

13 **Against Defendant SPANISH HILLS**

14 64. Plaintiff repeats and realleges the allegations as contained in the preceding
15 paragraphs herein, and incorporate the same herein by reference.

16 65. Defendants are not a "Provider of Health care" as explicitly defined in NRS 41A.017,
17 and as such, the provisions of NRS Chapter 41A do not apply.

18 66. Defendant SPANISH HILLS owed a duty of care to Plaintiff, consistent with the
19 standard of care prescribed in a rehabilitation facility to use reasonable diligence and best judgment
20 in the exercise of skill and application of learning in an effort to accomplish the purpose for which
21 they were employed.

22 67. Defendant SPANISH HILLS breached this duty when it failed to have adequate
23 policies and procedures, or failed to utilize policies and procedures in the exercise of skill and
24 application of learning in an effort to accomplish the purpose for which it was employed.

25 68. Defendant SPANISH HILLS, by and through its employees, agents and/or servants
26 breached its duty of care by failing to put into place safety protocols when it knew or should have
27 known that its patients were at risk of injury if it refused to implement appropriate offloading
28 procedures and/or properly prevent pressure injuries.

69. As a direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff was injured, receiving injuries to the tissue and skin of his body. Plaintiff thereby experienced great pain and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

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

71. As a further proximate result of the aforementioned negligence and carelessness of Defendants, Plaintiff was required to, and did, employ physicians and other health care providers to examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges that he has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

72. The actions of Defendants, and each of them, have forced Plaintiff to retain counsel to represent him in the prosecution of this action, and he is therefore entitled to an award of a reasonable amount as attorney's fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(CORPORATE NEGLIGENCE, VICARIOUS LIABILITY, NEGLIGENT HIRING, TRAINING, AND SUPERVISION) Against Defendant SPANISH HILLS

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

74. Defendant is not a "Provider of Health care" as explicitly defined in NRS 41A.017, and as such, the provisions of NRS Chapter 41A do not apply.

75. Defendant SPANISH HILLS hired, trained, supervised, and/or retained employees, agents and/or servants, to include but not limited to administrators, managers, supervisors, and caregivers, were acting in the scope of their employment, under Defendant's control and in furtherance of Defendant's interest at the time such actions caused injuries to Plaintiff.

1 76. Defendant is vicariously liable for damages resulting from its agents' and/or
2 employees' and/or servants' negligent actions and omissions regarding the injuries to Plaintiff to
3 include but not limited to conduct in failing to supervise and/or correct the negligence of its
4 employees demonstrated disregard for the safety of its residents.

5 77. Defendant in the capacity of a rehabilitation facility, providing care to elderly
6 residents, owed a Plaintiff a nondelegable duty to employ staff adequately trained in the care of
7 elderly residents.

8 78. Defendant had a duty to hire, properly train, properly supervise, and properly retain
9 competent employees, agents, independent contractors and representatives.

10 79. Defendant failed to comply with Federal Regulations F686 Skin Integrity and F 684
11 Quality of Care. (**See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1)**)

12 80. Defendant failed to implement protocols, policies and procedures to prevent pressure
13 wounds including but not limited to offloading procedures. (**See Affidavit of Scott Matthew**
14 **Bolhack, M.D., attached hereto as Ex. 1)**)

15 81. Defendant failed to properly hire, train, and/or retain its employees, agents, and/or
16 independent contractors. (**See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex.**
17 **1)**)

18 82. Upon information and belief, Defendant, breached its duty by improperly hiring,
19 improperly training, improperly supervising and improperly retaining incompetent employees.

20 83. Plaintiff thereby experienced great pain, suffering, and anxiety to his body and mind,
21 sustaining injuries and damages in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

22 84. As a further direct and proximate result of the aforesaid negligence and carelessness
23 of Defendant, Plaintiff has incurred damages, both general and special, including medical expenses
24 as a result of the necessary treatment of Plaintiff's injuries.

25 85. As a further proximate result of the aforementioned negligence and carelessness of
26 Defendant, Plaintiff was required to, and did, employ physicians and other health care providers to
27 examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The
28

1 exact amount of such expenses is unknown at this present time, but Plaintiff alleges that he has
2 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

3 86. The actions of the Defendant have forced the Plaintiff to retain counsel to represent
4 him in the prosecution of this action, and he is therefore entitled to an award of a reasonable amount
5 as attorney fees and costs of suit.

6 WHEREFORE, Plaintiff, BARRY HEIFETZ, expressly reserves his right to amend this
7 Complaint at the time of trial, to include all items of damage not yet ascertained, demand judgment
8 against Defendants, SPRING VALLEY HEALTH CARE, LLC, d/b/a SPANISH HILLS WELNESS
9 SUITES SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO AND DEFENDANT
10 MIRIAM S. SITHOLE, APRN; DOE DOCTOR I, DOE NURSE I, DOES I through X; ROE
11 BUSINESS ENTITIES XI through XX, inclusive and each of the defendants as follows:

12 1. For general damages, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),
13 to be set forth and proven at the time of trial;

14 2. For special damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),
15 to be set forth and proven at the time of trial;

16 3. For reasonable attorney's fees;

17 4. For costs and disbursements of this suit; and

18 5. For such other relief as to the Court seems just and proper.

19 DATED this 13th day of January, 2020.

20 CLAGGETT & SYKES LAW FIRM

21 */s/ Jennifer Morales*

22
23 Sean K. Claggett, Esq.
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EXHIBIT 1

Affidavit

Barry Heifetz

vs.

Spanish Hills Wellness Suites

Commonwealth of Nevada

County of Clark

My Background

As Scott Bolhack, MD, MBA, CMD, CWSP, PCWC, FACP, I have served the residents of Tucson in multiple areas of medical practice since 1992. I am board-certified in both Internal Medicine and in Hospice and Palliative Care. I also hold two additional certifications: one as a Certified Medical Director (CMD), a certificate granted by The Society for Post-Acute and Long-Term Care Medicine; and another as a Certified Wound Specialist Physician (CWSP) as designated by the American Board of Wound Management. My current clinical activities include skilled nursing facilities delivering primary care for the past 25 years. I am also a medical director of a hospital-based wound care center in Tucson where I have practiced for the past 10 years. I speak nationally about rehabilitation in nursing homes, quality improvement processes, palliative care, and wound care. I have additional experience as a medical director for skilled nursing facilities, assisted living facilities, hospices, home health agencies and wound centers. I have presented over 35 scientific posters in the areas of quality improvement in skilled nursing facilities, post-hospital care, and wound care. I am qualified to review this case involving a resident who received care in a skilled nursing facility. As part of my practice, I routinely directly supervise nurse practitioners, nurses (at all levels of training: RN, LPN, CNA), and other staff in the skilled nursing facility.

Documents Reviewed

I have reviewed the following records as they pertain to Mr. Barry Heifetz:

- 1. Henderson Hospital Admission**
- 2. Nevada Orthopedic and Spine**
- 3. Spanish Hills Wellness Suites**
- 4. Summerlin Hospital**
- 5. American Medical Response**
- 6. Photographs of Wounds**
- 7. Affidavit of Diana Schmitt**

Summary of Case

Barry Heifetz was a 79 year-old male who was admitted to Spanish Hills Wellness Suites on January 14, 2019 and discharged to home on January 30, 2019. He recently had a left total hip arthroplasty completed at Henderson Hospital on December 25, 2018 by the orthopedic surgeon Mark Allen DO, but had a delay in his rehabilitation due to dislocation of the left hip. This admission to Spanish Hills was his second admission due to the complication of the dislocation, after he was placed in an abductor brace.

Mr. Heifetz' medical problem list at the time of his admission to Spanish Hills included: left total hip arthroplasty with complication of dislocation, hypothyroidism, hypertension, glaucoma, chronic back pain, muscle wasting of the left lower extremity and neuropathy. The initial history and physical from January 14, 2019 completed by the admitting clinician Shanna Baltar, DO does not reflect any issues with his skin. Dr. Baltar ordered a pressure-relieving mattress (January 14, 2019)¹ and a one-time wound care consult (January 15, 2019)²; and orders for compression stockings to be worn for 12 hours during the day (January 16, 2019).³

On January 22, 2019, the clinician Miriam Sithole, APRN noted that he had an edematous left lower extremity and she ordered compression stockings at that time, along with a venous doppler ultrasound to successfully rule out a blood clot in that extremity.

On January 23, 2019, the first documentation of his wounds were noted. On the right heel, it was noted that he had developed a fluid-filled blister; on the left heel it was reported that he suffered from a deep tissue injury.⁴ There are no measurements, nor any other parameters of these injuries noted anywhere in the medical record. Miriam Sithole, APRN references in her progress note for the day to treat as indicated. A reference by Rachel Anderson LPN on January 23, 2019 is entered that the dressings were changed to his bilateral lower extremities and his heels were elevated on pillows to prevent pressure on heel. This is the only such documentation of prevention for further injury to his heels for his entire stay at the facility by any staff member.

On January 25, 2019, the orthopedic surgeon Mark Allen, DO also referenced the heel blisters and lower extremity compression for Mr. Heifetz' edema.⁵

On January 30, 2019, in the discharge summary for Mr. Heifetz,⁶ the wounds and edema were briefly addressed. The patient required wound care secondary to multiple lesions of his bilateral left lower extremities calf area due to 'chronic vascular insufficiency' [sic]. He was continued on ACE wraps to his lower extremities because his legs were too edematous for compression stockings [sic]. At the time of discharge, home health orders were referenced as: H/H wound care team for daily wound management.⁷ There were no further specifics to those

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orders, reference to location(s) of the wounds, treatment plans, dressings or plans for follow-up. In review of the HCFA 485 home health orders, there were no specific dressings ordered for the wounds.⁸

On February 19, 2019, the orthopedist Mark Allen, DO notes that the patient has a heel wound that he developed while in rehabilitation, and recommends a wound care evaluation by a physician for debridement, medical grade honey, and possibly hyperbaric oxygen. He is shown the pictures of the heels by the daughter of Mr. Heifetz.⁹

Photographs with a written notation of February 28, 2019 reveal a left heel pressure injury that was unstageable with a thick eschar in place and an pressure injury of the left posterior ankle that appears as a stage 3 injury. By the April 2, 2019, visit with the orthopedic surgeon Dr. Allen, his recovery from the hip repair continues to be restricted due to the pressure injury of the left heel.¹⁰

There were numerous employees that were involved in the failures and breaches in the standard of medical care for Mr. Heifetz. These employees (nurses and CNAs) of Spanish Hills Wellness Suites include:

1. Diana Hale RN
2. Ziegelda Ross RN
3. Javier Canan
4. Joshua Abellera LPN
5. Erin Faucette LPN
6. Rachel Anderson LPN
7. Carlynne G. Tiquia LPN
8. Sheryl Coke LPN
9. Adora Laus De Leon LPN
10. Queenie Ochosa, LPN
11. I reserve the right to include additional nursing staff as the record disclosure is completed.

In addition, the primary care clinicians involved in his care at Spanish Hills also demonstrated failures and breaches in the standard of care. These clinicians include:

1. Shanna Marie Baltar, DO
2. Miriam Sithole, APRN

Opinions

There are numerous breaches of the standard of medical care by the aforementioned employees of Spanish Hills. These breaches of the standard of care occur during Mr. Heifetz's stay at Spanish Hills and with his transition to home health. They are as follows:

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1. Failure to prevent the occurrence of pressure injuries in a vulnerable adult (including but not limited to all of the aforementioned nursing staff and clinicians).
2. Failure to prevent the progression of pressure injuries in a vulnerable adult (including but not limited to all of the aforementioned nursing staff and clinicians).
3. Failure to complete and document a risk assessment scale for pressure injury (Braden Scale) (including but not limited to all of the aforementioned nursing staff and clinicians).
4. Failure to accurately assess the wounds in terms of specific location, size, shape, odor, characteristics, etiology (including but not limited to all of the aforementioned nursing staff and clinicians).
5. Failure to recognize that Mr. Heifetz was at risk for pressure injuries and initiate a care plan for prevention of heel injuries (including but not limited to all of the aforementioned nursing staff and clinicians).
6. Failure to initiate interventions in a timely manner to prevent the progression of pressure injuries in a vulnerable adult including but not limited to all of the aforementioned nursing staff and clinicians).
7. Failure to acknowledge that Mr. Heifetz was a vulnerable adult requiring assistance in repositioning due to his hip surgery which resulted in pressure injuries to his heels including but not limited to all of the aforementioned nursing staff and clinicians).
8. Failure to acknowledge that Mr. Heifetz was a vulnerable adult requiring assistance in positioning his lower extremities with elevation to counter the effects of edema including but not limited to all of the aforementioned nursing staff and clinicians).
9. Failure to ensure that the ordered wound consultation on January 14, 2019 was completed (including but not limited to all of the aforementioned nursing staff and clinicians).
10. Failure to prevent the heels from further pressure injury by initiating specific orders or requesting orders from the clinicians for calf elevation while lying in bed, or specific orthoses for offloading the heels while in a wheelchair (including but not limited to all of the aforementioned nursing staff and clinicians).
11. Failure to create a precise care plan on January 23, 2019.¹¹ It was noted that the patient was at risk for pressure ulcer due to friction and shear; however, the care plan is backdated to January 21, 2019; does not state where the area of risk for pressure injury exists; provides a generic approach to resolution by having a minimum of 2 people plus draw sheet to lift resident while in bed; and to perform skin assessment and inspection every shift with close attention to heels (including but not limited to all of the aforementioned nursing staff and clinicians).
12. Failure of accurately documenting Mr. Heifetz' skin condition as noted by the document Observation Detail List Report on January 24, 2019, one day after the heel ulcerations were documented elsewhere in the medical record including but not limited to all of the aforementioned nursing staff and clinicians.¹²
13. Failure of accurately documenting Mr. Heifetz' skin condition as noted by Minimum Data Set (MDS), Section M, on January 30, 2019, his day of discharge, seven days after pressure injuries of the heel were already noted and being treated. The MDS entered for January 30, 2019, Section M Skin Conditions, does not refer to the existence of any pressure injuries

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including but not limited to all of the aforementioned nursing staff and clinicians. (Miriam S. Sithole, APRN) ¹³

14. Failure to communicate significant changes in his condition with the family including but not limited to all of the aforementioned nursing staff and clinicians.
15. Failure to insure the safety of compression garments on a patient with edema with 'chronic vascular insufficiency' (as noted by Miriam Sithole APRN). The arterial status of Mr. Heifetz was never determined. In my clinical experience, patients with suspected vascular insufficiency require an evaluation of their status before any form of compression is initiated (including but not limited to all of the aforementioned clinicians).
16. Failure of the clinical staff to correctly identify the cause of the skin injury and initiate and monitor the status of the skin resulting in a worsening conditioning and prolonged recovery (including but not limited to all of the aforementioned nursing staff and clinicians).
17. Failure to carry the specific orders written by the clinicians for compression stockings, not for ACE bandages as supplied including but not limited to all of the aforementioned nursing staff).
18. Failure to utilize the appropriate compression garment in an at-risk patient. ACE bandages are not an appropriate compression device to utilize for lower extremity edema and can result in medical device pressure injuries including but not limited to all of the aforementioned nursing staff.
19. Failure to insure that home health initiated daily wound care orders. The discharge note from Spanish Hills Wellness Suites specifically asks for daily wound treatments and assistance with management and monitoring of the bilateral lesions to the lower extremities including but not limited to all of the aforementioned nursing staff and clinicians.
20. Failure to specify to Home Health the treatment plan, the dressings, and follow-up for the wounds as the patient transitioned to the home setting (Miriam S. Sithole, APRN)
21. As a result of the aforementioned breaches of the standard of care, Mr. Heifetz developed pressure sores to both heels.
22. Failure of the facility to comply with Federal Regulations F686 Skin Integrity and F684 Quality of Care.
23. Failure of the facility to implement protocols, policies and procedures to prevent pressure wounds including but not limited to offloading procedures.
24. Failure of the facility to properly hire, train, and/or retain its employees, agents, and/or independent contractors.
25. Breach of the standard of care for the clinicians (the physician and APRN) for failure to assess the cause of and insure the treatment of the wound during his stay.
26. Breach of the standard of care for the clinicians (the physician and APRN) for not insuring that the wound care consult was completed as ordered on January 19, 2019.
27. Breach of the standard of care for the clinicians (the physician and APRN) for failure to properly assess the vascular condition of the patient before ordering compression garments, for not insuring that the proper garment was utilized, and for not understanding the implications and consequences of the use of the incorrect garment for compression.
28. These breaches of the standard of care set forth herein caused and/or contributed to Mr. Heifetz developing pressure injuries.

29. Due to the development of pressure injuries, and specifically the unstageable pressure injury to the left heel, the patient suffered a prolonged recovery from his hip surgery.
30. The breaches in the standards of prevention, treatment and care resulted in a prolonged burden of medical care including negative pressure wound treatment (wound vacuum device) that lasted for approximately an additional six months.

I reserve my right for further review and comment as additional information concerning the care of Barry Heifetz is discoverable over time.

All of my opinions above are made to a reasonable degree of medical probability.


Scott Matthew Bolhack, MD, MBA, CMD, CWSP, PCWC, FACP

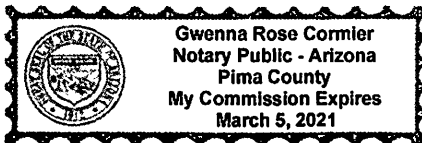

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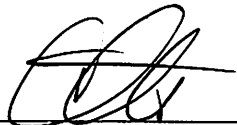
**CERTIFICATE
NOTARIAL ACKNOWLEDGEMENT**

State of Arizona

County of PIMA

On this 11 day of JANUARY, 2020, before me personally appeared
SCOTT MATTHEW BOLHACK, whose identity was proven to me
on the basis of satisfactory evidence to be the person who he or she claims to be, and
acknowledged that he or she signed the above/attached document.





Notary Public
GWENNA ROSE CORMIER
Print name
3.5.21

My commission expires

This certificate is attached to the following document:

Description of the document: AFFIDAVIT

Document title: AFFIDAVIT

Document type: _____

Number of pages: 1 Date: 1.11.2020

Additional signers: _____

EXHIBIT 2

I, Diana Schmitt RN, BSN, CLNC, am qualified to render a professional opinion where nursing home and rehab standards of care are in question. My nursing license is registered with the State of Colorado and is in good standing. I have practiced long-term care nursing extensively over my nursing career with emphasis on nursing home/rehab and extensive nursing home/rehab comprehensive medical record reviews focusing on standards of care for quality assurance and injury related to breaches in standards of care.

Records reviewed to form an opinion concerning Barry Heifetz' left heel pressure ulcer included: photos, ambulance transport records, Spanish Hills' records, Summerlin Hospital records, Henderson Hospital Records, and Nevada Orthopedic and Spine records.

I have reviewed the above mentioned records and what follows is my concluding opinion that breaches in the standards of care concerning the services provided by Spanish Hills Nursing and Rehab occurred and were experienced by Barry Heifetz during his January 14th thru 30th, 2019 residency. These breaches resulted in avoidable bilateral skin breakdown to his heels. Further records review or other information may or may not change my opinion on those breaches in standards of care and/or that those breaches resulted in Mr. Heifetz' pressure ulcer development.

- 1) **Failure to develop an adequate Person-Centered Baseline Care Plan** – The standard of care requires that the Person-Centered Baseline Care Plan be completed within the first 48 hours of admission; updated as necessary; be person-centered; promote continuity of care; facilitate medical and care needs; increase resident safety; and safeguard against avoidable adverse events. The Baseline Care Plan is based on admission orders, diagnoses, information and resident data from the transferring facility, and resident and family participation.

Spanish Hill's nursing staff failed to meet the requirements of Baseline Care Plan development related to Mr. Heifetz' diagnoses, admission orders, and omitted interventions that would have safeguarded him against avoidable pressure ulcer development if they had been implemented. This is a breach in the standard of care. The following failures occurred at Spanish Hills which resulted in Mr. Heifetz acquiring avoidable bilateral skin breakdown that progressed to a right heel blister and a left heel full-thickness pressure ulcer that required months of treatment.

- A) Failure to implement a meaningful Baseline Care Plan for Mr. Heifetz within 48hrs of admission at Spanish Hills.
- B) Failure to update the Baseline Care Plan during the interim of admission until the Comprehensive Care Plan was developed.
- C) Failure to identify risks and conditions in the Baseline Care Plan that would affect Mr. Heifetz' health and safety.
- D) Failure to document person-centered information that would show that Mr. Heifetz and his family participated in the Baseline Care Plan development or that they had opportunity to discuss the Baseline Care Plan and ask questions concerning medical care, ADL care, rehab, and safety.
- E) The nursing staff at Spanish Hills failed to develop a meaningful Baseline Care Plan that would meet Mr. Heifetz' actual and potential medical and ADL care needs. The Baseline Care Plan serves to safeguard against avoidable adverse outcomes that may occur right after admission while the facility continues to gather resident assessment data for the purpose of MDS requirements and Comprehensive Care Plan development. These failures included:

- a) Omitted resident assessment data for Mr. Heifetz' ADL care including: bed mobility, eating, toileting, transfers, ambulation, and device use.
 - b) Omitted resident assessment data for functional status related to surgery, fractures, and decreased mobility.
 - c) Omitted timely skin integrity interventions that would have averted Mr. Heifetz' bilateral heel pressure ulcer development if they had been implemented.
- F) The nursing staff at Spanish Hills failed to deliver a reasonable level of continuity of care from the transferring facility, Summerlin Hospital. The Baseline Care Plan lacked pertinent resident assessment data based on Mr. Heifetz' diagnoses, admission orders, and information and assessment data from the transferring facility, Summerlin Hospital, as well as information from Mr. Heifetz and his family. These failures included:
- a) Omitted risk factors of decreased mobility, obesity, advanced age, pain related to recent hospitalization for total left hip arthroplasty with complication of multiple hip dislocations.
 - b) Omitted skin integrity interventions of off-loading upon admission especially to his heels that would have provided immediate aversion of Mr. Heifetz' bilateral heel skin breakdown.
 - c) Omitted instructions on compression stocking use and left hip brace application. Mr. Heifetz arrived at Spanish Hills with these devices and the Spanish Hills nurses should have followed up with the MD and/or Summerlin Hospital as to use and safety.

2) **Failure to provide adequate skin assessment and implement appropriate interventions/referrals**

– The standard of care requires that a skilled nursing facility must ensure that residents do not develop skin breakdown unless the resident's clinical condition demonstrates that the skin breakdown was unavoidable. If a pressure ulcer develops, the facility must provide appropriate treatments and interventions to promote healing, prevent infection, and prevent further skin breakdown.

The nursing staff at Spanish Hill's failed to meet the requirements to prevent unavoidable skin breakdown and pressure ulcer development and failed to meet the requirements to provide adequate assessment and treatment to promote healing of a pressure ulcer which is a breach in the standards of care.

- A) Nursing failed to address Mr. Heifetz' risk factors for skin breakdown which included not only his left total hip replacement with surgical incisions and 3 left hip dislocations but dementia, obesity, abnormal labs, peripheral neuropathy with Gabapentin use, potential for DVT with compression stocking use, pain related to left hip dislocation and surgical wound, immobility related to left hip brace, general weakness related to hospitalization and total hip replacement, narcotic use for pain, and urinary incontinence.
- B) Labs reports showed that Mr. Heifetz had a low albumin and total protein blood levels which put him at risk for skin break down. It was not clear that this was reported to the MD or dietary.
- C) The following failures occurred at Spanish Hills which resulted in Mr. Heifetz acquiring skin breakdown to his right heel and a full-thickness pressure ulcer to his left heel.
 - a) Failure to perform a comprehensive body check on admission. A body diagram or other nursing assessment tool was not found that would demonstrate appropriate

admission skin assessment including removing the compression stocking to assess the condition of Mr. Heifetz' heels.

- b) Failure to off-load Mr. Heifetz' heels off of the bed surface. This intervention should have appeared on the Baseline Care Plan and MAR/TAR due to the risk for pressure ulcer development from left-sided extremity weakness and increased immobility from Mr. Heifetz' left hip surgery. Ongoing and consistent off-loading of the heels was not found in the Spanish Hill's records.
 - c) Failure to document that turning and repositioning was ongoing to any degree. This intervention should have appeared on the Baseline Care Plan due to the risk for skin breakdown related to bladder incontinence and left hip brace use. Ongoing and consistent turning and repositioning was not found in the Spanish Hill's records.
 - d) Failure to document that donning and doffing of compression stockings was performed competently and appropriately.
 - e) Mr. Heifetz arrived at Spanish Hills with compression stockings on. Nursing documentation lacked assessment data concerning donning and doffing of compression stockings or skin assessment under compression stockings.
 - f) Nursing continued to document compression stocking use after skin breakdown and deep tissue injury was found on Mr. Heifetz' heels.
 - g) Failure to document that Mr. Heifetz' left hip brace was implemented per MD orders. The left hip brace was intended to be applied 24/7 per MD orders. Nursing failed to clarify this order upon admission and failed to include left hip brace use on the MAR/TAR until January 24th. It was not clear how and when nursing managed the left hip brace. Left extremity skin assessments for circulation, motion and sensation including left heel assessments were omitted in the Spanish Hills' records.
 - h) Nursing initialed the MAR for weekly skin checks, but no nursing assessment tool was found to demonstrate the findings of the weekly skin checks or if any emphasis was placed on the areas of Mr. Heifetz' body that were at risk for skin breakdown and/or pressure ulcer development.
 - i) A pressure reducing mattress was implemented at admission and signed off on the MAR/TAR twice daily. However, a pressure reducing mattress alone for an obese resident with multiple risk factors for pressure ulcer development was not adequate to provide the appropriate off-loading for high risk pressure areas such as the coccyx and heels as in Mr. Heifetz case.
 - j) Appropriate referrals to the dietician and wound care specialist were not found.
- 3) **Failure to implement the nursing process on admission and for change in conditions / competent nursing staff** – The standard of care requires that nursing services provide care that includes the nursing process of assessment, evaluation, planning, and implementation of the resident care plan and in response to the resident's care needs. The facility must ensure that nurses have the specific competencies and skill sets necessary to care for residents' needs as identified through resident assessments, and described in the plan of care.

The nursing staff at Spanish Hill's failed to meet the requirements that would support the nursing process was systematically applied during Mr. Heifetz' residency which is a breach in the standard of care. It was not demonstrated that competent nursing assessments were

performed which should reflect appropriate planning, evaluation, follow up, and documentation. These failures resulted in care plans that were inadequate and caregivers (nurses and CNA's) who delivered below the standard of care services.

- A) The nursing services of Spanish Hills failed to follow appropriate assessment guidelines at admission as evidenced by:
 - a) Omitted resident assessment data on the Baseline Care Plan to provide for immediate health and safety needs.
 - b) Omitted comprehensive body and skin assessment at admission to identify any skin integrity issues which may have been present.
 - c) Failed to remove compression stockings to assess the lower extremities and heels for blanchable vs. nonblanchable areas.
 - d) Failed to document the condition of the skin around and under the left hip brace and to do a circulation, motion, and sensory check of the left extremity.
- B) A wound consult was found signed off on the MAR on January 15th, 2019, but wound consult notes were not found in the records. After Mr. Heifetz acquired wounds to his heels, a wound care consult was not found.
- C) Nursing failed to perform an appropriate assessment for pressure ulcer risk. A Braden Scale¹ assessment was performed on admission; however, the score for risk of skin breakdown was at 15 [mild risk]. This Braden Scale score was not correct given Mr. Heifetz' Gabapentin use for peripheral neuropathy, urinary incontinence, decreased activity level, decreased bed mobility due to left hip brace use and hip precautions due to total hip replacement with dislocations, inadequate nutrition, and friction and shear problem due to obesity and decreased bed mobility especially the left leg. Mr. Heifetz should have scored lower in the moderate to high risk range. Given Mr. Heifetz' complication of 3 hip dislocations following his total hip replacement with a left hip brace to limit his ROM and his pain level, a reasonable and prudent nursing assessment would conclude that Mr. Heifetz was at a high risk for a pressure ulcer development to his left heel.
- D) Seroquel (Quetiapine) was started on January 19, 2019, for sleep and anxiety. Mr. Heifetz was reported to have some sun-downing and forgetfulness, but he had no behavioral disturbance that would warrant Seroquel use.
- E) On January 21, 2019, a Risk for Pressure Ulcer Care Plan was developed with the interventions of two staff to use a draw sheet while Mr. Heifetz was in bed and a skin assessment and inspections every shift with close attention to heels.
 - a) These interventions should have appeared on the Baseline Care Plan as the result of appropriate assessment of risk factors for pressure ulcer development. Mr. Heifetz was found with edema to his left lower extremity the next day on January 22, 2019.
 - b) The use of the draw sheet was not found to have been implemented in the records.
 - c) The draw sheet intervention addressed friction and shear, but did not address off-loading of the heels. There was no intervention(s) on the Baseline Care Plan or the Risk for Pressure Ulcer Care Plan to off-load Mr. Heifetz' heels.
- F) Appropriate change of condition was not implemented on January 22, 2019. Nursing noted edema to the left lower extremity, but there was no other assessment data such as

¹ Braden Scale – For Prediction Pressure Sore Risk. Severe risk ≤9; High risk 10-12; Mod risk 13-14; Mild risk 15-18.

skin condition, left brace placement and condition of surrounding skin, foot and heel condition, and if the compression stockings were being worn and removed for inspection. The next day wound treatment orders appeared on the MAR/TAR.

- a) Right heel fluid filled blister cleanse with normal saline pat dry apply Betadine solution cover with dry dressing wrap with Kerlix every day x 30days.
- b) Left heel deep tissue injury (DTI) cleanse with normal saline pat dry apply Betadine solution cover with dry dressing wrap with Kerlix every day x 30days.
- G) Appropriate wound assessment or meaningful wound care notes were not found in the records. The notations on the Wound Care Administration History were not adequate to describe the condition of Mr. Heifetz' wounds whether the area was intact or not and measurements were not taken.
- H) On January 23, 2019, the first and only notation in the records appeared in a nursing note that Mr. Heifetz' leg was off-loaded on a pillow to prevent pressure on the heel.
- I) IDT coordination of care lacked as evidenced by the following.
 - a) The family or Mr. Heifetz was not included in the Baseline Care Plan development.
 - b) The Baseline Care Plan was incomplete with multiple omissions.
 - c) The Baseline Care Plan was not updated.
 - d) Nursing assessment lacked to identify risk factors for pressure ulcer development.
 - e) Device monitoring was not adequately documented in order to determine proper and safe use.
 - f) No IDT notes or meetings with the family was found.
 - g) IDT follow up for Mr. Heifetz' right heel blister and left heel DTI was not found.
 - h) IDT follow up was not found to ensure appropriate referral for the wound care specialist and to the dietician due to left heel DTI.
 - i) IDT failed to assess Seroquel, an antipsychotic that was started for anxiety and sleep. The appropriateness of this order was not explained and nonpharmacological measures were not found to have been implemented. A consent form was not found for Seroquel use. There was no documentation found to support the use of this medication.
 - j) IDT failed to ensure adequate skin cheeks under the left hip brace with appropriate documentation.
 - k) IDT documentation was not found to ensure that compression stocking use was appropriate with edema and skin breakdown. Continued compression stocking use likely contributed to further discomfort/pain and tissue damage to the left heel.
 - l) IDT coordination lacked to ensure MD orders were followed and the MAR/TAR was free of omissions and errors and contraindicated interventions.
 - m) The Comprehensive Care Plan was inadequate to appreciate Mr. Heifetz' risk factors and lacked appropriate interventions.

In conclusion, Mr. Heifetz was admitted to Spanish Hills for skilled rehab care to promote his most optimal health and well-being. The quality of skilled and ADL care that the standard of care requires for all residents was not demonstrated in Mr. Heifetz' medical records from Spanish Hills. It is my professional opinion, that Spanish Hills' management and nursing staff were negligent as stated above. The following individuals were identified in the records (this list is not exhaustive due to some names illegible or cut off due to poor copy quality, missing, or on further produced records):

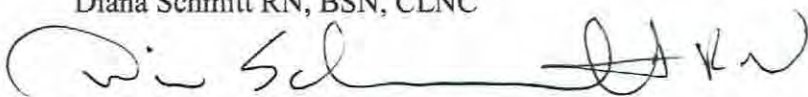
- Shanna Marie Baltar DO, attending physician – Individually, owed a duty of care to Plaintiffs to coordinate medical care, treatments, and risk factors for pressure ulcer development in accordance with medical standards of care; but, breached the standard of care for reconciliation of admission orders to Spanish Hills relating to compression stocking therapy and pressure ulcer risk factors of immobility/surgery, nutritional status and other risk factors resulting in failure to provide preventive treatment of pressure ulcer development. [Spanish Hills Wellness Suites.pdf 113-114, 504 of 666]
- Miriam S. Sithole APRN, nurse practitioner – Individually, owed a duty of care to Plaintiffs to provide appropriate medical assessments and treatments in accordance with current practice guidelines and certification standards; but, breached the standards related to assessment of deep tissue injury followed by orders inconsistent with practice guidelines. [Spanish Hills Wellness Suites.pdf 297, 299, 300, 302 of 666]
- Diana Hale RN – Individually, owed a duty of care to Plaintiffs to provide wound treatments and documentation in a manner consistent with standards of care and to advocate and provide general oversight consistent with state and federal statutes; but, breached those standards by failing to appreciate coordination of care resulting in missed wound treatments. [Spanish Hills Wellness Suites.pdf 302 of 666]
- Ziegelda Ross RN – Individually, owed a duty of care to Plaintiffs to provide competent skin assessment/documentation and wound treatment/documentation in a manner consistent with standards of care; but, breached those standards by failing to provide appropriate skin/wound assessment/documentation resulting in further wound development followed by worsening of leg and foot wounds. [Spanish Hills Wellness Suites.pdf 488 of 666]
- Javier Canan – Individually, owed a duty of care to Plaintiffs to provide competent skin assessment/documentation and wound treatment/documentation in a manner consistent with standards of care; but, breached those standards by failing to provide appropriate skin/wound assessment/documentation resulting in further wound development followed by worsening of leg and foot wounds. [Spanish Hills Wellness Suites.pdf 488 of 666]
- Joshua Abellera LPN – Individually, owed a duty of care to Plaintiffs to provide competent skin assessment/documentation and wound treatment/documentation in a manner consistent with standards of care; but, breached those standards by failing to provide appropriate skin/wound assessment/documentation resulting in further wound development followed by worsening of leg and foot wounds. [Spanish Hills Wellness Suites.pdf 488 of 666]
- Erin Faucette LPN – Individually, owed a duty of care to Plaintiffs to provide skin assessment and documentation in a manner consistent with standards of care; but, breached the standard of care by failing to accurately provide assessment and documentation of lower extremity skin problems. [Spanish Hills Wellness Suites.pdf 299 of 666]
- Rachel Anderson LPN – Individually, owed a duty of care to Plaintiffs to follow facility policy and federal regulations for the admission process; but, breached the standards by failing to accurately perform and document a head to toe admission skin assessment and failing to follow through with completion and implementing the Baseline Care Plan. [Spanish Hills Wellness Suites.pdf 002-10, 97-98, 301, 435-437, 443-444 of 666]
- Carlynne G. Tiquia LPN – Individually, owed a duty of care to Plaintiffs to follow facility policy and federal regulations for the admission process; but, breached the

standards by failing to accurately perform and document a head to toe admission skin assessment and failing to follow through with completion and implementing the Baseline Care Plan. [Spanish Hills Wellness Suites.pdf 97-98, 293 of 666]

- Sheryl Coke LPN – Individually, owed a duty of care to Plaintiffs to adhere to the standard of care in assessment and the nursing process; but, breached those standards by failing to accurately assess and document skin issues resulting in a delay to identify progressing skin problems. [Spanish Hills Wellness Suites.pdf 456-457 of 666]
- Adora Laus De Leon LPN – Individually, owed a duty of care to Plaintiffs to adhere to the standard of care in assessment and the nursing process and following MD orders; but, breached those standards by failing to accurately assess and document skin issues resulting in a delay to identify progressing skin problems and failing to follow through with a wound care consultation. [Spanish Hills Wellness Suites.pdf 295, 299, 504 of 666]
- Queenie Ochoa, LPN – Individually, owed a duty of care to Plaintiffs to follow facility policy and federal regulations for the admission process; but, breached the standards by failing to implement care plan approaches appropriately resulting in poor coordination of care. [Spanish Hills Wellness Suites.pdf 517 of 666]

The negligence proximately caused Mr. Heifetz to develop left heel DTI injury which progressed into a left heel full-thickness pressure ulcer with tissue loss.

Diana Schmitt RN, BSN, CLNC



11/11/2020

JURAT WITH AFFIANT STATEMENT

State of Colorado } ss.
County of La Plata

- ☒ See Attached Document (Notary to cross out lines 1-7 below)
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Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me

this 11 day of Jan 2020, by
Date Month Year

Diana L. Schmitt
Name of Signer No. 1



Place Notary Seal/Stamp Above

Name of Signer No. 2 (if any)

Michele Northcutt
Signature of Notary Public

Michele Northcutt ex 3/12/22

Any Other Required Information
(Residence, Expiration Date, etc.)

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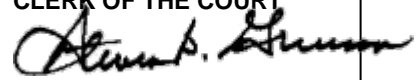
Description of Attached Document

Title or Type of Document: Affidavit for law suit

Document Date: Jan 11, 2020

Number of Pages: 7 + 1 Notary Stamp

Signer(s) Other Than Named Above: _____



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Shanna Marie Baltar, DO, and
8 *Miriam Sithole, APRN*

9 **DISTRICT COURT**

* * *

10 **CLARK COUNTY, NEVADA**

11 BARRY HEIFETZ, an individual,

12 Plaintiff,

13 v.

14 SPRING VALLEY HEALTH CARE, LLC, a
foreign limited liability company, d/b/a
15 SPANISH HILLS WELLNESS SUITES;
SHANA MARIE BALTAR, DO; and
16 individual, MIRIAM SITHOLE, APRN, an
individual, DOE DOCTOR 1, and individual,
17 DOE NURSE 1, an individual, DOES I through
X, and ROE BUSINESS ENTITIES XI—XX,
18 inclusive,

19 Defendant(s).

Case No.: A-20-808436-C

Dept. No.: 1

**DEFENDANTS SHANNA MARIE
BALTAR, DO AND MIRIAM SITHOLE,
APRN'S AMENDED MOTION FOR
PARTIAL SUMMARY JUDGMENT**

HEARING REQUESTED

20
21 Defendants SHANA MARIE BALTAR, DO and MIRIAM SITHOLE, APRN (hereinafter
22 “Defendants”), by and through their counsel of record, John H. Cotton, Esq. and Brandon C. Verde,
23 Esq., LL.M. of John H. Cotton & Associates, and pursuant to Rules 26 and 33 of the Nevada Rules
24 of Civil Procedure, hereby submit the following Motion for Partial Summary Judgment on
25

1 Plaintiff's prayer for Punitive Damages and Plaintiff's Second Claim for Relief 41.1395
2 Vulnerable Persons Statute.

3 This Motion is supported by the following Memorandum of Points and Authorities, the
4 attached exhibits thereto, and all pleadings and papers on file herein.

5 DATED this 14th day of December 2021.

6 **JOHN H. COTTON & ASSOCIATES, LTD.**

7 7900 W. Sahara Avenue, Ste. 200

8 Las Vegas, Nevada 89117

9 By: /s/ Brandon C. Verde

10 John H. Cotton, Esq.

11 Brandon C. Verde, Esq., LL.M.

12 *Attorneys for Defendants,*

13 *Shanna Marie Baltar, DO, and*

14 *Miriam Sithole, APRN*

DECLARATION OF BRANDON C. VERDE, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Brandon C. Verde, declares as follows:

1. I am an attorney licensed to practice in the State of Nevada. I am a member of the law firm of John H. Cotton & Associates, Ltd., counsel of record for Defendants in the above-entitled action.

2. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would completely testify to the matters stated herein.

3. This Declaration is made in support of Defendants' Motion for Partial Summary Judgment.

4. **Exhibit "A"** is a true and correct copy of Plaintiff's Complaint with affidavit.

5. **Exhibit "B"** is a true and correct copy of the Stipulation and Order to Extend Discovery Deadlines (Third Request).

6. **Exhibit "C"** is a true and correct copy of Defendant's Answer to Plaintiff's Complaint.

7. **Exhibit "D"** is a true and correct copy of selected records for Barry Heifetz from Spanish Hills Wellness Suites with identifying information redacted.

8. **Exhibit "E"** is a true and correct copy of Mike Jeong, M.D. expert report.

9. **Exhibit "F"** is a true and correct copy of Mike Jeong, M.D. expert rebuttal report.

10. **Exhibit "G"** is a true and correct copy of Mike Jeong, M.D.'s Curriculum Vitae.

11. This Motion is brought in good faith and not for purposes of delay.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this __14TH__ day of December, 2021, in Las Vegas, Nevada.

/s/ Brandon Verde
BRANDON C. VERDE, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This medical malpractice action arises from the care of Defendants Miriam Sithole, APRN, and Shanna Baltar, D.O. (Collectively as “Defendants”) given to Plaintiff. Attached to Plaintiff’s Complaint is the affidavit and case study of Scott Bolhack, M.D. *See* Plaintiff’s Complaint with expert affidavit from Scott Bolhack, M.D., attached hereto as **Exhibit “A.”** Plaintiff alleges causes of action of (1) professional negligence against all Defendants (2) Violation of NRS 41.1395 against all Defendants (3) negligence against Defendant Spanish Hills Wellness Suites, and (4) corporate negligence, vicarious liability, negligent hiring, training and supervision against Spanish Hills Wellness Suites. Plaintiff’s Complaint requests punitive damages against Defendants for the alleged “extreme and outrageous conduct that constitutes a conscious disregard for the safety of Plaintiff.” *See* **“Exhibit A,”** Prayer for Damages, and ¶46. Summary judgment should be granted against Plaintiff’s prayer for punitive damages, as there are no facts to support Plaintiff’s claim for punitive damages, nor does Defendants’ conduct arise to the level for which punitive damages can be awarded.

Furthermore, the facts of this case are grounded in professional negligence, and Plaintiff’s second claim for relief for Violation of NRS 41.1395, Vulnerable Persons Statute, against all Defendants cannot survive. The allegations against Defendants sound in professional and medical negligence. A professional negligence claim cannot be converted into an elder abuse claim. This is simply not an elder abuse case. As such, Defendants’ Motion for Partial Summary Judgment should be granted.

II.

STATEMENT OF UNDISPUTED FACTS

Pursuant to NRCP 56(c), the following are the undisputed facts relevant to the determination of this Motion for Partial Summary Judgment. For the purposes of this Motion only, Defendants accept these facts as undisputed.

1. Plaintiff commenced this action on January 13, 2020, by the filing of his Complaint. *See* **Exhibit “A.”**

2. According to Paragraph 48 through 63 of Plaintiff's Complaint, Plaintiff did not specifically plead **double damages** and **attorney's fees** under NRS 41.1395. See **Exhibit "A."**

3. The last day to amend pleadings or add parties was June 28, 2021. See Stipulation and Order to Extend Discovery Deadlines (Third Request), attached hereto as **Exhibit "B."**

4. Plaintiff's Complaint alleges causes of action of (1) professional negligence against all Defendants (2) Violation of NRS 41.1395 against all Defendants (3) negligence against Defendant Spanish Hills Wellness Suites, and (4) corporate negligence, vicarious liability, negligent hiring, training, and supervision against Spanish Hills Wellness Suites. See **Exhibit "A."**

5. Defendants Shanna Baltar, D.O. and Miriam Sithole, APRN filed their answer to Plaintiff's Complaint on November 19, 2020. See Defendants' Answer to Plaintiff's Complaint, attached hereto as **Exhibit "C."**

6. Defendants denied all material allegations in Plaintiff's Complaint, including that he was negligent or caused Plaintiff's alleged injuries, and interposed affirmative defenses. *Id.*

7. Mr. Heifetz was admitted to Spanish Hills Wellness Suites on January 14, 2019.

8. Mr. Heifetz consulted with Dr. Baltar upon admission at Spanish Hills Wellness Suites on January 14, 2019. See **Exhibit "D,"** at SHWS000305 – SHWS000307.

9. On January 14, 2019, Defendant Dr. Baltar prescribed Mr. Heifetz Oxycodone, Vasculera, Aspirin, Eliquis, Sennosides-Docusate sodium, and Quetiapine. See **Exhibit "D,"** Spanish Hills Wellness Suites records at SHWS000112.

10. On January 14, 2019, Defendant Dr. Baltar ordered a complete metabolic panel and complete blood count for Mr. Heifetz. See **Exhibit "D"** at SHWS000113.

11. On January 14, 2019, Defendant Dr. Baltar ordered Mr. Heifetz podiatry, ophthalmology, and dental consultations. See **Exhibit "D"** at SHWS000113.

12. On January 14, 2019, Defendant Dr. Baltar ordered Mr. Heifetz a pressure-relieving mattress. See **Exhibit "D"** at SHWS000112.

13. On January 14, 2019, Defendant Dr. Baltar approved an interdisciplinary plan of care for Mr. Heifetz. See **Exhibit "D"** at SHWS000113.

14. On January 14, 2019, Rachel Anderson, LPN, conducted the Braden Scale to determine the patient's risk for pressure ulcers. See **Exhibit "D"** at SHWS000055 –

1 SHWS000056.

2 15. On January 16, 2019, Defendant Miriam Sithole, APRN, ordered the continuation
3 of compression stockings and to be worn 12 hours in the morning and off for 12 hours at night.
4 See **Exhibit “D”** at SHWS000115.

5 16. From January 16, 2019, through January 30, 2019, Mr. Heifetz’s compression
6 stockings were placed on for 12 hours in the morning and removed 12 hours at night. See **Exhibit**
7 **“D”** at SHWS000117 – SHWS000118.

8 17. On January 16, 2019, a care plan was created for Mr. Heifetz. See **Exhibit “D”** at
9 SHWS000405 – SHWS000416.

10 18. On January 22, 2019, a left heel blood blister and in anterior aspects of the tibia
11 were discovered. See **Exhibit “D”** at SHWS000321.

12 19. On January 23, 2019, Mr. Heifetz was evaluated by the wound care team, Javier
13 Canan, and spoke to Dr. Baltar regarding the resident’s heels with new orders given. See **Exhibit**
14 **“D”** at SHWS000431 – SHWS000432.

15 20. On January 23, 2019, Dr. Baltar ordered Mr. Heifetz’s “left heel cleanse with ns
16 pat dry apply betadine sol cover with dry dressing wrap with kerlix qd x 30 days.” See **Exhibit**
17 **“D”** at SHWS000423.

18 21. On January 30, 2019, Mr. Heifetz was discharged from Spanish Hills Wellness
19 Suites.

20 III.

21 STANDARD FOR SUMMARY JUDGMENT

22 The purpose of summary judgment is to avoid unnecessary trials when they would serve
23 no useful purpose. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 96, 378 P.2d 979, 980 (1973). Summary
24 judgment proceedings pierce the formality of the pleadings and test whether, based on the
25 uncontroverted facts, one party is entitled to a judgment as a matter of law. *Dredge Corp, v. Husite*
Co., 78 Nev. 69, 86-89, 369 P.2d 676, 686-687, *cert. denied* 371 U.S. 821 (1962); *Matsushita Elec.*
Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106, S.Ct. 1348, 1356 (1986). “Summary
judgment is appropriated under NRCP 56 when the pleadings, depositions, answers to
interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate

1 that no genuine issues of material fact exist, and the moving party is entitled to judgment as a
2 matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The
3 substantive law controls which factual disputes are considered material such that summary
4 judgment will be precluded. *Id.* “A factual dispute is genuine when the evidence is such that a
5 rational trier of fact could return a verdict for the nonmoving party.” *Id.*

6 To avoid summary judgment, the nonmoving party must set forth specific facts
7 demonstrating the existence of genuine issues of material fact. *Id.* at 732, 121 P.3d at 1031. The
8 nonmoving party cannot build a case on the “gossamer threads of whimsy, speculation, and
9 conjecture.” *Id.* In *Cuzze v. University and Community College System of Nevada*, the Nevada
10 Supreme Court clarified the burdens in moving for and defending against summary judgment. The
11 Court stated:

12 With respect to burdens of proof and persuasion in the summary judgment
13 context, . . . [t]he party moving for summary judgment bears the initial burden of
14 production to show the absence of a genuine issue of material fact. If such a
15 showing is made, then the party opposing summary judgment assumes a burden
16 of production to show the existence of a genuine issue of material fact. The
17 manner in which each party may satisfy its burden of production depends on
18 which party will bear the burden of persuasion on the challenged claim at trial. If
19 the moving party will bear the burden of persuasion, that party must present
20 evidence that would entitle it to a judgment as a matter of law in the absence of
21 contrary evidence. But if the nonmoving party will bear the burden of persuasion at
22 trial, the party moving for summary judgment may satisfy the burden of
23 production by either (1) submitting evidence that negates an essential element of
24 the nonmoving party’s claim, or (2) “pointing out . . . that there is an absence of
25 evidence to support the nonmoving party’s case.” In such instances, in order to
defeat summary judgment, the nonmoving party must transcend the pleadings
and, by affidavit or other admissible evidence, introduce specific facts that show
a genuine issue of material fact. *Cuzze v. University and Community College of
Southern Nevada*, 172 P.3d 131, 134 (2007).

IV.

ARGUMENT

A. PLAINTIFF’S CLAIMS FAIL TO SATISFY NEVADA’S PUNITIVE DAMAGE STATUTE AS A MATTER OF LAW AND SUMMARY JUDGMENT SHOULD BE GRANTED ON PLAINTIFF’S PRAYER FOR PUNITIVE DAMAGES

a. Punitive Damages Standard

23 In Nevada, punitive damages are authorized pursuant to NRS 42.005. However, a plaintiff
24 is not automatically entitled to punitive damages. *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d,
25 433, 450 (2006); *Dillard Department Stores v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887

(1999). The court must make the threshold determination as a matter of law whether Plaintiff's claims are sufficient to invoke the punitive damages statute. *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243, 252-53 (2008); *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433, 451 (2006); *Evans. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 612, 5 P.3d 1043 (2000); *Dillard's Department Stores v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999); *Wickliffe v. Fletcher Jones of Las Vegas, Inc.*, 99 Nev. 343, 356, 661 P.2d 1295 (1983). Punitive damages are not designed to compensate the plaintiff for harm suffered but are designed to punish and deter the defendant's conduct. *Bongiovi*, 138 P.2d at 450.

Pursuant to NRS 42.005, a plaintiff may recover punitive damages in an action for the breach of an obligation not arising from contract, only "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression fraud or malice, express or implied." NRS 42.005(1). Tort liability alone is insufficient to support an award of punitive damages. *See First Interstate Bank of Nevada v. Jafbro's Auto Body, Inc.*, 106 Nev. 54, 57, 787 P.2d 765 (1990).

Oppression is defined in statute as "despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person." NRS 42.001(4) Fraud is defined as an "intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his rights or property or to otherwise injure another person." NRS 42.001(2). Express malice is conduct that is intended to injure another person. *Clark v. Lubritz*, 113 Nev. 1089, 1099, 944 P.2d 861 (1997). Implied malice is despicable conduct performed with a conscious disregard of the rights of others. *Bongiovi*, 138 P.3d at 451.

The legislature has defined "conscious disregard" as "the knowledge of probably harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1). Thus, NRS 42.001, requires that the defendant acted with a culpable state of mind and "denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence." *Countrywide*, 192 P.2d at 255. Furthermore, the Nevada Supreme Court cited to the California Book of Approved Jury Instructions when defining extreme and outrageous conduct as "conduct which is 'outside all possible bounds of decency' and is regard as 'utterly intolerable in a civilized community.'" BAJI 12.74 further instructs that "persons must necessarily

1 be expected and required to be hardened ... to occasional acts that are definitely inconsiderate and
2 unkind.” *Maduike v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998).

3 Punitive damages are appropriate only in cases of egregiously tortious conduct that rises to
4 the level of extreme indifference to the Plaintiff’s rights. *Hughes v. Blue Cross of N. Cal.*, 263
5 Rptr. 850, 858 (1989). Mere carelessness or ignorance does not justify the imposition of punitive
6 damages. *Id.* NRS 42.005 requires a finding of culpable conduct which exceeds negligent conduct.
7 An award of punitive damages is improper where the evidence fails to show either a willful wrong
8 or that the damage suffered by the Plaintiff was an intended or necessary consequence. *American*
9 *Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 606, 729 P.2d 1352 (1986).
10 Additionally, in California, punitive damages cannot be awarded for negligence or gross
11 negligence. *See Ebaugh v. Rabkin*, 22 Cal.App.3d 891, 894 (1972) *citing Read v. Turner*, 239
12 Cal.App.2d 504, 515-516 (1966); *see also Ellis v. City Council*, 222 Cal.App.2d 490, 498-99
13 (1963). Iowa, Arizona and Wisconsin also do not permit punitive damages for negligence. *See*
14 *Hudgins v. Southwest Airlines Co.*, 212 P.2d 810, 824 (Ariz. 2009); *Beeman v. Manville Corp.*,
15 496 N. W.2d 247, 255 (Iowa 1993); *Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 446 (Wis. 1980).

16 In *Countrywide*, punitive damages were proper where Countywide ignored the signs that
17 they were foreclosing on the wrong property when the unity still contained the owners’ personal
18 property and mail, there was a preliminary title report available, there were multiple warnings a
19 mistake had been made, and yet Countrywide proceeded with the foreclosure resulting in the loss
20 of Plaintiffs’ personal belongings. 192 P.3d at 243. In *Bongiovi*, a punitive damages award was
21 proper in a defamation suit where Dr. Bongiovi told a patient that the physician who was to perform
22 her surgery recently killed a woman while performing the same surgery. 138 P.3d at 433. In
23 *Wickliffe*, punitive damages were proper where a car dealership refused to return the Plaintiffs’ car
24 until she canceled her lease on her second car, although her lease had no provision precluding the
25 plaintiff from having two leased cars. 661 P.2d at 1295. In *Austin v. C&L Trucking, Inc.*, punitive
damages were proper where a large tractor-trailer was driven on an interstate highway with
defective brakes that were known to be defective. 610 F. Supp. 465 (1985). In all these cases, the
defendants intentionally engaged in wrongful conduct.

b. The Facts of This Case Do Not Warrant an Award of Punitive Damages

1 Applying *Countrywide* and the other above-cited cases to the instant case, Plaintiff cannot
2 recover punitive damages on any of the claims alleged against Dr. Baltar or APRN Sithole. Further,
3 when compared with prior cases, the facts of this case indicate that Plaintiff had no evidence to
4 support an award of punitive damages.

5 To obtain punitive damages, Plaintiff is required to produce admissible evidence that Dr.
6 Baltar and APRN Sithole acted with a culpable state of mind. Plaintiff must show that their conduct
7 **exceeded** reckless or gross negligence. Plaintiff must show that their conduct was “outside all
8 possible bounds of decency and is ‘utterly intolerable’ in a civilized society.” Punitive damages
9 are inappropriate unless Plaintiff can produce evidence to show that this was a “willful wrong” or
10 that his injuries and damages were an intended consequence of Dr. Baltar and APRN Sithole’s
11 actions or omissions.

12 This is simply a medical malpractice case wherein Plaintiff alleges Dr. Baltar and APRN
13 Sithole’s treatment of Mr. Heifetz fell below the standard of care. Plaintiff’s allegations against
14 Defendants are merely criticisms of Defendants’ care and treatment. As set forth in the State of
15 Undisputed Material Facts, the facts of this case show:

- 16 • Mr. Heifetz consulted with Dr. Baltar upon admission at Spanish Hills Wellness
17 Suites
- 18 • Upon admission, Defendant Dr. Baltar prescribed Mr. Heifetz Oxycodone,
19 Vasculera, Aspirin, Eliquis, Sennosides-Docusate sodium, and Quetiapine.
- 20 • Upon admission, Defendant Dr. Baltar ordered a complete metabolic panel and
21 complete blood count for Mr. Heifetz.
- 22 • Upon admission, Defendant Dr. Baltar ordered Mr. Heifetz a podiatry,
23 ophthalmology, and dental consultation.
- 24 • Upon admission, Defendant Dr. Baltar ordered Mr. Heifetz a pressure-relieving
25 mattress.
- Upon admission, Defendant Dr. Baltar approved an interdisciplinary plan of
care for Mr. Heifetz.
- Rachel Anderson, LPN, conducted the Braden Scale to determine the patient’s
risk for pressure ulcers.

- Defendant Miriam Sithole, APRN, ordered the continuation of compression stockings and to be worn 12 hours in the morning and off for 12 hours at night.
- Mr. Heifetz's compression stockings were placed on for 12 hours in the morning and removed 12 hours at night.
- A care plan was created for Mr. Heifetz.
- Mr. Heifetz subsequently developed a left heel blood blister and in anterior aspects of the tibia.
- Mr. Heifetz was evaluated by the wound care team, Javier Canan, and spoke to Dr. Baltar regarding the resident's heels with new orders given.
- Dr. Baltar ordered Mr. Heifetz's "left heel cleanse with ns pat dry apply betadine sol cover with dry dressing wrap with kerlix qd x 30 days."

Plaintiff's claims, and these facts, do not rise even to the level of gross negligence. If found to be at fault, Dr. Baltar and APRN Sithole's conduct cannot be described as oppressive, fraudulent, or malicious. Dr. Baltar and APRN Sithole's expert bariatric physician, Dr. Mike Jeong, M.D., opines that Dr. Baltar and APRN Sithole met the standard of care to Spanish Hills Wellness Suites from January 14, 2019, through January 30, 2019. *See* **Exhibit "E,"** Mike Jeong, M.D. expert report; **Exhibit "F,"** Mike Jeong, M.D. rebuttal report; and **Exhibit "G,"** Mike Jeong, M.D. Curriculum Vitae. The fact that Dr. Baltar and APRN Sithole have expert support for their care and treatment demonstrates that this is not a case where Dr. Baltar or APRN Sithole's actions were outside all possible bounds of decency or in conscious disregard of Plaintiff's right and safety. This demonstrates that this is simply a medical malpractice case alleging the failure to use reasonable care, skill, or knowledge ordinarily used under similar circumstances. Punitive damages are not warranted.

Additionally, there are no factual allegations in the Complaint that would invoke Nevada's punitive damages statute. *See* **"Exhibit A."** Regarding punitive damages, Plaintiff's Complaint alleges:

Defendants' refusal to implement a proper baseline care plan, remove Plaintiff's compression stocking every 12 hours as ordered, and/or in some other manner, undertake the offloading procedures and healthcare to Plaintiff constitutes extreme and outrageous conduct that constitutes a conscious disregard for the safety of Plaintiff. Said conduct justifies the imposition of exemplary and punitive damages against the Defendant pursuant to NRS 42.005.

The factual allegations for punitive damages in this paragraph, if true, do not demonstrate outrageous conduct that constitutes a conscious disregard for the safety of Plaintiff. However, as shown from the medical records, these allegations are contradictory as shown as follows:

- (1) Plaintiff alleges that Defendants Dr. Baltar and APRN Sithole failed to complete a baseline care plan. *See Exhibit "A"* at ¶35. However, an interdisciplinary care plan was approved by Dr. Baltar upon admission. SHWS000113. *See Exhibit "D"* at SHWS000405. Also, a care plan was completed by nursing staff for Mr. Heifetz on January 16, 2019. *See Exhibit "D"* at SHWS000405 – SHWS000416.
- (2) Plaintiff alleges that Defendants Dr. Baltar and APRN Sithole failed to prevent the progression of pressure injuries. *See Exhibit "A"* at ¶36. However, Defendant Dr. Baltar ordered a pressure-relieving mattress to assist with the prevention of pressure injuries. *See Exhibit "D"* at SHWS000112.
- (3) Plaintiff alleges Defendants Dr. Baltar and APRN Sithole failed to remove Plaintiff's compression stocking every 12 hours as ordered. *See Exhibit "A"* at ¶37. However, Plaintiff's compression stockings were removed every twelve hours by the nursing staff as indicated by their initials and the respective time entries performed. *See Exhibit "D"* at SHWS000117 – SHWS000118.
- (4) Plaintiff alleges that Defendants Dr. Baltar and APRN Sithole failed to accurately assess Plaintiff's risk for pressure injuries and/or initiate a care plan for prevention of heel injuries. *See Exhibit "A"* at ¶38. Assessing the risk of pressure injuries is performed by nursing staff. Additionally, nursing staff Rachel Anderson, LPN, performed a risk assessment for pressure injuries "Braden Scale" on Plaintiff. *See Exhibit "D"* at SHWS000055 – SHWS000056.

The allegations described by Plaintiff in support of punitive damages amount to nothing more than medical malpractice. Plaintiff has not pled any facts or can offer any evidence or testimony that show Dr. Baltar or APRN Sithole acted with a culpable state of mind such that punitive damages should be allowed. Plaintiff has not presented any "clear and convincing evidence" of oppressive fraudulent, or malicious conduct on the part of Dr. Baltar or APRN

1 Sithole. As the *Countrywide* decision clarified, Plaintiff would have to show Dr. Baltar and APRN
2 Sithole acted with a culpable state of mind and that their conduct **exceeded** reckless or gross
3 negligence. 192 P.3d at 255 [Emphasis added.] Summary judgment should be granted on
4 Plaintiff's prayer for punitive damages, as Plaintiff has not made any allegations and cannot
5 provide any facts to show that Dr. Baltar or APRN Sithole had any malice or intent to cause harm
6 or that Dr. Baltar or APRN Sithole's alleged negligence exceeds the standard of recklessness or
gross negligence.

7 **B. THE FACTS OF THIS CASE ARE GROUNDED IN PROFESSIONAL**
8 **NEGLIGENCE, THEREFORE NRS 41.1395 VULNERABLE PERSONS STATUTE**
9 **IS NOT APPLICABLE**

10 If a claim is based upon professional negligence, then the vulnerable person abuse statute
11 does not apply. *See Smith v. Ben Bennett, Inc.*, 133 Cal. App. 4th 1507, 1522-1523 (Ct. App. 2005).
12 In *Brown v. Mt. Grant Gen. Hosp.*, 2013 U.S. Dist. LEXIS 120909 (U.S. Dist. Nev. 2013), the
13 U.S. District Court reasoned that the Nevada Supreme Court would likely be critical of the artful
14 pleading of elder abuse claims and that it is necessary to look to "the nature of the grievance to
15 determine the character of the action, not the form of the pleadings." *Id.* at *23, *quoting Egan v.*
16 *Chambers*, 299 P.3d 364, 366 n. 2 (Nev. 2013) [Internal citation omitted.] Plaintiff cannot raise a
vulnerable and elder person abuse cause of action arising out of the same facts as his medical
malpractice action-these claims are mutually exclusive. *Unruh-Haxton*, 162 Cal. App. 4th at 352.

17 The statutory design of Nevada law similarly supports the position that allegations of abuse
18 or neglect of a vulnerable person are mutually exclusive of professional negligence. If not, then
19 the public policy underlying the \$350,000 cap for healthcare providers is obliterated. Plaintiff
20 would only need to allege a claim for neglect of an elder or vulnerable person in addition to a
21 professional negligence claim to allow Plaintiff to recover double damages and potentially
22 attorney's fees and costs. The allegations against Dr. Baltar and APRN Sithole amount to no more
than professional negligence. The facts of this case are grounded in professional negligence, and
therefore an elder abuse claim cannot survive.

23 ///

24 ///

25 ///

V.

CONCLUSION

Based on the foregoing, Defendants Dr. Baltar and APRN Sithole respectfully request this court to grant summary judgment on Plaintiff's prayer for punitive damages, and Plaintiff's claims for vulnerable and elder person pursuant to NRS 41.1395.

DATED this 14th day of December 2021.

JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

/s/ Brandon C. Verde

JOHN H. COTTON, ESQ.
BRANDON C. VERDE, ESQ., LL.M.
*Attorneys for Defendants
Shanna Marie Baltar, DO, and
Miriam Sithole, APRN*

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December 2021, I served the foregoing
DEFENDANTS SHANNA MARIE BALTAR, DO AND MIRIAM SITHOLE, APRN's
MOTION FOR PARTIAL SUMMARY JUDGMENT through the Clerk of the Court using the
Wiznet Electronic Filing and Service system upon all parties with an email address on record in
this action:

Jennifer Morales, Esq.
Shirley Blazich, Esq.
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Las Vegas, NV 89113
Attorney for Defendant,
Spring Valley Health Care, LLC
d/b/a Spanish Hills Wellness Suites

Robert D. Rourke, Esq.
ROURKE LAW FIRM
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorney for Defendant,
Spring Valley Health Care, LLC
d/b/a Spanish Hills Wellness Suites

/s/ Arielle Atkinson
An Employee of John H. COTTON & ASSOCIATES, LTD.

Exhibit A

**Sub Acute Unit**

2250 East Flamingo Road, Las Vegas, NV 89119
Tel # (702) 936-6355 Fax # (702) 369 -0639

FAX COVER SHEET

TO: Conor Flynn

FAX #:

RE:

FROM: Shanna Batten PO

PAGES: 33

DATE: 1/16/20

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

COMMENTS: Patient info - confidential

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1/14/2020 2:02 PM

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Las Vegas, Nevada 89107

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SUMMSean K. Claggett, Esq.
Nevada Bar No. 008407Jennifer Morales, Esq.
Nevada Bar No. 008829Brian Blankenship, Esq.
Nevada Bar No. 011522**CLAGGETT & SYKES LAW FIRM**

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sclaggett@claggettlaw.comjmorales@claggettlaw.combrian@claggettlaw.com*Attorneys for Plaintiff***DISTRICT COURT****CLARK COUNTY, NEVADA****BARRY HEIFETZ, an Individual,****Plaintiff,****v.****CASE NO.: A-20-808436-C****DEPT NO.: I****SPRING VALLEY HEALTH CARE, LLC, a
foreign limited-liability company, d/b/a
SPANISH HILLS WELLNESS SUITES;
SHANNA MARIE BALTAR, DO; an individual,
MIRIAM SITHOLE, APRN; an individual, DOE
DOCTOR I, an individual; DOE NURSE I, an
individual; DOES I through X; ROE BUSINESS
ENTITIES XI through XX, inclusive,****Defendants.****SUMMONS - SHANNA MARIE BALTAR,
DO****NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.****TO THE DEFENDANT(S): SHANNA MARIE BALTAR, DO****A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the
Complaint.**

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1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this lawsuit, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

(b) Serve a copy of your response upon the attorney whose name address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

STEVEN D. GRIERSON,
CLERK OF THE COURT

Submitted by:

CLAGGETT & SYKES LAW FIRM

By: 

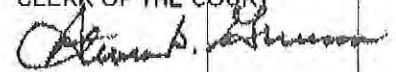
Deputy Clerk Demand Palmer Date 1/15/2020

Clark County Courthouse
200 Lewis Avenue
Las Vegas, NV 89155


Sean K. Claggett, Esq.
Nevada Bar No. 008407
Jennifer Morales, Esq.
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NOTE: When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure 4(b).

Electronically Filed
1/13/2020 3:08 PM
Steven D. Grilerson
CLERK OF THE COURT



CASE NO: A-20-808436-C
Department 1

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15 brian@claggettlaw.com
16 *Attorneys for Plaintiff*

DISTRICT COURT
CLARK COUNTY, NEVADA

13 BARRY HEIFETZ, an Individual,
14
15 Plaintiff,

CASE NO.:

16 v.

DEPT NO.:

17 SPRING VALLEY HEALTH CARE, LLC, a
18 foreign limited-liability company, d/b/a
19 SPANISH HILLS WELLNESS SUITES;
20 SHANNA MARIE BALTAR, DO; an individual,
21 MIRIAM SITHOLE, APRN; an individual, DOE
22 DOCTOR I, an Individual; DOE NURSE I, an
23 individual; DOES I through X; ROE BUSINESS
24 ENTITIES XI through XX, inclusive,

COMPLAINT

22 Defendants.

23 Plaintiff, BARRY HEIFETZ, an individual, by and through his attorneys of record,
24 CLAGGETT & SYKES LAW FIRM, bring their causes of action against Defendants, SPRING
25 VALLEY HEALTH CARE, LLC, d/b/a SPANISH HILLS WELLNESS SUITES; SHANNA
26 MARIE BALTAR, DO; MIRIAM SITHOLE, APRN; DOE DOCTOR I, DOE NURSE I, DOES I
27 through X; ROE BUSINESS ENTITIES XI through XX; and each of them, and alleges as follows:
28

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JURISDICTION, VENUE, AND PARTIES

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1. This court has jurisdiction over this matter under NRS 14.065 and NRS 4370(1), as the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of \$15,000.00. Venue is proper pursuant to NRS 13.040, as Defendant, or any of them, resided in Clark County, Nevada at the commencement of this action.

2. BARRY HEIFETZ (hereinafter "Barry" or "Plaintiff") was at all times relevant a resident of Clark County, Nevada.

3. SPRING VALLEY HEALTH CARE, LLC, d/b/a SPANISH HILLS WELLNESS SUITES ("Spanish Hills" or "Defendant"), was and is a foreign limited liability company doing business in Clark County, Nevada.

4. At all times relevant herein, Defendant, SHANNA MARIE BALTAR, DO ("Defendant Baltar") is and was a physician licensed to practice medicine in the State of Nevada pursuant to NRS Chapters 630 and 449, and was at all times relevant a resident of Clark County, Nevada.

5. At all times relevant herein, Defendant MIRIAM SITHOLE, APRN, ("Defendant Sithole") is and was a licensed advanced practice registered nurse licensed to practice nursing in the State of Nevada pursuant to NRS Chapters 632, and was at all times relevant a resident of Clark County, Nevada.

6. Plaintiff does not know the names or true identities of Defendant DOE Doctor I. Plaintiff is informed and believes, and thereon alleges, that there may have been another supervising physician who acted negligently in monitoring and/or supervising Defendant Baltar's treatment, and/or was negligent in providing his or her own treatment and care of Plaintiff. Plaintiff will move for leave to amend the Complaint upon learning the true identity of DOE Doctor I.

7. Plaintiff does not know the names or true identities of Defendant DOE Nurse I. Plaintiff is informed and believes, and thereon alleges, that there may have been another nurse or nurse practitioner who acted negligently in monitoring and/or supervising Defendant Sithole's

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1 treatment, and/or was negligent in providing his or her own treatment and care of Plaintiff. Plaintiff
2 will move for leave to amend the Complaint upon learning the true identity of DOE Nurse I.

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

14 9. That the true names or capacities of Defendants, ROE BUSINESS ENTITIES XI
15 through XX, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such
16 fictitious names. Defendants designated herein as ROE BUSINESS ENTITIES XI through XX, and
17 each of them, are predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint
18 venture with, and/or serving as an alter ego of, any and/or all Defendants named herein; and/or are
19 entities responsible for the supervision of the individually named Defendants at the time of the events
20 and circumstances alleged herein; and/or are entities employed by and/or otherwise directing the
21 individual Defendants in the scope and course of their responsibilities at the time of the events and
22 circumstances alleged herein; and/or are entities otherwise contributing in any way to the acts
23 complained of and the damages alleged to have been suffered by the Plaintiff herein. Plaintiff is
24 informed and, on that basis believes and thereon alleges, that each of the Defendants designated as
25 a ROE BUSINESS ENTITY is in some manner negligently, vicariously, and/or statutorily
26 responsible for the events and happenings referred to and caused damages to Plaintiff as herein
27 alleged. Plaintiff will seek leave of the Court to amend this Complaint to insert the true names of
28 such Defendants when the same have been ascertained.

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

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

12. Plaintiff is a 79-year-old male who lives in Las Vegas, Nevada.

13. On January 7, 2019, Plaintiff underwent a total left hip replacement at Henderson Hospital.

14. Following the procedure, Henderson Hospital discharged Plaintiff and sent him home.

15. On or about January 12, 2019, days following his hip surgery, Plaintiff's left hip dislocated and came out of the socket as he was standing up.

16. Plaintiff was admitted to Summerlin Hospital Medical Center to repair the left hip dislocation.

17. While at Summerlin Hospital, physicians repaired Plaintiff's hip and placed him in an abductor brace.

18. The abductor brace completely immobilized Plaintiff.

19. On or about January 14, 2019, Summerlin Hospital transferred Plaintiff to Defendant Spanish Hills to undergo intensive physical and occupational therapy on his hip.

20. Upon admission, Defendant Baltar and Defendant Sithole performed a physical examination of Plaintiff.

21. The initial history and physical from January 14, 2019, completed by Dr. Baltar does not reflect any issues with Plaintiff's skin.

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1 22. Following the physical, Defendant Baltar and Defendant Sithole ordered a
2 compression stocking to be placed on Plaintiff's left leg to be worn for 12 hours during the day and
3 12 hours off during the evening hours.

4 23. Defendant Spanish Hills also devised a baseline care plan for Plaintiff's stay and
5 rehabilitation.

6 24. The baseline care plan called for frequent rounds to assess Plaintiff's needs.

7 25. The baseline care plan was devoid of any offloading procedures to prevent skin ulcers
8 or damage to Plaintiff's skin during his rehabilitation at Spanish Hills.

9 26. The baseline care plan was also left unsigned by Defendant Spanish Hills.

10 27. Upon information and belief, from January 16, 2019, thru January 22, 2019,
11 Defendant Spanish Hills; staff of physicians and nurses oversaw Plaintiff's care and rehabilitation
12 following complications due to his hip. (See Affidavit of Scott Matthew Bolhack, M.D., attached
13 hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

14 28. Upon information and belief, from January 16, 2019, thru January 22, 2019,
15 Defendants never removed the compression stocking.

16 29. On or about January 22, 2019, a member of Plaintiff's family removed the
17 compression stocking from Plaintiff's left leg.

18 30. Due to Spanish Hills' failure to remove the compression stocking, Plaintiff was
19 severely injured. (See Ex. 1, Affidavit of Scott Matthew Bolhack, M.D.)

20 31. As a result of Defendants' failure to remove the compression stocking, Plaintiff
21 developed a severe left ulcer on his left heel and suffered a deformity to his left leg. (See Ex. 1,
22 Affidavit of Scott Matthew Bolhack, M.D.)

23 32. The injury left Plaintiff unable to rehabilitate his left-hip over the next 6-12 months.

24 33. The injury also forced Plaintiff to wear a wound vacuum device for over 6-12 months
25 following the injury. (See Ex. 1, Affidavit of Scott Matthew Bolhack, M.D.)

26 ///

27 ////

FIRST CLAIM OF RELIEF
(PROFESSIONAL NEGLIGENCE)

Against All Defendants

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

35. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN owed a duty to prevent the occurrence of pressure injuries to Plaintiff by completing a baseline care plan designed to complete and document a risk assessment scale for pressure injuries to Plaintiff. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

36. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN further owed a duty of care to implement appropriate offloading procedures for Plaintiff to prevent the progression of pressure injuries given he was completely immobilized following his hip procedures. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

37. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN breached their respective duties of care by failing to implement a proper baseline care plan, failing to remove Plaintiff's compression stocking every 12 hours as ordered, and/or in some other manner, providing substandard offloading procedures and healthcare to Plaintiff. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

38. Defendants SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM S. SITHOLE, APRN failed to accurately assess Plaintiff's risk for pressure injuries and/or initiate a care plan for prevention of heel injuries. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1 and Affidavit of Diana Schmitt, RN, attached hereto as Ex. 2.)

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1 39. At all times relevant herein, Defendants, and each of them, knew or in the exercise
2 of reasonable care should have known, that the provisions of medical care and treatment was of such
3 a nature that, if it was not properly given, was likely to injure the person to whom it was given.

4 40. Defendants, and each of them, fell below the standard of care for health care providers
5 who possess the degree of professional learning, skill, and ability of other similar health care
6 providers in failing to properly treat Plaintiff resulting in significant injuries. The allegations against
7 SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO and DEFENDANT MIRIAM
8 S. SITHOLE, APRN are supported by the Affidavits of Dr. Scott Bolhack ("Ex. 1") and Diana
9 Schmitt, RN ("Ex. 2").

10 41. Defendants are vicariously liable for damages resulting from its agents' and/or
11 employees' and/or servants' negligent actions and omissions regarding the injuries to Plaintiff.

12 42. Plaintiff experienced great pain, suffering, and anxiety to his body and mind,
13 sustaining injuries and damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00).

14 43. As a further direct and proximate result of the aforesaid negligence and carelessness
15 of Defendants, Plaintiff has incurred damages, both general and special, including medical expenses
16 as a result of the necessary treatment of Plaintiff's injuries, and will continue to incur damages for
17 future medical treatment necessitated by incident-related injuries he suffered due to Defendants'
18 negligence.

19 44. As a further proximate result of the aforementioned negligence and carelessness of
20 Defendants, Plaintiff was required to, and did, employ physicians and other health care providers to
21 examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The
22 exact amount of such expenses is unknown at this present time, but Plaintiff alleges that Plaintiff
23 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

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

27 46. Defendants' refusal to implement a proper baseline care plan, remove Plaintiff's
28 compression stocking every 12 hours as ordered, and/or in some other manner, undertake the

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1 offloading procedures and healthcare to Plaintiff constitutes extreme and outrageous conduct that
2 constitutes a conscious disregard for the safety of Plaintiff. Said conduct justifies the imposition of
3 exemplary and punitive damages against the Defendant pursuant to NRS 42.005.

4 47. The actions of the Defendants forced Plaintiff to retain counsel to represent him in the
5 prosecution of this action, and he is therefore entitled to an award of reasonable attorney fees and
6 costs of suit.

7 **SECOND CLAIM FOR RELIEF**

8 **(VIOLATION OF NRS 41.1395)**

9 **Against All Defendants**

10 48. Plaintiff repeats and realleges the allegations as contained in the preceding
11 paragraphs herein, and incorporate the same herein by reference.

12 49. Defendants are not a "Provider of Health care" as explicitly defined in NRS 41A.017,
13 and as such, the provisions of NRS Chapter 41A do not apply.

14 50. Pursuant to NRS 41.1395, "if a older person or a vulnerable person suffers a personal
15 injury or death that is caused by abuse or neglect ... the person who caused the injury, death or loss
16 is liable to the older person or vulnerable person for two times the actual damages incurred by the
17 older person or vulnerable person."

18 51. NRS 41.1395 defines "abuse," among other things, as "willful and unjustified":
19 failure of a person who assumed legal responsibility or a contractual obligation for caring for an
20 older person or a vulnerable person, or who has voluntarily assumed responsibility for such a
21 person's care, to provide food, shelter, clothing, or services within the scope of the person's
22 responsibility or obligation, which are necessary to maintain the physical or mental health of the
23 vulnerable person."

24 52. Plaintiff is an older person, as he exceeded 60 years of age at the time of his injury.

25 53. Defendants SPANISH HILLS, SHANNA MARIE BALTAR, DO and MIRIAM S.
26 SITHOLE, APRN owed a duty to prevent the occurrence of pressure injuries to Plaintiff by
27 completing a baseline care plan designed to complete and document a risk assessment scale for
28 pressure injuries to Plaintiff.

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54. Defendants SPANISH HILLS, SHANNA MARIE BALTAR, DO and MIRIAM S. SITHOLE, APRN further owed a duty of care to to implement appropriate offloading procedures for Plaintiff to prevent the progression of pressure injuries given he was completely immobilized following his hip procedures.

55. Defendants SPANISH HILLS, SHANNA MARIE BALTAR, DO and MIRIAM S. SITHOLE, APRN abused Plaintiff when they refused to remove Plaintiff's compression stocking every 12 hours as ordered while he was completely immobile resulting in his pressure ulcers and serious injuries.

56. That NRS 41.1395 was intended to prevent Defendants acts, which caused Plaintiff severe injuries.

57. The acts/and or omissions of Defendants, by abusing and/or neglecting Plaintiff, a "vulnerable person" in violation of NRS 41.1395 were willful and/or wanton, and oppressive, in conscious disregard of his safety, and therefore, an award of punitive damages is appropriate in an amount to be determined at trial.

58. As a direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff was injured, receiving injuries to the tissue and skin of his body. Plaintiff thereby experienced great pain and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

59. The acts/and or omissions of Defendants, by abusing and/or neglecting Plaintiff, a "vulnerable person" in violation of NRS 41.1395 were willful and/or wanton, and oppressive, in conscious disregard of his safety, and therefore, an award of punitive damages is appropriate in an amount to be determined at trial.

60. As a direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff was injured, receiving injuries to the tissue and skin of his body. Plaintiff thereby experienced great pain and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

61. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff incurred damages, both general and special, including medical expenses as

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1 a result of the necessary treatment of Plaintiff's injuries, and will continue to incur damages for
2 future medical treatment necessitated by the incident-related injuries Plaintiff has suffered.

3 62. As a further proximate result of the aforementioned negligence and carelessness of
4 Defendants, Plaintiff was required to, and did, employ physicians and other health care providers to
5 examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The
6 exact amount of such expenses is unknown at this present time, but Plaintiff alleges that he has
7 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

8 63. The actions of Defendants, and each of them, have forced Plaintiff to retain counsel
9 to represent him in the prosecution of this action, and he is therefore entitled to an award of a
10 reasonable amount as attorney's fees and costs of suit.

11 THIRD CLAIM FOR RELIEF

12 (NEGLIGENCE)

13 Against Defendant SPANISH HILLS

14 64. Plaintiff repeats and realleges the allegations as contained in the preceding
15 paragraphs herein, and incorporate the same herein by reference.

16 65. Defendants are not a "Provider of Health care" as explicitly defined in NRS 41A.017,
17 and as such, the provisions of NRS Chapter 41A do not apply.

18 66. Defendant SPANISH HILLS owed a duty of care to Plaintiff, consistent with the
19 standard of care prescribed in a rehabilitation facility to use reasonable diligence and best judgment
20 in the exercise of skill and application of learning in an effort to accomplish the purpose for which
21 they were employed.

22 67. Defendant SPANISH HILLS breached this duty when it failed to have adequate
23 policies and procedures, or failed to utilize policies and procedures in the exercise of skill and
24 application of learning in an effort to accomplish the purpose for which it was employed.

25 68. Defendant SPANISH HILLS, by and through its employees, agents and/or servants
26 breached its duty of care by failing to put into place safety protocols when it knew or should have
27 known that its patients were at risk of injury if it refused to implement appropriate offloading
28 procedures and/or properly prevent pressure injuries.

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69. As a direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff was injured, receiving injuries to the tissue and skin of his body. Plaintiff thereby experienced great pain and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

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

71. As a further proximate result of the aforementioned negligence and carelessness of Defendants, Plaintiff was required to, and did, employ physicians and other health care providers to examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The exact amount of such expenses is unknown at this present time, but Plaintiff alleges that he has suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

72. The actions of Defendants, and each of them, have forced Plaintiff to retain counsel to represent him in the prosecution of this action, and he is therefore entitled to an award of a reasonable amount as attorney's fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(CORPORATE NEGLIGENCE, VICARIOUS LIABILITY, NEGLIGENT HIRING,
TRAINING, AND SUPERVISION)
Against Defendant SPANISH HILLS

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

74.	Defendant is not a "Provider of Health care" as explicitly defined in NRS 41A.017, and as such, the provisions of NRS Chapter 41A do not apply.	
-----	---	--

75. Defendant SPANISH HILLS hired, trained, supervised, and/or retained employees, agents and/or servants, to include but not limited to administrators, managers, supervisors, and caregivers, were acting in the scope of their employment, under Defendant's control and in furtherance of Defendant's interest at the time such actions caused injuries to Plaintiff.

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76. Defendant is vicariously liable for damages resulting from its agents' and/or employees' and/or servants' negligent actions and omissions regarding the injuries to Plaintiff to include but not limited to conduct in failing to supervise and/or correct the negligence of its employees demonstrated disregard for the safety of its residents.

77. Defendant in the capacity of a rehabilitation facility, providing care to elderly residents, owed a Plaintiff a nondelegable duty to employ staff adequately trained in the care of elderly residents.

78. Defendant had a duty to hire, properly train, properly supervise, and properly retain competent employees, agents, independent contractors and representatives.

79. Defendant failed to comply with Federal Regulations F686 Skin Integrity and F 684 Quality of Care. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1)

80. Defendant failed to implement protocols, policies and procedures to prevent pressure wounds including but not limited to offloading procedures. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1)

81. Defendant failed to properly hire, train, and/or retain its employees, agents, and/or independent contractors. (See Affidavit of Scott Matthew Bolhack, M.D., attached hereto as Ex. 1)

82. Upon information and belief, Defendant, breached its duty by improperly hiring, improperly training, improperly supervising and improperly retaining incompetent employees.

83. Plaintiff thereby experienced great pain, suffering, and anxiety to his body and mind, sustaining injuries and damages in the sum in excess of Fifteen Thousand Dollars (\$15,000.00).

84. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendant, Plaintiff has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of Plaintiff's injuries.

85. As a further proximate result of the aforementioned negligence and carelessness of Defendant, Plaintiff was required to, and did, employ physicians and other health care providers to examine, treat, and care for Plaintiff and did incur medical and incidental expenses thereby. The

1 exact amount of such expenses is unknown at this present time, but Plaintiff alleges that he has
2 suffered special damages in excess of Fifteen Thousand Dollars (\$15,000.00).

3 86. The actions of the Defendant have forced the Plaintiff to retain counsel to represent
4 him in the prosecution of this action, and he is therefore entitled to an award of a reasonable amount
5 as attorney fees and costs of suit.

6 WHEREFORE, Plaintiff, BARRY HEIFETZ, expressly reserves his right to amend this
7 Complaint at the time of trial, to include all items of damage not yet ascertained, demand judgment
8 against Defendants, SPRING VALLEY HEALTH CARE, LLC, d/b/a SPANISH HILLS WEINER
9 SUITES SPANISH HILLS, DEFENDANT SHANNA MARIE BALTAR, DO AND DEFENDANT
10 MIRIAM S. SITHOLF, APRN; DOE DOCTOR I, DOE NURSE I, DOES I through X; ROE
11 BUSINESS ENTITIES XI through XX, inclusive and each of the defendants as follows:

12 1. For general damages, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),
13 to be set forth and proven at the time of trial;

14 2. For special damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),
15 to be set forth and proven at the time of trial;

16 3. For reasonable attorney's fees;

17 4. For costs and disbursements of this suit; and

18 5. For such other relief as to the Court seems just and proper.

19 DATED this 13th day of January, 2020.

20 CLAGGETT & SYKES LAW FIRM

21 /s/ Jennifer Morales

22
23 Sean K. Claggett, Esq.
24 Nevada Bar No. 008407
25 Jennifer Morales, Esq.
26 Nevada Bar No. 008829
27 Brian Blankenship, Esq.
28 Nevada Bar No. 011522
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 - Telephone
Attorneys for Plaintiff

EXHIBIT 1

Affidavit**Barry Heifetz**

vs.

Spanish Hills Wellness Suites

Commonwealth of Nevada

County of Clark

My Background

As Scott Bolhack, MD, MBA, CMD, CWSP, PCWC, FACP, I have served the residents of Tucson in multiple areas of medical practice since 1992. I am board-certified in both Internal Medicine and in Hospice and Palliative Care. I also hold two additional certifications: one as a Certified Medical Director (CMD), a certificate granted by The Society for Post-Acute and Long-Term Care Medicine; and another as a Certified Wound Specialist Physician (CWSP) as designated by the American Board of Wound Management. My current clinical activities include skilled nursing facilities delivering primary care for the past 25 years. I am also a medical director of a hospital-based wound care center in Tucson where I have practiced for the past 10 years. I speak nationally about rehabilitation in nursing homes, quality improvement processes, palliative care, and wound care. I have additional experience as a medical director for skilled nursing facilities, assisted living facilities, hospices, home health agencies and wound centers. I have presented over 35 scientific posters in the areas of quality improvement in skilled nursing facilities, post-hospital care, and wound care. I am qualified to review this case involving a resident who received care in a skilled nursing facility. As part of my practice, I routinely directly supervise nurse practitioners, nurses (at all levels of training: RN, LPN, CNA), and other staff in the skilled nursing facility.

Documents Reviewed

I have reviewed the following records as they pertain to Mr. Barry Heifetz:

1. Henderson Hospital Admission
2. Nevada Orthopedic and Spine
3. Spanish Hills Wellness Suites
4. Summerlin Hospital
5. American Medical Response
6. Photographs of Wounds
7. Affidavit of Diana Schmitt

Summary of Case

Barry Heifetz was a 79 year-old male who was admitted to Spanish Hills Wellness Suites on January 14, 2019 and discharged to home on January 30, 2019. He recently had a left total hip arthroplasty completed at Henderson Hospital on December 25, 2018 by the orthopedic surgeon Mark Allen DO, but had a delay in his rehabilitation due to dislocation of the left hip. This admission to Spanish Hills was his second admission due to the complication of the dislocation, after he was placed in an abductor brace.

Mr. Heifetz' medical problem list at the time of his admission to Spanish Hills included: left total hip arthroplasty with complication of dislocation, hypothyroidism, hypertension, glaucoma, chronic back pain, muscle wasting of the left lower extremity and neuropathy. The initial history and physical from January 14, 2019 completed by the admitting clinician Shanna Baltar, DO does not reflect any issues with his skin. Dr. Baltar ordered a pressure-relieving mattress (January 14, 2019)¹ and a one-time wound care consult (January 15, 2019)²; and orders for compression stockings to be worn for 12 hours during the day (January 16, 2019).³

On January 22, 2019, the clinician Miriam Sithole, APRN noted that he had an edematous left lower extremity and she ordered compression stockings at that time, along with a venous doppler ultrasound to successfully rule out a blood clot in that extremity.

On January 23, 2019, the first documentation of his wounds were noted. On the right heel, it was noted that he had developed a fluid-filled blister; on the left heel it was reported that he suffered from a deep tissue injury.⁴ There are no measurements, nor any other parameters of these injuries noted anywhere in the medical record. Miriam Sithole, APRN references in her progress note for the day to treat as indicated. A reference by Rachel Anderson LPN on January 23, 2019 is entered that the dressings were changed to his bilateral lower extremities and his heels were elevated on pillows to prevent pressure on heel. This is the only such documentation of prevention for further injury to his heels for his entire stay at the facility by any staff member.

On January 25, 2019, the orthopedic surgeon Mark Allen, DO also referenced the heel blisters and lower extremity compression for Mr. Heifetz' edema.⁵

On January 30, 2019, in the discharge summary for Mr. Heifetz,⁶ the wounds and edema were briefly addressed. The patient required wound care secondary to multiple lesions of his bilateral left lower extremities calf area due to 'chronic vascular insufficiency' [sic]. He was continued on ACE wraps to his lower extremities because his legs were too edematous for compression stockings [sic]. At the time of discharge, home health orders were referenced as: H/H wound care team for daily wound management.⁷ There were no further specifics to those

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orders, reference to location(s) of the wounds, treatment plans, dressings or plans for follow-up. In review of the HCFA 485 home health orders, there were no specific dressings ordered for the wounds.⁸

On February 19, 2019, the orthopedist Mark Allen, DO notes that the patient has a heel wound that he developed while in rehabilitation, and recommends a wound care evaluation by a physician for debridement, medical grade honey, and possibly hyperbaric oxygen. He is shown the pictures of the heels by the daughter of Mr. Heifetz.⁹

Photographs with a written notation of February 28, 2019 reveal a left heel pressure injury that was unstageable with a thick eschar in place and an pressure injury of the left posterior ankle that appears as a stage 3 injury. By the April 2, 2019, visit with the orthopedic surgeon Dr. Allen, his recovery from the hip repair continues to be restricted due to the pressure injury of the left heel.¹⁰

There were numerous employees that were involved in the failures and breaches in the standard of medical care for Mr. Heifetz. These employees (nurses and CNAs) of Spanish Hills Wellness Suites include:

1. Diana Hale RN
2. Ziegelda Ross RN
3. Javier Canan
4. Joshua Abellera LPN
5. Erin Faucette LPN
6. Rachel Anderson LPN
7. Carlynne G. Tiquia LPN
8. Sheryl Coke LPN
9. Adora Laus De Leon LPN
10. Queenie Ochosa, LPN
11. I reserve the right to include additional nursing staff as the record disclosure is completed.

In addition, the primary care clinicians involved in his care at Spanish Hills also demonstrated failures and breaches in the standard of care. These clinicians include:

1. Shanna Marie Baltar, DO
2. Miriam Sithole, APRN

Opinions

There are numerous breaches of the standard of medical care by the aforementioned employees of Spanish Hills. These breaches of the standard of care occur during Mr. Heifetz's stay at Spanish Hills and with his transition to home health. They are as follows:

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1. Failure to prevent the occurrence of pressure injuries in a vulnerable adult (including but not limited to all of the aforementioned nursing staff and clinicians).
2. Failure to prevent the progression of pressure injuries in a vulnerable adult (including but not limited to all of the aforementioned nursing staff and clinicians).
3. Failure to complete and document a risk assessment scale for pressure injury (Braden Scale) (including but not limited to all of the aforementioned nursing staff and clinicians).
4. Failure to accurately assess the wounds in terms of specific location, size, shape, odor, characteristics, etiology (including but not limited to all of the aforementioned nursing staff and clinicians).
5. Failure to recognize that Mr. Heifetz was at risk for pressure injuries and initiate a care plan for prevention of heel injuries (including but not limited to all of the aforementioned nursing staff and clinicians).
6. Failure to initiate interventions in a timely manner to prevent the progression of pressure injuries in a vulnerable adult including but not limited to all of the aforementioned nursing staff and clinicians).
7. Failure to acknowledge that Mr. Heifetz was a vulnerable adult requiring assistance in repositioning due to his hip surgery which resulted in pressure injuries to his heels including but not limited to all of the aforementioned nursing staff and clinicians).
8. Failure to acknowledge that Mr. Heifetz was a vulnerable adult requiring assistance in positioning his lower extremities with elevation to counter the effects of edema including but not limited to all of the aforementioned nursing staff and clinicians).
9. Failure to ensure that the ordered wound consultation on January 14, 2019 was completed (including but not limited to all of the aforementioned nursing staff and clinicians).
10. Failure to prevent the heels from further pressure injury by initiating specific orders or requesting orders from the clinicians for calf elevation while lying in bed, or specific orthoses for offloading the heels while in a wheelchair (including but not limited to all of the aforementioned nursing staff and clinicians).
11. Failure to create a precise care plan on January 23, 2019.¹¹ It was noted that the patient was at risk for pressure ulcer due to friction and shear; however, the care plan is backdated to January 21, 2019; does not state where the area of risk for pressure injury exists; provides a generic approach to resolution by having a minimum of 2 people plus draw sheet to lift resident while in bed; and to perform skin assessment and inspection every shift with close attention to heels (including but not limited to all of the aforementioned nursing staff and clinicians).
12. Failure of accurately documenting Mr. Heifetz' skin condition as noted by the document Observation Detail List Report on January 24, 2019, one day after the heel ulcerations were documented elsewhere in the medical record including but not limited to all of the aforementioned nursing staff and clinicians.¹²
13. Failure of accurately documenting Mr. Heifetz' skin condition as noted by Minimum Data Set (MDS), Section M, on January 30, 2019, his day of discharge, seven days after pressure injuries of the heel were already noted and being treated. The MDS entered for January 30, 2019, Section M Skin Conditions, does not refer to the existence of any pressure injuries


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- including but not limited to all of the aforementioned nursing staff and clinicians. (Miriam S. Sithole, APRN) ¹³
14. Failure to communicate significant changes in his condition with the family including but not limited to all of the aforementioned nursing staff and clinicians.
 15. Failure to insure the safety of compression garments on a patient with edema with 'chronic vascular insufficiency' (as noted by Miriam Sithole APRN). The arterial status of Mr. Heifetz was never determined. In my clinical experience, patients with suspected vascular insufficiency require an evaluation of their status before any form of compression is initiated (including but not limited to all of the aforementioned clinicians).
 16. Failure of the clinical staff to correctly identify the cause of the skin injury and initiate and monitor the status of the skin resulting in a worsening conditioning and prolonged recovery (including but not limited to all of the aforementioned nursing staff and clinicians).
 17. Failure to carry the specific orders written by the clinicians for compression stockings, not for ACE bandages as supplied including but not limited to all of the aforementioned nursing staff).
 18. Failure to utilize the appropriate compression garment in an at-risk patient. ACE bandages are not an appropriate compression device to utilize for lower extremity edema and can result in medical device pressure injuries including but not limited to all of the aforementioned nursing staff.
 19. Failure to insure that home health initiated daily wound care orders. The discharge note from Spanish Hills Wellness Suites specifically asks for daily wound treatments and assistance with management and monitoring of the bilateral lesions to the lower extremities including but not limited to all of the aforementioned nursing staff and clinicians.
 20. Failure to specify to Home Health the treatment plan, the dressings, and follow-up for the wounds as the patient transitioned to the home setting (Miriam S. Sithole, APRN)
 21. As a result of the aforementioned breaches of the standard of care, Mr. Heifetz developed pressure sores to both heels.
 22. Failure of the facility to comply with Federal Regulations F686 Skin Integrity and F684 Quality of Care.
 23. Failure of the facility to implement protocols, policies and procedures to prevent pressure wounds including but not limited to offloading procedures.
 24. Failure of the facility to properly hire, train, and/or retain its employees, agents, and/or independent contractors.
 25. Breach of the standard of care for the clinicians (the physician and APRN) for failure to assess the cause of and insure the treatment of the wound during his stay.
 26. Breach of the standard of care for the clinicians (the physician and APRN) for not insuring that the wound care consult was completed as ordered on January 19, 2019.
 27. Breach of the standard of care for the clinicians (the physician and APRN) for failure to properly assess the vascular condition of the patient before ordering compression garments, for not insuring that the proper garment was utilized, and for not understanding the implications and consequences of the use of the incorrect garment for compression.
 28. These breaches of the standard of care set forth herein caused and/or contributed to Mr. Heifetz developing pressure injuries.

29. Due to the development of pressure injuries, and specifically the unstageable pressure injury to the left heel, the patient suffered a prolonged recovery from his hip surgery.
30. The breaches in the standards of prevention, treatment and care resulted in a prolonged burden of medical care including negative pressure wound treatment (wound vacuum device) that lasted for approximately an additional six months.

I reserve my right for further review and comment as additional information concerning the care of Barry Heifetz is discoverable over time.

All of my opinions above are made to a reasonable degree of medical probability.


Scott Matthew Bolhack, MD, MBA, CMD, CWSP, PCWC, FACP

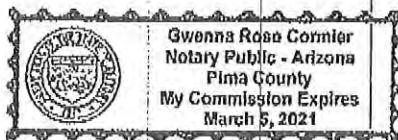

Date

**CERTIFICATE
NOTARIAL ACKNOWLEDGEMENT**

State of Arizona

County of PIMA

On this 11 day of JANUARY, 2020, before me personally appeared
SCOTT MATTHEW BOLHACK, whose identity was proven to me
on the basis of satisfactory evidence to be the person who he or she claims to be, and
acknowledged that he or she signed the above/attached document.



Notary Public

GWENNA ROSE CORMIER
Print name3.5.21
My commission expires

This certificate is attached to the following document:

Description of the document: AFFIDAVITDocument title: AFFIDAVIT

Document type:

Number of pages: 1 Date: 1-11-2020

Additional signers:

EXHIBIT 2

I, Diana Schmitt RN, BSN, CLNC, am qualified to render a professional opinion where nursing home and rehab standards of care are in question. My nursing license is registered with the State of Colorado and is in good standing. I have practiced long-term care nursing extensively over my nursing career with emphasis on nursing home/rehab and extensive nursing home/rehab comprehensive medical record reviews focusing on standards of care for quality assurance and injury related to breaches in standards of care.

Records reviewed to form an opinion concerning Barry Heifetz' left heel pressure ulcer included: photos, ambulance transport records, Spanish Hills' records, Summerlin Hospital records, Henderson Hospital Records, and Nevada Orthopedic and Spine records.

I have reviewed the above mentioned records and what follows is my concluding opinion that breaches in the standards of care concerning the services provided by Spanish Hills Nursing and Rehab occurred and were experienced by Barry Heifetz during his January 14th thru 30th, 2019 residency. These breaches resulted in avoidable bilateral skin breakdown to his heels. Further records review or other information may or may not change my opinion on those breaches in standards of care and/or that those breaches resulted in Mr. Heifetz' pressure ulcer development.

- 1) **Failure to develop an adequate Person-Centered Baseline Care Plan** – The standard of care requires that the Person-Centered Baseline Care Plan be completed within the first 48 hours of admission; updated as necessary; be person-centered; promote continuity of care; facilitate medical and care needs; increase resident safety; and safeguard against avoidable adverse events. The Baseline Care Plan is based on admission orders, diagnoses, information and resident data from the transferring facility, and resident and family participation.

Spanish Hill's nursing staff failed to meet the requirements of Baseline Care Plan development related to Mr. Heifetz' diagnoses, admission orders, and omitted interventions that would have safeguarded him against avoidable pressure ulcer development if they had been implemented. This is a breach in the standard of care. The following failures occurred at Spanish Hills which resulted in Mr. Heifetz acquiring avoidable bilateral skin breakdown that progressed to a right heel blister and a left heel full-thickness pressure ulcer that required months of treatment.

- A) Failure to implement a meaningful Baseline Care Plan for Mr. Heifetz within 48hrs of admission at Spanish Hills.
- B) Failure to update the Baseline Care Plan during the interim of admission until the Comprehensive Care Plan was developed.
- C) Failure to identify risks and conditions in the Baseline Care Plan that would affect Mr. Heifetz' health and safety.
- D) Failure to document person-centered information that would show that Mr. Heifetz and his family participated in the Baseline Care Plan development or that they had opportunity to discuss the Baseline Care Plan and ask questions concerning medical care, ADL care, rehab, and safety.
- E) The nursing staff at Spanish Hills failed to develop a meaningful Baseline Care Plan that would meet Mr. Heifetz' actual and potential medical and ADL care needs. The Baseline Care Plan serves to safeguard against avoidable adverse outcomes that may occur right after admission while the facility continues to gather resident assessment data for the purpose of MDS requirements and Comprehensive Care Plan development. These failures included:

- a) Omitted resident assessment data for Mr. Heifetz' ADL care including: bed mobility, eating, toileting, transfers, ambulation, and device use.
- b) Omitted resident assessment data for functional status related to surgery, fractures, and decreased mobility.
- c) Omitted timely skin integrity interventions that would have averted Mr. Heifetz' bilateral heel pressure ulcer development if they had been implemented.
- f) The nursing staff at Spanish Hills failed to deliver a reasonable level of continuity of care from the transferring facility, Summerlin Hospital. The Baseline Care Plan lacked pertinent resident assessment data based on Mr. Heifetz' diagnoses, admission orders, and information and assessment data from the transferring facility, Summerlin Hospital, as well as information from Mr. Heifetz and his family. These failures included:
 - a) Omitted risk factors of decreased mobility, obesity, advanced age, pain related to recent hospitalization for total left hip arthroplasty with complication of multiple hip dislocations.
 - b) Omitted skin integrity interventions of off-loading upon admission especially to his heels that would have provided immediate aversion of Mr. Heifetz' bilateral heel skin breakdown.
 - c) Omitted instructions on compression stocking use and left hip brace application. Mr. Heifetz arrived at Spanish Hills with these devices and the Spanish Hills nurses should have followed up with the MD and/or Summerlin Hospital as to use and safety.

- 2) **Failure to provide adequate skin assessment and implement appropriate interventions/referrals** – The standard of care requires that a skilled nursing facility must ensure that residents do not develop skin breakdown unless the resident's clinical condition demonstrates that the skin breakdown was unavoidable. If a pressure ulcer develops, the facility must provide appropriate treatments and interventions to promote healing, prevent infection, and prevent further skin breakdown.

The nursing staff at Spanish Hill's failed to meet the requirements to prevent unavoidable skin breakdown and pressure ulcer development and failed to meet the requirements to provide adequate assessment and treatment to promote healing of a pressure ulcer which is a breach in the standards of care.

- A) Nursing failed to address Mr. Heifetz' risk factors for skin breakdown which included not only his left total hip replacement with surgical incisions and 3 left hip dislocations but dementia, obesity, abnormal labs, peripheral neuropathy with Gabapentin use, potential for DVT with compression stocking use, pain related to left hip dislocation and surgical wound, immobility related to left hip brace, general weakness related to hospitalization and total hip replacement, narcotic use for pain, and urinary incontinence.
- B) Labs reports showed that Mr. Heifetz had a low albumin and total protein blood levels which put him at risk for skin break down. It was not clear that this was reported to the MD or dietary.
- C) The following failures occurred at Spanish Hills which resulted in Mr. Heifetz acquiring skin breakdown to his right heel and a full-thickness pressure ulcer to his left heel.
 - a) Failure to perform a comprehensive body check on admission. A body diagram or other nursing assessment tool was not found that would demonstrate appropriate

admission skin assessment including removing the compression stocking to assess the condition of Mr. Heifetz' heels.

- b) Failure to off-load Mr. Heifetz' heels off of the bed surface. This intervention should have appeared on the Baseline Care Plan and MAR/TAR due to the risk for pressure ulcer development from left-sided extremity weakness and increased immobility from Mr. Heifetz' left hip surgery. Ongoing and consistent off-loading of the heels was not found in the Spanish Hill's records.
- c) Failure to document that turning and repositioning was ongoing to any degree. This intervention should have appeared on the Baseline Care Plan due to the risk for skin breakdown related to bladder incontinence and left hip brace use. Ongoing and consistent turning and repositioning was not found in the Spanish Hill's records.
- d) Failure to document that donning and doffing of compression stockings was performed competently and appropriately.
- e) Mr. Heifetz arrived at Spanish Hills with compression stockings on. Nursing documentation lacked assessment data concerning donning and doffing of compression stockings or skin assessment under compression stockings.
- f) Nursing continued to document compression stocking use after skin breakdown and deep tissue injury was found on Mr. Heifetz' heels.
- g) Failure to document that Mr. Heifetz' left hip brace was implemented per MD orders. The left hip brace was intended to be applied 24/7 per MD orders. Nursing failed to clarify this order upon admission and failed to include left hip brace use on the MAR/TAR until January 24th. It was not clear how and when nursing managed the left hip brace. Left extremity skin assessments for circulation, motion and sensation including left heel assessments were omitted in the Spanish Hills' records.
- h) Nursing initialed the MAR for weekly skin checks, but no nursing assessment tool was found to demonstrate the findings of the weekly skin checks or if any emphasis was placed on the areas of Mr. Heifetz' body that were at risk for skin breakdown and/or pressure ulcer development.
- i) A pressure reducing mattress was implemented at admission and signed off on the MAR/TAR twice daily. However, a pressure reducing mattress alone for an obese resident with multiple risk factors for pressure ulcer development was not adequate to provide the appropriate off-loading for high risk pressure areas such as the coccyx and heels as in Mr. Heifetz case.
- j) Appropriate referrals to the dietician and wound care specialist were not found.

- 3) **Failure to implement the nursing process on admission and for change in conditions / competent nursing staff** – The standard of care requires that nursing services provide care that includes the nursing process of assessment, evaluation, planning, and implementation of the resident care plan and in response to the resident's care needs. The facility must ensure that nurses have the specific competencies and skill sets necessary to care for residents' needs as identified through resident assessments, and described in the plan of care.

The nursing staff at Spanish Hill's failed to meet the requirements that would support the nursing process was systematically applied during Mr. Heifetz' residency which is a breach in the standard of care. It was not demonstrated that competent nursing assessments were

performed which should reflect appropriate planning, evaluation, follow up, and documentation. These failures resulted in care plans that were inadequate and caregivers (nurses and CNA's) who delivered below the standard of care services.

- A) The nursing services of Spanish Hills failed to follow appropriate assessment guidelines at admission as evidenced by:
- a) Omitted resident assessment data on the Baseline Care Plan to provide for immediate health and safety needs.
 - b) Omitted comprehensive body and skin assessment at admission to identify any skin integrity issues which may have been present.
 - c) Failed to remove compression stockings to assess the lower extremities and heels for blanchable vs. nonblanchable areas.
 - d) Failed to document the condition of the skin around and under the left hip brace and to do a circulation, motion, and sensory check of the left extremity.
- B) A wound consult was found signed off on the MAR on January 15th, 2019, but wound consult notes were not found in the records. After Mr. Heifetz acquired wounds to his heels, a wound care consult was not found.
- C) Nursing failed to perform an appropriate assessment for pressure ulcer risk. A Braden Scale¹ assessment was performed on admission; however, the score for risk of skin breakdown was at 15 [mild risk]. This Braden Scale score was not correct given Mr. Heifetz' Gabapentin use for peripheral neuropathy, urinary incontinence, decreased activity level, decreased bed mobility due to left hip brace use and hip precautions due to total hip replacement with dislocations, inadequate nutrition, and friction and shear problem due to obesity and decreased bed mobility especially the left leg. Mr. Heifetz should have scored lower in the moderate to high risk range. Given Mr. Heifetz' complication of 3 hip dislocations following his total hip replacement with a left hip brace to limit his ROM and his pain level, a reasonable and prudent nursing assessment would conclude that Mr. Heifetz was at a high risk for a pressure ulcer development to his left heel.
- D) Seroquel (Quetiapine) was started on January 19, 2019, for sleep and anxiety. Mr. Heifetz was reported to have some sun-downing and forgetfulness, but he had no behavioral disturbance that would warrant Seroquel use.
- E) On January 21, 2019, a Risk for Pressure Ulcer Care Plan was developed with the interventions of two staff to use a draw sheet while Mr. Heifetz was in bed and a skin assessment and inspections every shift with close attention to heels.
- a) These interventions should have appeared on the Baseline Care Plan as the result of appropriate assessment of risk factors for pressure ulcer development. Mr. Heifetz was found with edema to his left lower extremity the next day on January 22, 2019.
 - b) The use of the draw sheet was not found to have been implemented in the records.
 - c) The draw sheet intervention addressed friction and shear, but did not address off-loading of the heels. There was no intervention(s) on the Baseline Care Plan or the Risk for Pressure Ulcer Care Plan to off-load Mr. Heifetz' heels.
- F) Appropriate change of condition was not implemented on January 22, 2019. Nursing noted edema to the left lower extremity, but there was no other assessment data such as

¹ Braden Scale - For Prediction Pressure Sore Risk. Severe risk ≤ 9 ; High risk 10-12; Mod risk 13-14; Mild risk 15-18.

skin condition, left brace placement and condition of surrounding skin, foot and heel condition, and if the compression stockings were being worn and removed for inspection. The next day wound treatment orders appeared on the MAR/TAR.

- a) Right heel fluid filled blister cleanse with normal saline pat dry apply Betadine solution cover with dry dressing wrap with Kerlix every day x 30days.
- b) Left heel deep tissue injury (DTI) cleanse with normal saline pat dry apply Betadine solution cover with dry dressing wrap with Kerlix every day x 30days.
- G) Appropriate wound assessment or meaningful wound care notes were not found in the records. The notations on the Wound Care Administration History were not adequate to describe the condition of Mr. Heifetz' wounds whether the area was intact or not and measurements were not taken.
- H) On January 23, 2019, the first and only notation in the records appeared in a nursing note that Mr. Heifetz' leg was off-loaded on a pillow to prevent pressure on the heel.
- I) IDT coordination of care lacked as evidenced by the following.
 - a) The family or Mr. Heifetz was not included in the Baseline Care Plan development.
 - b) The Baseline Care Plan was incomplete with multiple omissions.
 - c) The Baseline Care Plan was not updated.
 - d) Nursing assessment lacked to identify risk factors for pressure ulcer development.
 - e) Device monitoring was not adequately documented in order to determine proper and safe use.
 - f) No IDT notes or meetings with the family was found.
 - g) IDT follow up for Mr. Heifetz' right heel blister and left heel DTI was not found.
 - h) IDT follow up was not found to ensure appropriate referral for the wound care specialist and to the dietician due to left heel DTI.
 - i) IDT failed to assess Seroquel, an antipsychotic that was started for anxiety and sleep. The appropriateness of this order was not explained and nonpharmacological measures were not found to have been implemented. A consent form was not found for Seroquel use. There was no documentation found to support the use of this medication.
 - j) IDT failed to ensure adequate skin checks under the left hip brace with appropriate documentation.
 - k) IDT documentation was not found to ensure that compression stocking use was appropriate with edema and skin breakdown. Continued compression stocking use likely contributed to further discomfort/pain and tissue damage to the left heel.
 - l) IDT coordination lacked to ensure MD orders were followed and the MAR/TAR was free of omissions and errors and contraindicated interventions.
 - m) The Comprehensive Care Plan was inadequate to appreciate Mr. Heifetz' risk factors and lacked appropriate interventions.

In conclusion, Mr. Heifetz was admitted to Spanish Hills for skilled rehab care to promote his most optimal health and well-being. The quality of skilled and ADL care that the standard of care requires for all residents was not demonstrated in Mr. Heifetz' medical records from Spanish Hills. It is my professional opinion, that Spanish Hills' management and nursing staff were negligent as stated above. The following individuals were identified in the records (this list is not exhaustive due to some names illegible or cut off due to poor copy quality, missing, or on further produced records):

- Shanna Marie Baltar DO, attending physician – Individually, owed a duty of care to Plaintiffs to coordinate medical care, treatments, and risk factors for pressure ulcer development in accordance with medical standards of care; but, breached the standard of care for reconciliation of admission orders to Spanish Hills relating to compression stocking therapy and pressure ulcer risk factors of immobility/surgery, nutritional status and other risk factors resulting in failure to provide preventive treatment of pressure ulcer development. [Spanish Hills Wellness Suites.pdf 113-114, 504 of 666]
- Miriam S. Sithole APRN, nurse practitioner – Individually, owed a duty of care to Plaintiffs to provide appropriate medical assessments and treatments in accordance with current practice guidelines and certification standards; but, breached the standards related to assessment of deep tissue injury followed by orders inconsistent with practice guidelines. [Spanish Hills Wellness Suites.pdf 297, 299, 300, 302 of 666]
- Diana Hale RN – Individually, owed a duty of care to Plaintiffs to provide wound treatments and documentation in a manner consistent with standards of care and to advocate and provide general oversight consistent with state and federal statutes; but, breached those standards by failing to appreciate coordination of care resulting in missed wound treatments. [Spanish Hills Wellness Suites.pdf 302 of 666]
- Ziegelda Ross RN – Individually, owed a duty of care to Plaintiffs to provide competent skin assessment/documentation and wound treatment/documentation in a manner consistent with standards of care; but, breached those standards by failing to provide appropriate skin/wound assessment/documentation resulting in further wound development followed by worsening of leg and foot wounds. [Spanish Hills Wellness Suites.pdf 488 of 666]
- Javier Canan – Individually, owed a duty of care to Plaintiffs to provide competent skin assessment/documentation and wound treatment/documentation in a manner consistent with standards of care; but, breached those standards by failing to provide appropriate skin/wound assessment/documentation resulting in further wound development followed by worsening of leg and foot wounds. [Spanish Hills Wellness Suites.pdf 488 of 666]
- Joshua Abellera LPN – Individually, owed a duty of care to Plaintiffs to provide competent skin assessment/documentation and wound treatment/documentation in a manner consistent with standards of care; but, breached those standards by failing to provide appropriate skin/wound assessment/documentation resulting in further wound development followed by worsening of leg and foot wounds. [Spanish Hills Wellness Suites.pdf 488 of 666]
- Erin Faucette LPN – Individually, owed a duty of care to Plaintiffs to provide skin assessment and documentation in a manner consistent with standards of care; but, breached the standard of care by failing to accurately provide assessment and documentation of lower extremity skin problems. [Spanish Hills Wellness Suites.pdf 299 of 666]
- Rachel Anderson LPN – Individually, owed a duty of care to Plaintiffs to follow facility policy and federal regulations for the admission process; but, breached the standards by failing to accurately perform and document a head to toe admission skin assessment and failing to follow through with completion and implementing the Baseline Care Plan. [Spanish Hills Wellness Suites.pdf 002-10, 97-98, 301, 435-437, 443-444 of 666]
- Carlynne G. Tiquia LPN – Individually, owed a duty of care to Plaintiffs to follow facility policy and federal regulations for the admission process; but, breached the

standards by failing to accurately perform and document a head to toe admission skin assessment and failing to follow through with completion and implementing the Baseline Care Plan. [Spanish Hills Wellness Suites.pdf 97-98, 293 of 666]

- Sheryl Coke LPN – Individually, owed a duty of care to Plaintiffs to adhere to the standard of care in assessment and the nursing process; but, breached those standards by failing to accurately assess and document skin issues resulting in a delay to identify progressing skin problems. [Spanish Hills Wellness Suites.pdf 456-457 of 666]
- Adora Laus De Leon LPN – Individually, owed a duty of care to Plaintiffs to adhere to the standard of care in assessment and the nursing process and following MD orders; but, breached those standards by failing to accurately assess and document skin issues resulting in a delay to identify progressing skin problems and failing to follow through with a wound care consultation. [Spanish Hills Wellness Suites.pdf 295, 299, 504 of 666]
- Queenie Ochoa, LPN – Individually, owed a duty of care to Plaintiffs to follow facility policy and federal regulations for the admission process; but, breached the standards by failing to implement care plan approaches appropriately resulting in poor coordination of care. [Spanish Hills Wellness Suites.pdf 517 of 666]

The negligence proximately caused Mr. Heifetz to develop left heel DTI injury which progressed into a left heel full-thickness pressure ulcer with tissue loss.

Diana Schmitt RN, BSN, CLNC



1/11/2020

JURAT WITH AFFIANT STATEMENT

State of Colorado } ss.
 County of La Plata

- ☒ See Attached Document (Notary to cross out lines 1-7 below)
☐ See Statement Below (Lines 1-7 to be completed only by document signer[s], not Notary)

1
2
3
4
5
6
7

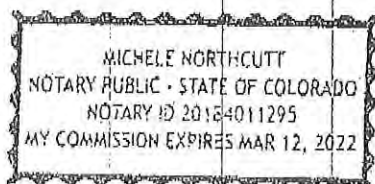
Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me

this 11 day of Jan 2020 by
 Date Month Year

Diana L. Schmitt
 Name of Signer No. 1



Name of Signer No. 2 (if any)

Michele Northcutt
 Signature of Notary Public

Michele Northcutt 3/12/22

Any Other Required Information
 (Residence, Expiration Date, etc.)

Place Notary Seal/Stamp Above

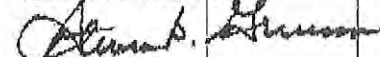
OPTIONAL

This section is required for notarizations performed in Arizona but is optional in other states. Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Affidavit for lawsuitDocument Date: Jan 11, 2020Number of Pages: 17 + 1 Notary Stamp

Signer(s) Other Than Named Above: _____

Electronically Filed
1/14/2020 2:01 PM
Steven D. Grierson
CLERK OF THE COURT



1 **DMJT**
2 Sean K. Claggett, Esq.
3 Nevada Bar No. 008407
4 Jennifer Morales, Esq.
5 Nevada Bar No. 008829
6 Brian Blankenship, Esq.
7 Nevada Bar No. 011522
8 **CLAGGETT & SYKES LAW FIRM**
9 4101 Meadows Lane, Suite 100
10 Las Vegas, Nevada 89107
11 (702) 655-2346 - Telephone
12 (702) 655-3763 - Facsimile
13 sclaggett@claggettlaw.com
14 jmorales@claggettlaw.com
15 brian@claggettlaw.com
16 *Attorneys for Plaintiff*

DISTRICT COURT
CLARK COUNTY, NEVADA

12 BARRY HEIFETZ, an Individual,
13
14 Plaintiff,

14 v.

CASE NO.: A-20-808436-C

DEPT NO.: 1

15 SPRING VALLEY HEALTH CARE, LLC, a
16 foreign limited-liability company, d/b/a
17 SPANISH HILLS WELLNESS SUITES;
18 SHANNA MARIE BALTAR, DO; an individual,
19 MIRIAM SITHOLE, APRN; an individual, DOE
20 DOCTOR I, an Individual; DOE NURSE I, an
21 individual; DOES I through X; ROE BUSINESS
22 ENTITIES XI through XX, inclusive,

20 Defendants.

PLAINTIFF'S DEMAND FOR JURY TRIAL

23 COMES NOW, Plaintiff, BARRY HEIFETZ by and through his attorneys, BRIAN
24 BLANKENSHIP, ESQ. of CLAGGETT & SYKES LAW FIRM, and demands a jury trial of all of the

25 ///

26 ///

27 ///

28 ///

CLAGGETT & SYKES LAW FIRM

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

702-655-2346 • Fax 702-655-3763

1 issues in the above captioned matter.

2 DATED this 14th day of January, 2020.

3
4 CLAGGETT & SYKES LAW FIRM

5
6 */s/ Brian Blankenship*

7 Sean K. Claggett, Esq.
8 Nevada Bar No. 008407
9 Jennifer Morales, Esq.
10 Nevada Bar No. 008829
11 Brian Blankenship, Esq.
12 Nevada Bar No. 011522
13 4101 Meadows Lane, Suite 100
14 Las Vegas, Nevada 89107
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16 *Attorneys for Plaintiff*
17
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26
27
28

CLAGGETT & SYKES LAW FIRM

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Las Vegas, Nevada 89107

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Exhibit B

1 **SAO**

2 Sean K. Claggett, Esq.
3 Nevada Bar No. 008407
4 Jennifer Morales, Esq.
5 Nevada Bar No. 008829
6 Shirley Blazich, Esq.
7 Nevada Bar No. 008378
8 Shannon L. Wise, Esq.
9 Nevada Bar No. 014509
4101 Meadows Lane, Ste. 100
6 Las Vegas, Nevada 89107
7 (702) 655-2346 – Telephone
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sclaggett@claggettlaw.com
jmorales@claggettlaw.com
shirley@claggettlaw.com
9 swise@claggettlaw.com
Attorneys for Plaintiffs

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 BARRY HEIFETZ, an Individual,
14 Plaintiff,

Case No. A-20-808436-C
Dept. No. XXI

15 v.

**STIPULATION AND ORDER TO
EXTEND DISCOVERY
DEADLINES
(THIRD REQUEST)**

16 SPRING VALLEY HEALTH CARE, LLC, a
foreign limited-liability company, d/b/a
17 SPANISH HILLS WELLNESS SUITES;
SHANNA MARIE BALTAR, DO; an
18 individual, MIRIAM SITHOLE, APRN; an
individual, DOE DOCTOR I, an Individual;
19 DOE NURSE I, an individual; DOES I
through X; ROE BUSINESS ENTITIES XI
20 through XX, inclusive,
21 Defendants.

22 IT IS HEREBY STIPULATED between Plaintiff BARRY HEIFETZ, by and
23 through his attorneys of record, the CLAGGETT & SYKES LAW FIRM; Defendants

Shanna Marie Baltar, D.O., and Miriam Sithole, APRN, by and through their counsel of record, JOHN H. COTTON & ASSOCIATES; Defendant Spring Valley Health Care, LLC d/b/a Spanish Hills Wellness Suites, by and through their counsel of record, ROURKE LAW FIRM and McBRIDE HALL, pursuant to EDCR 2.35, that the discovery deadlines be extended as follows:

I. DISCOVERY COMPLETED:

1. The parties have made and exchanged initial disclosures pursuant to Nevada Rule of Civil Procedure 16.1 and supplements thereto.
2. Plaintiff Barry Heifetz has responded to written discovery from Defendants Shanna Marie Baltar, D.O. and Miriam Sithole, APRN.
3. Plaintiffs have propounded written discovery to all Defendants.
4. Defendants have responded to Plaintiffs' written discovery.
5. The Deposition of Plaintiff Barry Heifetz has been taken.
6. The Deposition of Defendants have been taken.
7. The Depositions of percipient witnesses have been taken.

II. DISCOVERY REMAINING:

1. Plaintiff intends to conduct the continued deposition of Defendants' NRCP 30(b)(6) witness(es).
2. Defendants intend to depose Plaintiff's treating physicians.
3. Parties intend to take the deposition of additional percipient witnesses.
4. Parties intend to take the deposition of initial and expert witnesses.
5. Any other additional written discovery requests, as needed.
6. Any other depositions which may become necessary as discovery continues.

III. REASONS FOR THE CONTINUANCE:

The parties have agreed to mediation and it is now been moved to September 24, 2021. In the interest of costs, the parties would like to conduct expert discovery after mediation. This necessarily requires the parties to extend the current discovery deadline.

IV. PROPOSED SCHEDULE:

Based on the foregoing, the parties respectfully request that the Court grant their joint request to extend discovery deadlines and continue trial, as follows:

	Current Dates	Proposed Dates
Initial Expert Disclosure	June 28, 2021	Closed
Last Day to Amend Pleadings/Add Parties	June 28, 2021	Closed
Rebuttal Expert Disclosure	July 29, 2021	Closed
Close of Discovery	September 30, 2021	November 15, 2021
Last Day to File Dispositive Motions	October 22, 2021	December 15, 2021
Trial	February 22, 2022	NO CHANGE

V. CURRENT TRIAL DATE:

Trial in this matter is currently set for a jury trial on a five-week stack to begin on February 22, 2022. The current trial date will remain unchanged.

///

///

///

IT IS SO STIPULATED.

CLAGGETT & SYKES LAW FIRM <u>/s/ Shannon L. Wise</u> Date: _____ Jennifer Morales, Esq. Nevada Bar No. 00829 Shirley Blazich, Esq. Nevada Bar No. 008378 Shannon L. Wise, Esq. Nevada Bar No. 014509 4101 Meadows Lane, Suite 100 Las Vegas, Nevada 89107 <i>Attorneys for Plaintiff</i>	JOHN H. COTTON & ASSOCIATES, LTD. <u>/s/ Katherine L. Turpen</u> Date: <u>9/15/2021</u> Katherine L. Turpen, Esq. Nevada Bar No. 008911 7900 W. Sahara Avenue, Suite 200 Las Vegas NV 8911y <i>Attorneys for Defendants Shanna Marie Baltar, D.O., and Miriam Shithole, APRN</i>
ROURKE LAW FIRM _____ Date: _____ Robert D. Rourke, Esq. Nevada Bar No. 005757 10161 Park Run Drive, Suite 150 Las Vegas, NV 89145 <i>Attorneys for Defendant Spring Valley Health, LLC d/b/a Spanish Hills Wellness Suites</i> Or McBRIDE HALL <u>/s/ Robert C. McBride</u> Date: <u>9/15/2021</u> Robert C. McBride, Esq. Nevada Bar No. 007082 8329 W. Sunset Road, Suite 260 Las Vegas, NV 89113 <i>Attorneys for Defendant Spring Valley Health, LLC d/b/a Spanish Hills Wellness Suites</i>	

ORDER

Based upon the above stipulation of the parties, and good cause appearing:

IT IS HEREBY ORDERED that the discovery deadlines will be extended as agreed by the parties herein; a separate amended scheduling order will not be issued:

IT IS FURTHER ORDERED that the discovery deadlines shall be amended as follows:

	Current Dates	Proposed Dates
Initial Expert Disclosure	June 28, 2021	Closed
Last Day to Amend Pleadings/Add Parties	June 28, 2021	Closed
Rebuttal Expert Disclosure	July 29, 2021	Closed
Close of Discovery	September 30, 2021	November 15, 2021
Last Day to File Dispositive Motions	October 22, 2021	December 15, 2021
Trial	February 22, 2022	NO CHANGE

LD to file any Motions in Limine

January 7, 2022

IT IS FURTHER ORDERED that trial in this matter is currently set for a jury trial on a five-week stack to begin on February 22, 2022. The current trial date will remain unchanged.

Dated this 20th day of September, 2021


DISTRICT COURT JUDGE

Prepared and submitted by:
CLAGGETT & SYKES LAW FIRM

AD8 5F8 1BE9 871F
Tara Clark Newberry
District Court Judge

/s/ Shannon L. Wise
Shannon L. Wise, Esq.
Nevada Bar No. 014509
Attorney for Plaintiffs

From: [Robert McBride](#)
To: [Katherine Turpen](#); [Jackie Abrego](#); [Brandon Verde](#); [Robert Rourke](#); [Teyla Charlotte Buys](#)
Cc: [Shannon Wise](#); [Gemini Yii](#); [Candace P. Cullina](#); [Kellie D. Piet](#)
Subject: RE: Helfetz v. Dr. Baltar / SAO to extend discovery deadlines
Date: Wednesday, September 15, 2021 11:22:53 AM
Attachments: [image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)

Please attach mine as well. Thanks.

BTW, do we have a confirmed time set for the mediation on 9/24?

Robert C. McBride, Esq.
rcmcbride@mcbridehall.com | www.mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



MCBRIDE HALL
ATTORNEYS AT LAW

NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT [\(702\) 792-5855](tel:7027925855), AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.

From: Katherine Turpen <kturpen@jhcottonlaw.com>
Sent: Wednesday, September 15, 2021 10:38 AM
To: Jackie Abrego <JAbrego@claggettlaw.com>; Brandon Verde <bverde@jhcottonlaw.com>; Robert Rourke <robert@rourkelawfirm.com>; Robert McBride <rcmcbride@mcbridehall.com>; Teyla Charlotte Buys <tcbuys@mcbridehall.com>
Cc: Shannon Wise <swise@claggettlaw.com>; Gemini Yii <gyii@jhcottonlaw.com>; Candace P. Cullina <ccullina@mcbridehall.com>; Kellie D. Piet <kpiet@mcbridehall.com>

Subject: RE: Heifetz v. Dr. Baltar / SAO to extend discovery deadlines

Please go ahead and affix my e-signature to the SAO.

Kind Regards,
KT

Katherine L. Turpen, Esq.
JOHN H. COTTON & ASSOCIATES
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Tel: 702.832.5909
Fax: 702.832.5910

KTurpen@JHCottonlaw.com

From: Jackie Abrego <JAbrego@claggettlaw.com>
Sent: Tuesday, September 14, 2021 3:50 PM
To: Katherine Turpen <kturpen@jhcottonlaw.com>; Brandon Verde <bverde@jhcottonlaw.com>;
Robert Rourke <robert@rourkelawfirm.com>; Robert McBride <rcmcbride@mcbridehall.com>
Cc: Jackie Abrego <JAbrego@claggettlaw.com>; Shannon Wise <swise@claggettlaw.com>
Subject: Heifetz v. Dr. Baltar / SAO to extend discovery deadlines

Good afternoon:

Attached please find a Stipulation and Order to Extend Discovery Deadlines – Third Request. Please let me know if you have any changes, or if approved, do I have your permission to attach your e-signature and submit to the Court.

Thank you.

Jackie Abrego
Paralegal

4101 Meadows Lane, Ste. 100 Las Vegas, NV 89107
6900 S. McCarran Blvd., # 2060 Reno, NV 89509
Ph. (702) 333-7777
Fax (702) 655-3763
www.claggettlaw.com

CLAGGETT & SYKES
LAW FIRM

Connect with us on social media:

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Barry Heifetz, Plaintiff(s)

CASE NO: A-20-808436-C

7 vs.

DEPT. NO. Department 21

8 Spring Valley Health Care LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Stipulation and Order to Extend Discovery Deadlines was served via
14 the court's electronic eFile system to all recipients registered for e-Service on the above
entitled case as listed below:

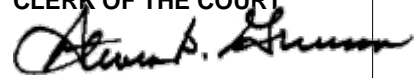
15 Service Date: 9/20/2021

16 Jackie Abrego	jabrego@claggettlaw.com
17 Maria Alvarez	malvarez@claggettlaw.com
18 Reception E-File	reception@claggettlaw.com
19 Kellie Piet	kpiet@mcbridehall.com
20 Gemini Yii	gyii@jhcottonlaw.com
21 Jessica Pincombe	jpincombe@jhcottonlaw.com
22 Moises Garcia	mgarcia@claggettlaw.com
23 John Cotton	jhcotton@jhcottonlaw.com
24 Robert McBride	rcmcbride@mcbridehall.com
25 Michelle Newquist	mnewquist@mcbridehall.com

26
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1	Candace Cullina	ccullina@mcbridehall.com
2	Robert Rourke	robert@rourkelawfirm.com
3	Jocelyn Abrego	Jocelyn@claggettlaw.com
4	Melanie Chapman	mbchapmanlaw@gmail.com
5	JJ Kashnow	jkashnow@mcbridehall.com
6	Brandon Verde	bverde@jhcottonlaw.com
7	Legal Assistant	la@rourkelawfirm.com
8	Lindsay Cortez	lindsay@claggettlaw.com
9	Lauren Smith	lsmith@mcbridehall.com
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Exhibit C



ANS
JOHN H. COTTON, ESQ.
Nevada Bar No. 5268
E-mail: JHCotton@jhcottonlaw.com
TODD M. WEISS, ESQ.
Nevada Bar No. 14130
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Telephone: (702) 832-5909
Facsimile: (702) 832-5910
*Attorneys for Defendants Shanna Marie Baltar, DO
and Miriam Sithole, APRN*

DISTRICT COURT
CLARK COUNTY, NEVADA

BARRY HEIFETZ, an individual,

Plaintiff,

Case No.: A-20-808436-C

v.

Dept. No.: 1

SPRING VALLEY HEALTH CARE, LLC, a
foreign limited liability company, d/b/a
SPANISH HILLS WELLNESS SUITES;
SHANA MARIE BALTAR, DO; and individual,
MIRIAM SITHOLE, APRN, an individual, DOE
DOCTOR 1, and individual, DOE NURSE 1, an
individual, DOES I through X, and ROE
BUSINESS ENTITIES XI—XX, inclusive,

Defendant(s).

DEFENDANTS SHANNA MARIE BALTAR, DO AND MIRIAM SITHOLE, APRN'S
ANSWER TO PLAINTIFF'S COMPLAINT

Defendants SHANNA MARIE BALTAR, DO and MIRIAM SITHOLE,
APRN(hereinafter "Defendants") by and through their attorneys of record, John H. Cotton, Esq.
and Todd M. Weiss, Esq., of the law firm of JOHN H. COTTON & ASSOCIATES, in answering
Plaintiff's Complaint (hereinafter "Complaint"), hereby admit, deny and allege as follows:

JURISDICTION, VENUE AND PARTIES

1. In answering paragraph 1 of Plaintiff's Complaint, Defendants admit that

jurisdiction and venue are proper.

2. In answering paragraph 2 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions contained therein and deny them on that basis.

3. In answering paragraph 3 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions contained therein and deny them on that basis.

4. In answering paragraph 4 of Plaintiff's Complaint, Defendants admit that Shanna Marie Baltar, DO was a physician licensed to practice medicine in the State of Nevada and a resident of Clark County, NV.

5. In answering paragraph 5 of Plaintiff's Complaint, Defendants admit that Miriam Sithole, APRN was a licensed Advanced Practice Registered Nurse in the State of Nevada and a resident of Clark County, NV.

6. In answering paragraph 6 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions contained therein and deny them on that basis.

7. In answering paragraph 7 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

8. In answering paragraph 8 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

9. In answering paragraph 9 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing.

10. In answering paragraph 10 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained

therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing.

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

11. In answering paragraph 11 of Plaintiff's Complaint, Defendants herein repeat and re-allege their answers to each and every allegation contained in Paragraphs 1 through 10 of Plaintiff's Complaint as if set forth at length herein.

12. In answering paragraph 12 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

13. In answering paragraph 13 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

14. In answering paragraph 14 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

15. In answering paragraph 15 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

16. In answering paragraph 16 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

17. In answering paragraph 17 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

18. In answering paragraph 18 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

19. In answering paragraph 19 of Plaintiff's Complaint, Defendants are without

1 knowledge or information sufficient to form a belief as to the truth of the allegations contained
2 therein and deny them on that basis.

3 20. In answering paragraph 20 of Plaintiff's Complaint, Defendants are without
4 knowledge or information sufficient to form a belief as to the truth of the allegations contained
5 therein and deny them on that basis. Defendants specifically deny any and all allegations of
6 negligence or wrongdoing.

7 21. In answering paragraph 21 of Plaintiff's Complaint, Defendants are without
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained
9 therein and deny them on that basis. Defendants specifically deny any and all allegations of
10 negligence or wrongdoing.

11 22. In answering paragraph 22 of Plaintiff's Complaint, Defendants are without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained
13 therein and deny them on that basis. Defendants specifically deny any and all allegations of
14 negligence or wrongdoing.

15 23. In answering paragraph 23 of Plaintiff's Complaint, Defendants are without
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained
17 therein and deny them on that basis. Defendants specifically deny any and all allegations of
18 negligence or wrongdoing.

19 24. In answering paragraph 24 of Plaintiff's Complaint, Defendants are without
20 knowledge or information sufficient to form a belief as to the truth of the allegations contained
21 therein and deny them on that basis. Defendants specifically deny any and all allegations of
22 negligence or wrongdoing.

23 25. In answering paragraph 25 of Plaintiff's Complaint, Defendants are without
24 knowledge or information sufficient to form a belief as to the truth of the allegations contained
25 therein and deny them on that basis. Defendants specifically deny any and all allegations of
26 negligence or wrongdoing.

27 26. In answering paragraph 26 of Plaintiff's Complaint, Defendants are without
28 knowledge or information sufficient to form a belief as to the truth of the allegations contained

1 therein and deny them on that basis. Defendants specifically deny any and all allegations of
2 negligence or wrongdoing.

3 27. In answering paragraph 27 of Plaintiff's Complaint, Defendants are without
4 knowledge or information sufficient to form a belief as to the truth of the allegations contained
5 therein and deny them on that basis. Defendants specifically deny any and all allegations of
6 negligence or wrongdoing. The referenced affidavits of Dr. Bolhack and Ms. Schmitt, RN speak
7 for themselves and no further response is required.

8 28. In answering paragraph 28 of Plaintiff's Complaint, Defendants are without
9 knowledge or information sufficient to form a belief as to the truth of the allegations contained
10 therein and deny them on that basis. Defendants specifically deny any and all allegations of
11 negligence or wrongdoing.

12 29. In answering paragraph 29 of Plaintiff's Complaint, Defendants are without
13 knowledge or information sufficient to form a belief as to the truth of the allegations contained
14 therein and deny them on that basis. Defendants specifically deny any and all allegations of
15 negligence or wrongdoing.

16 30. In answering paragraph 30 of Plaintiff's Complaint, Defendants are without
17 knowledge or information sufficient to form a belief as to the truth of the allegations contained
18 therein and deny them on that basis. Defendants specifically deny any and all allegations of
19 negligence or wrongdoing. The referenced affidavit of Dr. Bolhack speaks for itself and no
20 further response is required.

21 31. In answering paragraph 31 of Plaintiff's Complaint, Defendants are without
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained
23 therein and deny them on that basis. Defendants specifically deny any and all allegations of
24 negligence or wrongdoing. The referenced affidavit of Dr. Bolhack speaks for itself and no
25 further response is required.

26 32. In answering paragraph 32 of Plaintiff's Complaint, Defendants are without
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained
28 therein and deny them on that basis. Defendants specifically deny any and all allegations of

negligence or wrongdoing.

33. In answering paragraph 33 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing. The referenced affidavit of Dr. Bolhack speaks for itself and no further response is required.

FIRST CLAIM FOR RELIEF

(Professional Negligence)

34. In answering paragraph 34 of Plaintiff's Complaint, Defendants herein repeat and re-allege their answers to each and every allegation contained in Paragraphs 1 through 33 of Plaintiff's Complaint as if set forth at length herein.

35. In answering paragraph 35 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing. The referenced affidavits of Dr. Bolhack and Ms. Schmitt, RN speak for themselves and no further response is required.

36. In answering paragraph 36 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing. The referenced affidavits of Dr. Bolhack and Ms. Schmitt, RN speak for themselves and no further response is required.

37. In answering paragraph 37 of Plaintiff's Complaint, Defendants deny the allegations contained therein as they apply to them. The referenced affidavits of Dr. Bolhack and Ms. Schmitt, RN speak for themselves and no further response is required.

38. In answering paragraph 38 of Plaintiff's Complaint, Defendants deny the allegations contained therein as they apply to them. The referenced affidavits of Dr. Bolhack and Ms. Schmitt, RN speak for themselves and no further response is required.

39. In answering paragraph 39 of Plaintiff's Complaint, Defendants are without

1 knowledge or information sufficient to form a belief as to the truth of the allegations contained
2 therein and deny them on that basis. Defendants specifically deny any and all allegations of
3 negligence or wrongdoing.

4 40. In answering paragraph 40 of Plaintiff's Complaint, Defendants deny the
5 allegations contained therein as they apply to them. The referenced affidavits of Dr. Bolhack and
6 Ms. Schmitt, RN speak for themselves and no further response is required.

7 41. In answering paragraph 41 of Plaintiff's Complaint, Defendants deny the
8 allegations contained therein as they apply to them.

9 42. In answering paragraph 42 of Plaintiff's Complaint, Defendants are without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained
11 therein and deny them on that basis. Defendants specifically deny any and all allegations of
12 negligence or wrongdoing.

13 43. In answering paragraph 43 of Plaintiff's Complaint, Defendants deny the
14 allegations contained therein as they apply to them.

15 44. In answering paragraph 44 of Plaintiff's Complaint, Defendants deny the
16 allegations contained therein as they apply to them.

17 45. In answering paragraph 45 of Plaintiff's Complaint, Defendants deny the
18 allegations contained therein as they apply to them.

19 46. In answering paragraph 46 of Plaintiff's Complaint, Defendants deny the
20 allegations contained therein as they apply to them.

21 47. In answering paragraph 47 of Plaintiff's Complaint, Defendants deny the
22 allegations contained therein as they apply to them.

23
24 **SECOND CLAIM FOR RELIEF**

25 **(Violation of NRS 41.1395)**

26 48. In answering paragraph 48 of Plaintiff's Complaint, Defendants herein repeat and
27 re-allege their answers to each and every allegation contained in Paragraphs 1 through 47 of
28 Plaintiff's Complaint as if set forth at length herein.

1 49. In answering paragraph 49 of Plaintiff's Complaint, Defendants deny the
2 allegations contained therein as they apply to them.

3 50. In answering paragraph 50 of Plaintiff's Complaint, the cited/referenced statute
4 speaks for itself and no further response is required.

5 51. In answering paragraph 51 of Plaintiff's Complaint, the cited/referenced statute
6 speaks for itself and no further response is required.

7 52. In answering paragraph 52 of Plaintiff's Complaint, Defendants are without
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained
9 therein and deny them on that basis. Defendants specifically deny any and all allegations of
10 negligence or wrongdoing.

11 53. In answering paragraph 53 of Plaintiff's Complaint, Defendants are without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained
13 therein and deny them on that basis. Defendants specifically deny any and all allegations of
14 negligence or wrongdoing.

15 54. In answering paragraph 54 of Plaintiff's Complaint, Defendants are without
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained
17 therein and deny them on that basis. Defendants specifically deny any and all allegations of
18 negligence or wrongdoing.

19 55. In answering paragraph 55 of Plaintiff's Complaint, Defendants deny the
20 allegations contained therein as they apply to them.

21 56. In answering paragraph 56 of Plaintiff's Complaint, Defendants deny the
22 allegations contained therein as they apply to them.

23 57. In answering paragraph 57 of Plaintiff's Complaint, Defendants deny the
24 allegations contained therein as they apply to them.

25 58. In answering paragraph 58 of Plaintiff's Complaint, Defendants deny the
26 allegations contained therein as they apply to them.

27 59. In answering paragraph 59 of Plaintiff's Complaint, Defendants deny the
28 allegations contained therein as they apply to them.

63. In answering paragraph 63 of Plaintiff's Complaint, Defendants deny the allegations contained therein as they apply to them.

(Negligence)

68. In answering paragraph 65 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of

negligence or wrongdoing.

69. In answering paragraph 69 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing.

70. In answering paragraph 70 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing.

71. In answering paragraph 71 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing.

72. In answering paragraph 72 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis. Defendants specifically deny any and all allegations of negligence or wrongdoing.

FOURTH CLAIM FOR RELIEF

(Corporate Negligence, Vicarious Liability, Negligent Hiring, Training and Supervision)

73. In answering paragraph 73 of Plaintiff's Complaint, Defendants herein repeat and re-allege their answers to each and every allegation contained in Paragraphs 1 through 72 of Plaintiff's Complaint as if set forth at length herein.

74. In answering paragraph 74 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and deny them on that basis.

75. In answering paragraph 75 of Plaintiff's Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained

1 therein and deny them on that basis. Defendants specifically deny any and all allegations of
2 negligence or wrongdoing.

3 76. In answering paragraph 76 of Plaintiff's Complaint, Defendants are without
4 knowledge or information sufficient to form a belief as to the truth of the allegations contained
5 therein and deny them on that basis. Defendants specifically deny any and all allegations of
6 negligence or wrongdoing.

7 77. In answering paragraph 77 of Plaintiff's Complaint, Defendants are without
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained
9 therein and deny them on that basis. Defendants specifically deny any and all allegations of
10 negligence or wrongdoing.

11 78. In answering paragraph 78 of Plaintiff's Complaint, Defendants are without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained
13 therein and deny them on that basis. Defendants specifically deny any and all allegations of
14 negligence or wrongdoing.

15 79. In answering paragraph 66 of Plaintiff's Complaint, Defendants are without
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained
17 therein and deny them on that basis. Defendants specifically deny any and all allegations of
18 negligence or wrongdoing. The referenced affidavit of Dr. Bolhack speaks for itself and no
19 further response is required.

20 80. In answering paragraph 80 of Plaintiff's Complaint, Defendants are without
21 knowledge or information sufficient to form a belief as to the truth of the allegations contained
22 therein and deny them on that basis. Defendants specifically deny any and all allegations of
23 negligence or wrongdoing. The referenced affidavit of Dr. Bolhack speaks for itself and no
24 further response is required.

25 81. In answering paragraph 81 of Plaintiff's Complaint, Defendants are without
26 knowledge or information sufficient to form a belief as to the truth of the allegations contained
27 therein and deny them on that basis. Defendants specifically deny any and all allegations of
28 negligence or wrongdoing. The referenced affidavit of Dr. Bolhack speaks for itself and no

1 further response is required.

2 82. In answering paragraph 82 of Plaintiff's Complaint, Defendants are without
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained
4 therein and deny them on that basis. Defendants specifically deny any and all allegations of
5 negligence or wrongdoing.

6 83. In answering paragraph 83 of Plaintiff's Complaint, Defendants are without
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained
8 therein and deny them on that basis. Defendants specifically deny any and all allegations of
9 negligence or wrongdoing.

10 84. In answering paragraph 84 of Plaintiff's Complaint, Defendants are without
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained
12 therein and deny them on that basis. Defendants specifically deny any and all allegations of
13 negligence or wrongdoing.

14 85. In answering paragraph 85 of Plaintiff's Complaint, Defendants are without
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained
16 therein and deny them on that basis. Defendants specifically deny any and all allegations of
17 negligence or wrongdoing.

18 86. In answering paragraph 86 of Plaintiff's Complaint, Defendants are without
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained
20 therein and deny them on that basis. Defendants specifically deny any and all allegations of
21 negligence or wrongdoing.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff's Complaint fails to state a compensable claim for relief as against these Defendants.

SECOND AFFIRMATIVE DEFENSE

In all of the treatment provided and rendered to the Plaintiff by Defendants, the Plaintiff was fully informed of the risks inherent in such medical and mental health procedures and the risks inherent in his own failure to comply with instructions, and did voluntarily assume all risks attendant thereto.

THIRD AFFIRMATIVE DEFENSE

Defendants allege Plaintiff failed to use ordinary care for the safety of his person and property, was negligent and careless concerning the matters set forth in this action, and any damages suffered by him proximately resulted therefrom.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action against these Defendants are barred by the applicable statute of limitations of N.R.S. 41A or any other applicable affirmative statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff's damages, if any, were caused solely by conditions or illnesses suffered by Plaintiff prior to any association with Defendants, and that said illnesses or conditions were not the result of any negligence or malpractice, nor are they alleged to be the result of any negligence or malpractice by Defendants.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against these answering Defendants because the alleged damages were the result of the intervening and/or superseding conduct of others.

SEVENTH AFFIRMATIVE DEFENSE

Some or all of the claims for damages in the complaint are barred because Plaintiff, although under a duty to do so, failed to mitigate his alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

Defendants have performed and fully discharged all medical and legal obligations to Plaintiff, including meeting the requisite standard of care to which Plaintiff was entitled.

NINTH AFFIRMATIVE DEFENSE

The damages, if any, alleged by the Plaintiff were not the result of any acts or omission, commission, or negligence, but were the results of known risks which were consented to by the Plaintiff, such risks being inherent in the nature of the care rendered and such risks were assumed by Plaintiff upon consent to treatment.

TENTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff's injuries, if any, were caused by the acts or inactions of persons over whom Defendants had neither control nor right of control and for whom these answering Defendants are not liable or responsible.

ELEVENTH AFFIRMATIVE DEFENSE

Pursuant to N.R.S. 41A.045, in the event Defendants are found liable, liability shall be several liability for Plaintiff's economic and non-economic damages only for that portion of the judgment which represents the percentage of negligence attributable to these answering Defendants.

TWELFTH AFFIRMATIVE DEFENSE

These answering Defendants avail themselves to all affirmative defenses as set forth in N.R.S. 41A.021, 41A.031, 41A.035, 41A.045, 41A.071, 41A.100, 42.020, 41.1395 and all applicable subparts.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join a party pursuant to N.R.C.P. 19 necessary for the just adjudication of the claims at issue in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

These answering Defendants deny each and every allegation of Plaintiff's Complaint not specifically admitted or otherwise plead to herein.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff has no standing to assert the claims set forth in his Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

Any award of punitive damages would be unconstitutional under applicable constitutional protection.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants and their employees, if any, at all times met the applicable standard of care.

EIGHTEENTH AFFIRMATIVE DEFENSE

These answering Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, these answering Defendants reserve the right to seek leave of court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to establish the elements necessary to assert and maintain causes of action under NRS 41.1395 and NRS 41A, Negligence Per Se, against these answering Defendants.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff is comparatively at fault; Plaintiffs' recovery, if any, should be reduced in proportion to Plaintiff's own fault, or in the event that Plaintiff's fault exceeds that of these answering Defendants, Plaintiff is not entitled to any recovery.

TWENTY FIRST AFFIRMATIVE DEFENSE

Defendants reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

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...

1 **WHEREFORE**, Defendants, having fully answered Plaintiff's Complaint, pray for
2 judgment against Plaintiff as follows:

- 3 a. That Plaintiff's Complaint and all other claims therein be dismissed with prejudice
4 and that Plaintiff take nothing thereby;
- 5 b. For an award of Defendants' costs and attorney's fees incurred in the
6 defense of this action and interest on such costs and attorney's fees at the
7 highest rate allowed by law from the entry of final judgment until paid in
8 full; and
- 9 c. For such other and further relief as the Court deems just and proper.

DATED this 3RD day of February 2020

11 JOHN H. COTTON & ASSOCIATES
12 7900 W. Sahara Avenue, Ste. 200
13 Las Vegas, Nevada 89117

14 *Todd M. Weiss*

By: _____

John H. Cotton, Esq.

Todd M. Weiss, Esq.

*Attorneys for Defendants Shanna Marie Baltar, DO
and Miriam Sithole, APRN*

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February 2020, I served the foregoing ANSWER TO COMPLAINT, through the Clerk of the Court using the Wiznet Electronic Filing and Service system upon all parties with an email address on record in this action:

CLAGGET & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
Attorneys for Plaintiff

/s/ Gemini Yü
An Employee of John H. COTTON & ASSOCIATES, LTD.

John H. Cotton & Associates
7900 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

Exhibit D

Observation Detail List Report: HEIFETZ, BARRY (Full Code) MR#: 303759-02

Possessions and valuables received.					
Signature of Patient/Resident, or Responsible Party:					
Date Signed:					
Signature, title of staff completing this assessment					
Date:					
VITALS					
Type	Value	Details	Date	Time	Taken By
NOTES					
Date	Progress Note		Discipline	Created By	
Skin -- Braden Scale For Prediction of Pressure Sore Risk (Acuity)					
OBSERVATION INFORMATION					
Creator:	Rachel Anderson LPN				
Observation Date:	01/14/2019 22:06	Date Recorded:	01/14/2019 22:06		
Completed Date:	01/14/2019 22:07	Completed By:	Rachel Anderson LPN		
DESCRIPTION					
Braden Scale For Prediction					
OBSERVATION DETAILS					
SENSORY PERCEPTION					
Residents ability to respond meaningfully to pressure-related discomfort.					
<div><div><input type="radio"/></div>1 - Completely Limited - Unresponsive (does not moan, flinch or grasp) to painful stimuli, due to diminished LOC or sedation. -OR- Limited ability to feel pain over most of body surface.</div> <div><div><input type="radio"/></div>2 Very Limited Responds only to painful stimuli Can't communicate discomfort except by moaning, or restlessness OR Has sensory impairment that limits ability to feel pain/discomfort over half of body.</div> <div><div><input type="radio"/></div>3 - Slightly Limited - Responds to verbal commands but can't always communicate discomfort or need to be turned. -OR- Has some sensory impairment that limits ability to feel pain/discomfort in 1-2 extremities.</div> <div><div><input checked="" type="radio"/></div>4 - No Impairment - Responds to verbal commands. No sensory deficit limiting ability to feel or voice discomfort/pain.</div>					

Observation Detail List Report: HEIFETZ, BARRY (Full Code) MR#: 303759-02

Resident's usual food intake pattern. (NPO=Nothing By Mouth IV=Intravenously TPN=Total Parenteral Nutrition)

1 - Very Poor - Never eats a complete meal. Rarely eats more than 1/3 of food offered. Eats 2 serving or less of protein per day. Takes fluids poorly. Doesn't take liquid dietary supplement. -OR- Is NPO and/or maintained on clear liquids or IV's for more than 5 days.

2 - Probably Inadequate - Rarely eats a complete meal and generally eats only about 1/2 of food offered. Protein intake includes only 3 servings of meat or dairy products per day. Occasionally will take a dietary supplement when offered. -OR- Receives less than optimum amount of liquid diet or tube feeding.

3 - Adequate - Eats over half of most meals. Eats a total of 4 servings of protein (meat and dairy products) each day. Occasionally will refuse a meal, but will usually take a supplement when offered. -OR- Is on a tube feeding or TPN regimen that probably meets most nutritional needs.

4 - Excellent - Eats most of every meal. Never refuses a meal. Usually eats a total of 4 or more servings of protein (meat and dairy products) each day. Occasionally eats between meals. Does not require supplements.

FRICITION AND SHEAR

Describe any problems related to friction and shearing.

1 - Problem - Requires moderate to maximum assist in moving. Complete lifting without sliding against sheets is impossible. Frequently slides down in bed or chair, requiring frequent repositioning with maximum assist. Spasticity, contractures, or agitation leads to almost constant friction.

2 - Potential Problem - Moves feebly or requires minimum assist. During a move, skin probably slides to some extent, against sheets, chair, restraints or other device. Maintains relatively good position in chair or bed most of time but occasionally slides down.

3 - No Apparent Problem - Moves in bed and in chair independently and has sufficient muscle strength to lift up completely during move. Maintains good position in bed or chair at all times.

EVALUATION

Total Braden Scale Score

Braden Scale

Score: 15.0000

Level: 15-18 - AT RISK - If other major risk factors are present advance to next level of risk.

Interpretation of Score: 19 or Higher - NOT AT RISK - No interventions necessary at this time. 15-18 - AT RISK - If other major risk factors are present e.g. advanced age, fever, poor dietary intake of protein, Diastolic BP <60, hemodynamic instability advance to next level of risk. 13-14 - MODERATE RISK - If other major risk factors are present advance to next level of risk. 10-12 - HIGH RISK 9 or Less - VERY HIGH RISK

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INTERVENTIONS

Skin and Ulcer Treatments

Check all that apply

M1200

Pressure reducing device for chair

Pressure reducing device for bed

Turning/repositioning program

Nutrition or hydration intervention to manage skin problems

Pressure ulcer care

Surgical wound care

Application of nonsurgical dressings (with or without topical medications) other than to feet

Applications of ointments/medications other than to feet

Application of dressings to feet (with or without topical medications)

None of the above were provided

Indicate other measures taken.

REFERRALS

Indicate what referrals may be appropriate.

Activities

Clergy

Dietary

Nursing Rehab.

Occupational Therapy

Pharmacist Drug Review

Physical Therapy

Physician/NP/PA Update

Psychotherapy

Social Services

Therapeutic Recreation

Wound Clinic

Other

No Referrals Necessary

PLAN OF CARE

Indicate Care Plan action taken.

Continue Current Plan of Care

Initiate Plan of Care

Plan of Care updated. Describe below, if necessary.

Describe, if necessary.

VITALS

Type	Value	Details	Date	Time	Taken By
					SHWS000056

1PET APP 112

MatrixCare Report User: Greenham, Nicole Run Date:01/23/2020 12:39:12 Page 20 of 28

Physician Order Report: 01/21/2019 - 01/26/2019**Attending: Baltar, Shanna Marie****HEIFETZ, BARRY (Full Code)**

MR#: 303759-02	DOB: [REDACTED]	Age: 79	Sex: M
Room/Bed:	Unit: No Unit	Admit Date: 01/14/2019 20:39	
Alerts:	Allergies: lisinopril		
Diagnoses: F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint			

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/14/2019 - 01/14/2019		Aplisol (tuberculin ppd) solution; 5 tub. unit /0.1 mL; amt: 5 tuberculin units/0.1 mL; intradermal Once - One Time; Second 18:00 - 06:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		cholecalciferol (vitamin D3) [OTC] capsule; 2,000 unit; amt: 1 cap; oral Once A Day; 09:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		Daily Multi-Vitamin (multivitamin) [OTC] tablet; amt: 1 tab; oral Once A Day; 09:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		docusate sodium [OTC] capsule; 100 mg; amt: 1 cap; oral [DX: Constipation, unspecified] Twice A Day; 09:00, 21:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		gabapentin tablet; 600 mg; amt: 1 tab; oral [DX: Acute pain due to trauma] Three Times A Day; 06:00, 14:00, 22:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		latanoprost drops; 0.005 %; amt: 1 drop on both eyes; ophthalmic (eye) [DX: Unspecified open-angle glaucoma, stage unspecified] At Bedtime; 21:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		levothyroxine tablet; 25 mcg; amt: 1 tab; oral [DX: Hypothyroidism, unspecified] Once A Day; 05:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		losartan tablet; 25 mg; amt: 1 tab; oral [DX: Essential (primary) hypertension] Once A Day; 09:00	Shanna Marie Baltar
Prescription	01/14/2019 - 01/30/2019 (DC Date)		oxycodone - Schedule II tablet; 10 mg; amt: 1 tab; oral [DX: Dislocation of unspecified internal joint prosthesis, initial encounter] Every 4 Hours - PRN; PRN 1, PRN 2, PRN 3, PRN 4, PRN 5, PRN 6	Shanna Marie Baltar

Treatments flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/14/2019 - 01/30/2019 (DC Date)		Pressure Relieving Mattress Every Shift; 06:00 - 18:00, 18:00 - 06:00	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/14/2019 - 01/30/2019 (DC Date)		Vasculera (diosmin complex no.1) [OTC] tablet; 630 mg; amt: 1 tab; oral Once A Day; 09:00	Shanna Marie Baltar

Signatures

Phys . Sig.	Date:	Above Orders Noted by:	Date:
R.N. Review	Date:	Pharm Review	Date:

Physician Order Report: 01/21/2019 - 01/26/2019**Attending: Baltar, Shanna Marie****HEIFETZ, BARRY (Full Code)**

MR#:	303759-02	DOB:		Age:	79	Sex:	M
Room/Bed:		Unit:	No Unit	Admit Date:	01/14/2019 20:39		
Alerts:		Allergies:	lisinopril				
Diagnoses:	F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint						

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
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Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	ADMIT TO: Spanish Hills Wellness Suites	Shanna Marie Baltar

Lab flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Lab	01/15/2019	01/15/2019	CBC w/Diff (H/H, RBC, Indices, WBC, Plt, Diff) (4500); Comp Metabolic Panel w/eGFR (944); Magnesium (6335); Once - One Time; 01:30	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	CODE STATUS: FULL CODE	Shanna Marie Baltar

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	CONSULT: PODIATRY, OPHTHAMOLOGY, DENTAL AS NEEDED	Shanna Marie Baltar

Dietary flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	DIET/CONSISTENCY: REGULAR DIET	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	DISCHARGE PLANS - YES	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/15/2019	01/30/2019 (DC Date)	Eliquis (apixaban) tablet; 2.5 mg; amt: 1; oral Twice A Day; 07:00, 19:00	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	I APPROVE OF INTERDISCIPLINARY PLAN OF CARE FOR THIS RESIDENT	Shanna Marie Baltar

Signatures

Phys . Sig.	Date:	Above Orders Noted by:	Date:
R.N. Review	Date:	Pharm Review	Date:

Medications Administration History: 01/21/2019 - 01/26/2019**HEIFETZ, BARRY(Full Code)****U/R/B:****MR#: 303759****Physician:** Baltar, Shanna Marie ph: [REDACTED]**Resident Status** = In House from 01/21/2019 - 01/26/2019**Administration****Notes:**

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
(8AM - 2PM - 8PM)Check resident for level of pain utilizing numeric rating scale 0-10 or verbal descriptor scale(M)Mild, (Mo)Moderate, (S)Severe, (VS)Very Severe.	Three Times A Day			01/14/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
08:00	AL38	AL38	LM55*	SC69	SC69*	SC69*
Response	m	m	M	m	m	m
14:00	AL38	AL38	LM55	SC69	SC69	SC69
Response	mo	m	m	m	m	m
20:00	RA10	RA10	RA10	DJ20	DJ20	DJ20
Response	o	mo	m	m	m	m

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
2nd Step PPD Result	Once - One Time	Document induration in millimeters		01/23/2019 - 01/23/2019

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
TB Test 14:00 - 22:00	X	X	LM55	X	X	X
Induration (mm)	X	X	-	X	X	X

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
Aplisol (tuberculin ppd) solution; 5 tub. unit /0.1 mL; Amount to Administer: 5 tuberculin units/0.1 mL; intradermal	Once - One Time			01/21/2019 - 01/21/2019

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
TB Test 06:00 - 15:00	AL38	X	X	X	X	X
S te (R/L Forearm)	lfa	X	X	X	X	X
Manufacturer	tubersol	X	X	X	X	X
Lot #	c5482aa	X	X	X	X	X
Exp Date	11.20.20	X	X	X	X	X

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
cholecalciferol (vitamin D3) [OTC] capsule; 2,000 unit; Amount to Administer: 1 cap; oral	Once A Day			01/14/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
09:00	AL38	AL38	LM55	SC69	SC69	SC69

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
Compression stockings on for 12 hours in AM, off for 12 hours at night.	Twice A Day			01/16/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
09:00	AL38	AL38	LM55	SC69	SC69	SC69

Medications Administration History: 01/21/2019 - 01/26/2019**HEIFETZ, BARRY(Full Code)****U/R/B:****MR#: 303759****Physician:** Baltar, Shanna Marie ph: [REDACTED]**Resident Status** = In House from 01/21/2019 - 01/26/2019**Administration****Notes:**

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
21:00	RA10	RA10	RA10	DJ20	DJ20	DJ20*

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
Daily Multi-Vitamin (multivitamin) [OTC] tablet; Amount to Administer: 1 tab; oral	Once A Day			01/14/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
09:00	AL38	AL38	LM55	SC69	SC69	SC69

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
DILT-XR (diltiazem hcl) capsule,ext.rel 24h degradable; 120 mg; Amount to Administer: 1 tab; oral	Once A Day			01/16/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
09:00	AL38	AL38	LM55	SC69	SC69	SC69

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
docusate sodium [OTC] capsule; 100 mg; Amount to Administer: 1 cap; oral	Twice A Day			01/14/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
09:00	AL38	AL38	LM55	SC69	SC69	SC69
21:00	RA10	RA10	RA10	DJ20	DJ20	DJ20*

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
Eliquis (apixaban) tablet; 2.5 mg; Amount to Administer: 1; oral Other Test: ()	Twice A Day			01/15/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
07:00	AL38*	AL38*	LM55	SC69*	SC69*	SC69*
19:00	RA10	RA10	RA10	DJ20	DJ20	DJ20

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
folic acid [OTC] tablet; 1 mg; Amount to Administer: 1mg; oral	Once A Day			01/18/2019 - 01/30/2019 (DC Date)

Time	Mon 21	Tue 22	Wed 23	Thu 24	Fri 25	Sat 26
07:00	(AL38)	AL38*	LM55	SC69*	SC69*	SC69*

Spanish Hills Wellness Suites
5351 Montessouri St.
Las Vegas, NV 89113
Phone (702)251-2200 Fax (702)251-2201

HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: Heifetz, Barry
PATIENT #: 303759-02
ADMISSION DATE: 01/14/2019
ATTENDING PHYSICIAN: Shanna Marie Baltar, DO

DATE OF BIRTH: [REDACTED]

INSURANCE: OptumCare

DATE OF ENCOUNTER: 01/15/2019

HISTORY OF PRESENT ILLNESS: This is a 78-year-old male with a past medical history of hypertension, glaucoma, hypothyroidism, osteoarthritis, prior hip surgeries with dislocations, who presented to Summerlin Hospital after he was released from the hospital following a left hip total hip arthroplasty with Dr. Allen. His hip dislocated, he went back to the ER and was then evaluated by Ortho, who applied an abductor brace to be worn 24x7, then transferred to Spanish Hills for rehabilitation. The patient was seen and examined at bedside. He stated that he had not had bowel movement since Friday and that he does have 3/10 pain at rest, which is new for him. Usually his pain is only with ambulation.

PAST MEDICAL HISTORY: As stated:

1. Chronic back pain.
2. Neuropathy.
3. Hypertension.
4. Glaucoma.
5. Hypothyroidism.

PAST SURGICAL HISTORY: Right total hip arthroplasty in 2007, left total hip arthroplasty in 2019 of this month, tonsillectomy, cataract surgery, appendectomy.

SOCIAL HISTORY: Denies. The patient lives alone in a single storey house. Prior level of function includes use of a walker for ambulation.

PHYSICAL EXAMINATION:

VITAL SIGNS: Pending.

GENERAL APPEARANCE: The patient is in no acute distress, on room air, well-appearing, appears his stated age.

HISTORY AND PHYSICAL EXAMINATION

Spanish Hills Wellness Suites
5351 Montessouri St.
Las Vegas, NV 89113
Phone (702)251-2200 Fax (702)251-2201

HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: Heifetz, Barry
PATIENT #: 303759-02
ADMISSION DATE: 01/14/2019
ATTENDING PHYSICIAN: Shanna Marie Baltar, DO

HEENT: Head is normocephalic, atraumatic.

CARDIOVASCULAR: Regular rate and rhythm. No murmurs, rubs, or gallops.

LUNGS: Clear to auscultation. No wheezes, rales, or rhonchi.

ABDOMEN: Soft, nontender, nondistended. Positive bowel sounds.

EXTREMITIES: Bilateral upper and lower extremities. No cyanosis, no edema, no varicosities. 2/4 distal pulses. The left lower extremity has an abductor brace in place.

LABORATORY DATA: On 01/15/2019, white blood cell count 3.27, hemoglobin 11, hematocrit 31.4, platelets 197, 000. Sodium 133, potassium 4.6, chloride 99, bicarb 26, BUN 19, creatinine 1.13, glucose of 102.

ASSESSMENT AND PLAN:

1. Left total hip arthroplasty on 01/07/2019 with Dr. Allen , orthopedic surgeon. The patient has had multiple dislocations since the surgery and was sent to Summerlin Hospital where Ortho evaluated him and put him in an abductor brace, which should be applied 24x7. He has scheduled follow up with Dr. Allen and repeated left hip x-ray prior. The patient's pain control is 3/10 at this time at rest.
2. Hypertension. The patient takes losartan and Diltiazem.
3. Chronic pain, osteoarthritis, neuropathy. The patient states he has a pretty _____ pain tolerance. He takes gabapentin 600 three times daily and oxycodone 10 mg every 4 hours as needed for hip pain given his recent surgery.
4. Hypothyroidism. Continue his Levothyroxine 25 mcg daily.
5. Glaucoma. Continue his latanoprost drops.

DISPOSITION: This patient lives alone in a single-storey home. Prior level of function involved use of a walker for ambulation.

HISTORY AND PHYSICAL EXAMINATION

Spanish Hills Wellness Suites
5351 Montessori St.
Las Vegas, NV 89113
Phone (702)251-2200 Fax (702)251-2201

HISTORY AND PHYSICAL EXAMINATION

PATIENT NAME: Heifetz, Barry
PATIENT #: 303759-02
ADMISSION DATE: 01/14/2019
ATTENDING PHYSICIAN: Shanna Marie Baltar, DO



Shanna Marie Baltar, DO

SB / irr-t
D:01/15/2019 11:19:40
T:01/15/2019 12:21:34

CC:

HISTORY AND PHYSICAL EXAMINATION

**Occupational Therapy
Treatment Encounter Note(s)**

Provider: Spanish Hills Wellness Suites

HEIFETZ, BARRY

Identification Information

Patient: HEIFETZ, BARRY
MRN: 303759

DOB: [REDACTED]

Date of Service: 1/22/2019

Completed Date: 1/22/2019

Summary of Daily Skilled Services

Precautions Precautions / Contraindications: Ant hip precautions no hip flexion <90, no hip abduction <10 degrees

97530 97530: Pt received supine in bed and agreeable to OT session, however noticed Pt with blisters in anterior aspects of tibia along with L heel blood blister. Wound care notified and recommendations received for Pt not to use ted hose until physician carifies. Pt then transitioned from supine to sitting at EOB with Mod I. Sit to stand from bed completed with Mod I. Functional ambulation towards restroom with FWW completed with S. Engaged in toilet transfer using 3-in-1 commode with S. After Tx session was finished nurse arrived to room and recommended Pt to be on hold for ambulation since physician recommended and doppler US to R/O DVT in LLE. Returned to room and left seated in at EOB with all needs within reach.

97535 97535: Engaged in UB dressing while seated at EOB with S/U. Engaged in LB dressing with the use of AE (sock aid, reacher and dressing stick) with S/U with extra time. Engaged in toileting task, reached for supplies to wipe peri area with S/U.

Pain - General Pain = No pain present, per patient verbal and nonverbal communication

Response to Tx Response to Session Interventions: actively participates with skilled interventions.

Functional Status as a Result of Skilled Interventions

Sitting Balance Sitting During ADLs = Good -

Standing Balance Standing During ADLs = Fair

Self Feeding Self Feeding = DNT

Dressing UB Dressing = Set-up (A); LB Dressing = Set-up (A)

Toileting Toileting = Set-up (A); Toilet / Commode Transfers = Supervised (A); Personal Hygiene = Set-up (A)

Bathing UB Bathing = N/A - Not Applicable at this time; LB Bathing = N/A - Not Applicable at this time

Original Signature: _____ Electronically signed by Jaykel Benitez, OTA 1/22/2019 11:30:05 PM EST
Date

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Admit Date: 01/14/2019 Sex: M Age: 79 Physician: Shanna Marie Baltar DO

Allergies: lisinopril

Diagnosis: Dementia in other diseases classified elsewhere without behavioral disturbance, Anxiety disorder, unspecified, Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, Constipation, unspecified, Disorder of kidney and ureter, unspecified, Dislocation of unspecified internal joint prosthesis, initial encounter, Vitamin deficiency, unspecified, Acute pain due to trauma, Unspecified open-angle glaucoma, stage unspecified, Essential (primary) hypertension, Hypothyroidism, unspecified, Other specified arthritis, other site, Aftercare following joint replacement surgery, Presence of right artificial hip joint

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Category: Urinary Incontinence Barry experiences bladder incontinence R/T limited mobility d/t L hip dislocation Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Barry will maintain/improve current level of bladder continence. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Administer medications as ordered. Evaluate/record/report effectiveness and any adverse side effects. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Keep call light in reach. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	All
		Approach Start Date: 01/21/2019 Provide 1 assistance for toileting. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	CNA, Nursing
		Approach Start Date: 01/21/2019 Provide incontinence care after each incontinent episode. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	CNA, Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Report any signs of skin breakdown (sore, tender, red, or broken areas). Once A Day - PRN; PRN 1	CNA, Licensed Nurse, Nursing

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Report signs of UTI (acute confusion, urgency, frequency, bladder spasms, nocturia, burning, pain/difficulty urinating, nausea, emesis, chills, fever, low back/flank pain, malaise, foul odor, concentrated urine, blood in urine). Once A Day - PRN; PRN 1	All, CNA, Licensed Nurse, Nursing
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Last Reviewed/Revised: 01/23/2019 13:28 Queenie Ochoa, LPN	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Barry is at risk for pain/discomfort r/t L hip dislocation Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Goal Target Date: 04/21/2019 Barry will show no s/s pain/discomfort through next review. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Attempt non-pharmacological interventions Created: 01/23/2019 Created By: Queenie Ochoa, LPN	CNA, Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Check resident for level of pain utilizing numeric rating scale 0-10 or verbal descriptor scale(M)Mild, (Mo)Moderate, (S)Severe, (VS)Very Severe. (8AM - 2PM - 8PM Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Labwork/tests as ordered Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Medicate as ordered Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Monitor effectiveness of interventions and document Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Position for comfort as necessary Created: 01/23/2019 Created By: Queenie Ochoa, LPN	All
		Last Reviewed/Revised: 01/23/2019 13:26 Queenie Ochoa, LPN	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Barry is at risk for adverse consequences R/T receiving psychotropic medication for treatment of Seroquel for anxiety Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Barry will not exhibit signs of drug related side effects or adverse drug reaction through next review. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Assess resident's functional status prior to initiation of drug use to serve as a baseline. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Assess/record effectiveness of drug treatment. Monitor and report signs of sedation, anticholinergic and/or extrapyramidal symptoms. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Assess/record effectiveness of drug treatment. Monitor and report signs of sedation, hypotension, or anticholinergic symptoms. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Attempt a gradual dose reduction; monitor behaviors Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Document behaviors on behavior monitoring logs every shift Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Medication as ordered Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse
		Approach Start Date: 01/21/2019 Monitor resident's mood and response to medication.	Licensed Nurse, Physician, Social Service

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Pharmacy consultant review monthly.	Pharmacy
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Quantitatively and objectively document the resident's mood.	Licensed Nurse, Physician, Social Service
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Try non-pharmacological interventions before initiating drug therapy.	Licensed Nurse, Nursing, Physician, Social Service
Created: 01/23/2019 Created By: Queenie Ochoa, LPN			
Last Reviewed/Revised: 01/23/2019 13:25 Queenie Ochoa, LPN			
Problem Start Date: 01/21/2019 Barry is at risk for pressure ulcer due to friction and shear. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Intact skin without evidence of redness, irritation, maceration, or open areas. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Minimum of 2 people plus draw sheet to lift resident while in bed. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Skin assessment and inspection every shift with close attention to heels. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
Last Reviewed/Revised: 01/23/2019 13:22 Queenie Ochoa, LPN			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Barry is at risk for falls due to weakness and L hip dislocation. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Barry will be free of falls. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Assessment and treatment for postural/orthostatic hypotension. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Evaluate need for bed/chair alarms. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Implement exercise program that targets strength, gait and balance Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Increased staff supervision with intensity based on resident need. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Order comprehensive medication review by pharmacist, assess for polypharmacy and medications that increase the fall risk. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Provide individualized toileting interventions based on needs/patterns. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Last Reviewed/Revised: 01/23/2019 13:21 Queenie Ochoa, LPN	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
<p>Problem Start Date: 01/21/2019</p> <p>Category: ADL Functional / Rehabilitation Potential</p> <p>Barry requires limited to extensive assist in bed mobility, transfer, walk in room, walk in corridor, locomotion, dress, eat, toilet, maintain personal hygiene.</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	<p>Long Term Goal Target Date: 01/21/2019</p> <p>Barry will improve/maintain daily functions in bed mobility, transfer, walking in room, walking in corridor, locomotion on unit, locomotion off unit, dressing, eating, toilet use, personal hygiene.</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	<p>Approach Start Date: 01/21/2019</p> <p>Do not rush the resident. Allow extra time to complete ADLs.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	All
		<p>Approach Start Date: 01/21/2019</p> <p>Follow PT/OT/ST recommendations.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	CNA, Nursing, Occupational Therapy, Physical Therapy
		<p>Approach Start Date: 01/21/2019</p> <p>Have consistent approach amongst caregivers.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	All
		<p>Approach Start Date: 01/21/2019</p> <p>Monitor for presence of pain/intolerance during self care.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	CNA, Licensed Nurse, Nursing
		<p>Approach Start Date: 01/21/2019</p> <p>Provide 1 assistance for ADLs.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	CNA, Nursing
		<p>Approach Start Date: 01/21/2019</p> <p>Provide adequate rest periods between activities.</p> <p>Once A Day; 07:00</p> <p>Created: 01/23/2019</p>	Activities, CNA, Nursing

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
		Created By: Queenie Ochoa, LPN	
Last Reviewed/Revised: 01/23/2019 13:18 Queenie Ochoa, LPN			
Problem Start Date: 01/22/2019 Advanced Care Planning Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Long Term Goal Target Date: 04/22/2019 Resident will be informed of his/her right to complete advanced directives to direct his medical care and make his values and treatment goals known. Residents stated desires will be honored. Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Approach Start Date: 01/22/2019 Physician notified of residents desires and any needed physicians order obtained. Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Physician, Social Service, Social Services
		Approach Start Date: 01/22/2019 Resident has completed the following advanced directives () DNR () Living Will () Medical Power of Attorney () Financial Power of Attorney () Surrogate () Guardianship (x) Full code Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Social Service, Social Services
		Approach Start Date: 01/22/2019 Resident will be informed of his/her right to complete advanced directives to direct his medical care and make his values and treatment goals known. Residents stated desires will be honored. Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Social Service, Social Services
		Approach Start Date: 01/22/2019 Resident/responsible party will be informed of any changes in residents condition and benefits, risk and possible choices of treatments Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Social Service, Social Services
Last Reviewed/Revised: 01/22/2019 19:34 LaToya Davis, Soc Serv			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/16/2019 Category: Nutritional Status Barry has dx of left hip dislocation, s/p recent THA. Hx of HTN, hypothyroidism, obesity. At risk for weight loss due to CBW, disease state, advanced age and increased needs due to therapy and healing. Obesity (NC-3.3) related to pt estimated needs as evidenced by CBW>IBWR, BMI = 35. Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Long Term Goal Target Date: 04/21/2019 Barry will not have significant weight change by consuming 75% of meals over the next 90 days. Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Approach Start Date: 01/16/2019 Current nutrition interventions meet pt protein energy needs based on current disease state and current body weight (CBW) Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Dietary
		Approach Start Date: 01/16/2019 Monitor weight prn. Admit diet: Regular/regular consistency. Provide diet as ordered. Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Dietary, Nursing, Physical Therapy, Restorative Nursing Assistant, Speech Therapy
		Approach Start Date: 01/16/2019 RD will monitor, consult prn Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Dietary, Nursing
		Last Reviewed/Revised: 01/16/2019 12:34 Stephen Saunders, Dietary	
Problem Start Date: 01/16/2019 Category: Nutritional Status Mr. Heifetz was Assessed for Food Preferences Food Allergies: NONE Likes: Fish, Chicken, Beef, Pork, Eggs Dislikes: NONE Dairy Products: OK Diet: Regular Pt was introduced to Always Available Men Created: 01/16/2019 Created By: Jorge Arronte-Gomez, Diet Mgr	Long Term Goal Target Date: 04/16/2019 Provide diet as ordered with resident food preferences as feasible. Created: 01/16/2019 Created By: Jorge Arronte-Gomez, Diet Mgr	Approach Start Date: 01/16/2019 Will monitor patient to ensure dietary needs are being met. CSD will monitor patient as needed. RD will follow up. Flowsheet: Dietary Once between the 1st - 28th of the Month; Created: 01/16/2019 Created By: Jorge Arronte-Gomez, Diet Mgr	Dietary
Last Reviewed/Revised: 01/16/2019 11:07 Jorge Arronte-Gomez, Diet Mgr			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/01/2018 Category: Activities Barry prefers activities that identify with prior lifestyle. Edited: 01/21/2019 Edited By: Anita Marten	Short Term Goal Target Date: 02/01/2018 Barry will express satisfaction with daily routine and leisure activities. Edited: 01/21/2019 Edited By: Anita Marten	Approach Start Date: 01/01/2018 Allow Barry to express feelings and desires. He was provided a calendar of activities. Edited: 01/21/2019 Edited By: Anita Marten	Activities, All
Last Reviewed/Revised: 01/21/2019 13:48 Anita Marten			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 12/26/2017 Resident has surgical wounds R hip and R upper thigh, and is at risk for further skin breakdown. Edited: 12/26/2017 Edited By: Corneisha Sewell, LPN	Long Term Goal Target Date: 03/25/2018 Resident's surgical wound will heal without complications (e.g., infection, hemorrhage, dehiscence, evisceration). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Approach Start Date: 12/26/2017 Assess location, size (length, width, and depth), presence/absence of granulation tissue and epithelization of surgical wound. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Handle gently and try to eliminate any environmental stimuli. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Nursing
		Approach Start Date: 12/26/2017 Observe and report signs of localized infection (e.g., localized pain, redness, swelling, tenderness, loss of function, heat at the infected area). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Observe and report signs of sepsis (fever, lassitude or malaise, change in mental status, tachycardia, hypotension, anorexia, nausea, vomiting, diarrhea, headache, lymph node tenderness/enlargement). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Report complications (e.g., hematoma, hemorrhage, purulent drainage, odorous drainage, sinus tracts, undermining, tunneling, necrotic tissue, dehiscence, evisceration). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Weekly skin check by licensed nurse. Record and report any new findings. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Weekly skin check by licensed nurse. Record and report any new findings. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Last Reviewed/Revised: 12/26/2017 16:02 Corneisha Sewell, LPN			

Physician Order Report: 01/27/2019 - 01/30/2019**Attending: Baltar, Shanna Marie****HEIFETZ, BARRY (Full Code)**

MR#:	303759-02	DOB:		Age:	79	Sex:	M
Room/Bed:		Unit:	No Unit	Admit Date:	01/14/2019 20:39		
Alerts:		Allergies:	lisinopril				
Diagnoses:	F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint						

Wound Care flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/23/2019 - 01/30/2019 (DC Date)		dti left heel cleanse with ns pat dry apply betadine sol cover with dry dressing wrap with kerlix qd x 30 days Special Instructions: Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red, Y=Yellow, B=Black, W=White, P=Pink, T=Tan, PU=Purple, BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal Once A Day; 06:00 - 18:00	Shanna Marie Baltar
General	01/23/2019 - 01/30/2019 (DC Date)		fluid filled blister right heel cleanse with ns pat dry apply betadine sol cover with dry drtessing wrap with kerlix qd x 30 days Special Instructions: Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red, Y=Yellow, B=Black, W=White, P=Pink, T=Tan, PU=Purple, BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal Once A Day; 06:00 - 18:00	Shanna Marie Baltar

Treatments flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/23/2019 - 01/30/2019 (DC Date)		TLSO BRACE ON AT ALL TIME WHEN OUT OF BED Every Shift; 06:00 - 18:00, 18:00 - 06:00	Shanna Marie Baltar

Radiology flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Radiology	01/24/2019 - 01/30/2019 (DC Date)		Other Test: (X-RAY TO LEFT HIP DX: F/U APOINTMENT) XRAY- ASAP; ASAP	Miriam S Sithole

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/24/2019 - 01/24/2019		MAY TAKE LEFT HIP ADDUCTOR BRACE OFF TO SHOWER. MAY ALSO TAKE BRACE OFF TO ADJUST FOR COMFORT. PLEASE PAD ANY PARTS OF THE BRACE THAT IS CAUSING DISCOMFORT FOR PATIENT. PER SURGEON Once - One Time; 17:30	Miriam S Sithole
General	01/25/2019 - 01/25/2019		Per Dr Allen Continue L THA Precautions with Brace. May remove for shower. Continue wound Care bilaterally LE wounds with Edemas Control. Continue PT WBAT LLE with brace Once - One Time; 17:30	Miriam S Sithole
General	01/29/2019 - 01/30/2019 (DC Date)		DME: 3 in 1 commode [DX: Dislocation of unspecified internal joint prosthesis, initial encounter]	Miriam S Sithole
General	01/30/2019 - 01/30/2019		d/c home 1/30/19. F/U with ORTHO in 4 weeks from 1/25/19. f/u with PCP Dr Asimenios on 2/1/19 @ 2pm. H/H wound care team for daily wound mgt. Last dose foe Eliquis therapy is 2/13/19 per ortho. H/H RN/PT/OT/SW f/u with pt per Optum care protocol. Give pt Eliquis ONLY from the cart. Once - One Time; 17:30	Miriam S Sithole

Signatures

Phys . Sig.	Date:	Above Orders Noted by:	Date:
R.N. Review	Date:	Pharm Review	Date:

Wound Care Administration History: 01/27/2019 - 01/30/2019**HEIFETZ, BARRY(Full Code)****U/R/B:****MR#: 303759****Physician:** Baltar, Shanna Marie ph: [REDACTED]**Resident Status** = In House from 01/27/2019 - 01/30/2019**Administration****Notes:**

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
dti left heel cleanse with ns pat dry apply betadine sol cover with dry dressing wrap with kerlix qd x 30 days	Once A Day	Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red,Y=Yellow,B=Black,W=White, P=Pink,T=Tan,PU=Purple,BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal		01/23/2019 - 01/30/2019 (DC Date)

Time	Sun 27	Mon 28	Tue 29	Wed 30
06:00 - 18:00	JA45	JC53	JC53	JA45
Drainage	d	d	d	d
General Appearance	pu	pu	pu	pu
Surrounding Skin	dry	d	n	n

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
dti left heel cleanse with ns pat dry apply betadine sol cover with dry dressing wrap with kerlix qd x 30 days	Once A Day Every Other Day	Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red,Y=Yellow,B=Black,W=White, P=Pink,T=Tan,PU=Purple,BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal		01/30/2019 - 01/30/2019 (DC Date)

Time	Sun 27	Mon 28	Tue 29	Wed 30
06:00 - 18:00	X	X	X	JA45

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
dti left heel cleanse with ns pat dry apply betadine sol cover with dry dressing wrap with kerlix qod x 30 days	Once A Day Every Other Day	Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red,Y=Yellow,B=Black,W=White, P=Pink,T=Tan,PU=Purple,BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal		01/30/2019 - 01/30/2019 (DC Date)

Time	Sun 27	Mon 28	Tue 29	Wed 30
06:00 - 18:00	X	X	X	JC53

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
fluid filled blister right heel cleanse with ns pat dry apply betadine sol cover with dry drtressing wrap with kerlix qd x 30 days	Once A Day	Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red,Y=Yellow,B=Black,W=White, P=Pink,T=Tan,PU=Purple,BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal		01/23/2019 - 01/30/2019 (DC Date)

Time	Sun 27	Mon 28	Tue 29	Wed 30
06:00 - 18:00	JA45	JC53	JC53	JA45
drainage	d	d	d	d
general appearance	pu	pu	pu	pu
surrounding skin	dry	d	d	n

Wound Care Administration History: 01/27/2019 - 01/30/2019**HEIFETZ, BARRY(Full Code)****U/R/B:****MR#: 303759****Physician:** Baltar, Shanna Marie ph: [REDACTED]**Resident Status** = In House from 01/27/2019 - 01/30/2019**Administration****Notes:**

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
fluid filled blister right heel cleanse with ns pat dry apply betadine sol cover with dry drtressing wrap with kerlix qd x 30 days	Once A Day Every Other Day	Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red,Y=Yellow,B=Black,W=White, P=Pink,T=Tan,PU=Purple,BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal		01/30/2019 - 01/30/2019 (DC Date)

Time	Sun 27	Mon 28	Tue 29	Wed 30
06:00 - 18:00	X	X	X	(JC53)

Order	Frequency	Special Instructions	Diagnosis	Start/End Date
fluid filled blister right heel cleanse with ns pat dry apply betadine sol cover with dry drtressing wrap with kerlix qod x 30 days	Once A Day Every Other Day	Drainage: S=Saturated, M=Moist, D=Dry General Appearance: R=Red,Y=Yellow,B=Black,W=White, P=Pink,T=Tan,PU=Purple,BR=Brown, GR=Gray Surrounding Skin: M=Macerated, R=Reddened, F=Firm, N=Normal		01/30/2019 - 01/30/2019 (DC Date)

Time	Sun 27	Mon 28	Tue 29	Wed 30
06:00 - 18:00	X	X	X	JC53

Information Key:

PRN Reasons: BI*=Behavior Issue, CP=Chest Pain, Cg=Congestion, Cn = Constipation, Ch=Cough, D=Diarrhea, DE=Dry Eyes, F=Fever, I=Itching,
NV=Nausea/Vomit, P*=Pain, S=Sleep, US=Upset Stomach, O*=Other

PRN Results: E=Effective, NE=Not Effective, SE=Somewhat Effective, O*=Other

* = Comment in Reasons/Comments,

Initial parenthesized = Not Administered or Not Charted, see Reasons/Comments

H = Hospital Leave, T = Therapeutic Leave

Init	Name/Title	Init	Name/Title	Init	Name/Title
JA45	Joshua Abellera, LPN	JC53	Javier Canan		
Resident:	HEIFETZ, BARRY	MR#:	303759	Unit:	
Admit Date:	1/14/2019 20:39:00	DOB:	[REDACTED]	Age:	79
Physician:	Baltar, Shanna Marie ph: [REDACTED]	pgr:	(7)	Room/Bed:	
Allergies:	lisinopril	Diagnosis:	F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint		

Units:N/A**Reasons/Comments:**No**Diagnosis:**No**Diagnosis Notes:**No**Signature Page:**No**Sort By:** N/A**Page Break By Order:**NO

Exhibit E

MIKE JEONG, DO, MPH, CMD

9811 W. CHARLESTON BLVD. SUITE 2-304

LAS VEGAS, NEVADA 89117

Answering Service [REDACTED]

Cell phone [REDACTED]

Fax [REDACTED]

Email: [REDACTED]

MEDICAL EXPERT

REPORT OF

BARRY HEIFETZ

v.

DR. SHANNA BALTAR & MIRIAM SITHOLE, APRN

Brandon Verde, Esq.
John H. Cotton & Associates
7900 W. Sahara Blvd. Suite 200
Las Vegas, Nevada 89117

Date: June 21, 2021

RE: ***Barry Heifetz v. Baltar/Sithole***

Dear Mr. Verde,

I, Mike Jeong, DO, MPH, CMD, am a physician licensed in the State of Nevada. I am Board Certified by the American Board of Internal Medicine in Geriatric Medicine and Hospice & Palliative Medicine. I am a Certified Medical Director by the American Board of Post-Acute and Long-Term Care Medicine. I am a UCLA fellowship-trained Geriatrician. I completed Internal Medicine Residency at Yale University School of Medicine, in New Haven, Connecticut. I regularly care for elderly patients in skilled care facilities similar to Spanish Hills Wellness Suites as an Attending Physician and as a Medical Director. I am currently the Medical Director of two skilled nursing facilities. As an attending physician and specialist in the field of Geriatrics, I care for elderly patients similar to Mr. Barry Heifetz who was 79 years old and was at Spanish Hills Wellness Suites for rehabilitation after a recent hospitalization. I am familiar with the standard of care for medical practices that currently relate to issues of care and treatment of patients such as Mr. Barry Heifetz. I am familiar with the standard of care in this case by virtue of my training, education and experience in the same field as it relates to this case. My current curriculum vitae is attached to this report as Exhibit 1.

Materials Reviewed:

1. Complaint
2. Spanish Hills HEIFETZ 000028-001144
3. Heifetz ANS to ROGGS
4. Southwest Medical HEIFETZ 001790-002336
5. Henderson Hospital HEIFETZ 001276-001774
6. NV Ortho and Spine HEIFETZ 001145-001275
7. 2021-03-04 4th Supp to ECC Production

8. 6495093 Heifetz.Barry 031221.miniprint (Deposition)
9. 6495093 Barry.Heifetz. EXHIBIT 1
10. Photos HEIFETZ 000001-000027
11. Heifetz diary
12. Barry Heifetz Deposition
13. Dr. Baltar Deposition
14. Miriam Sithole Deposition

Opinions:

Based on my review of the above listed materials, as well as my education, training, and experience, I formed the following opinions:

1. The treatment rendered by Shanna Marie Baltar, DO to Plaintiff Barry Heifetz at Spanish Hills Wellness Suites, during the period January 14, 2019 through January 30, 2019, at all times met the standard of care. There was no evidence of negligence or medical malpractice attributable to Dr. Baltar.
2. The treatment rendered by Miriam Sithole, APRN to Mr. Barry Heifetz during the same period, under the supervision of Dr. Baltar, at all times met the standard of care. There was no evidence of negligence or medical malpractice attributable to Miriam Sithole, APRN, or to Dr. Baltar in her supervision of nurse practitioner Miriam Sithole.
3. No action or failure to act, on the part of Dr. Baltar, contributed to any morbidity experienced by Mr. Barry Heifetz.
4. No action or failure to act on the part of Miriam Sithole, APRN, as supervised by Dr. Baltar, contributed to any morbidity experienced by Mr. Barry Heifetz.

My opinions, as stated above, are given with a reasonable degree of medical probability, and may be modified and/or supplemented upon review of additional information and/or documentation.

These opinions are based on the following facts:

Mr. Barry Heifetz was a 79-year-old male with past medical history of hypertension, hypothyroidism, peripheral neuropathy, stasis dermatitis due to vascular insufficiency¹ who had a left total hip arthroplasty (hip replacement) on January 7, 2019 by orthopedic surgeon, Dr. Mark Allen. He presented to Summerlin Hospital on January 12, 2019 with complaint of left hip pain and was found to have a left hip dislocation. He had his left hip dislocation reduced in the emergency department and discharged home but had another dislocation at home and was admitted to the hospital on January 12, 2019. Mr. Heifetz was seen by orthopedic surgeon in the hospital who recommended an abduction left hip brace and physical and occupational therapy. Mr. Heifetz was transferred to Spanish Hills Wellness Suites for rehabilitation.

Mr. Barry Heifetz was admitted to Spanish Hills Wellness Suites on January 14, 2019. Admission orders by Dr. Baltar on January 14, 2019 included his discharge medications from the hospital and a pressure relieving mattress².

Dr. Shanna Marie Baltar evaluated Mr. Heifetz for his initial admission history and physical on January 15, 2019. Dr. Baltar noted on her physical exam that Mr. Heifetz had 2/4 distal pulses which means his amplitude of the distal pulses was described as expected or normal³. Dr. Baltar also noted his left lower extremity had an abductor brace in place and noted that orthopedic surgeon evaluated Mr. Heifetz and recommended he wear the abductor brace 24 hours a day, 7 days a week. He was to follow up with Dr. Allen, orthopedic surgeon for follow up as scheduled⁴. Dr. Baltar gave an order for wound care consult on January 15, 2019⁵.

On January 15, 2019, Dr. Baltar ordered that Mr. Heifetz required/requested the use of siderails as he was independent with bed mobility to assist with turning side to side.

¹ Barry Heifetz Deposition. Page 25, 15-25. Date: March 12, 2021.

² HEIFETZ 000419. Physician Order Report.

³ Mosby's Guide to Physical Examination. 2nd Edition, Chapter 10 Heart and Blood Vessels. Arterial Pulses. Pg. 344.

⁴ HEIFETZ 000360. Spanish Hills Wellness Suites. History and Physical by Shanna Marie Baltar, DO

⁵ HEIFETZ 000526. Physician Order Report.

She also ordered staff to monitor every 30 minutes and release and reposition every two hours and as needed for toileting and /or repositioning⁶.

On January 16, 2019, Mr. Heifetz was seen by nurse practitioner, Miriam Sithole, who reviewed his medical records, examined Mr. Heifetz and noted abductor brace was in place as recommended to be worn 24 hours a day, 7 days a week. She ordered compression stockings on for 12 hours in am, off for 12 hours at night⁷.

On January 17, 2019, nurse practitioner Miriam Sithole saw Mr. Heifetz for a scheduled follow-up visit. She noted abductor brace to left hip and without edema.

On January 18, 2019, Mr. Heifetz was seen by nurse practitioner, Miriam Sithole. She noted that nursing and family members of Mr. Heifetz noted increased forgetfulness with confusion especially in the evenings. Her assessment was mild cognitive decline and addressed their concerns by requesting a psychiatry consultation. She noted abductor brace to left hip and without edema. She also noted status post left total hip arthroplasty and that Mr. Heifetz had a follow up appointment with orthopedics on January 25, 2019.

On January 19, 2019, Mr. Heifetz was seen by a psychiatrist, Dr. Anthony Quinn who prescribed Seroquel 25 mg at bedtime as needed for anxiety /sleep latency and to consider starting Aricept 5 mg at bedtime for memory⁸.

On January 21, 2019, nurse noted no new skin issues, will continue to monitor⁹.

On January 22, 2019, nurse practitioner, Miriam Sithole, evaluated Mr. Heifetz for skilled follow-up visit and noted that he had increased edema to his left lower extremity. Mr. Heifetz denied pain at that time. She ordered an ultrasound to rule out

⁶ HEIFETZ 000303. Observation Detail List Report. Restraint/Adaptive Equipment - Siderail Review and Consent.

⁷ HEIFETZ 000416. Physician Order Report: Date: January 16, 2019. Compression stockings on for 12 hours in a.m., off for 12 hours at night. Twice daily; 9 AM and 9 PM. Ordered by Miriam Sithole, APRN.

⁸ HEIFETZ 000770. Psychiatry Consult. Anthony Quinn, MD

⁹ HEIFETZ 000771. Resident Progress Note. Adora Laus De Leon, LPN. Date: 1/21/2019.

deep venous thrombosis of the left lower extremity and to hold physical therapy and occupational therapy until the results of the ultrasound were received. She also recommended compression socks as ordered¹⁰.

On January 23, 2019, Mr. Heifetz was seen by nurse practitioner, Miriam Sithole for a scheduled follow-up visit. She noted that his abductor brace noted on left hip. She identified left lower extremity lesions due to vascular insufficiency and noted wound care team to manage and treat as indicated. She also noted chronic vascular insufficiency and to continue vasculera¹¹.

On January 23, 2019, Nurse, Javier Canan, noted that he spoke to Dr. Baltar regarding resident's heels and noted Dr. Baltar gave new orders and was carried out and Mr. Heifetz was made aware. Orders by Dr. Baltar on January 23, 2019, noted deep tissue injury left heel cleanse with normal saline, pat dry, apply betadine, cover with dry dressing, wrap with Kerlix daily x 30 days. Fluid filled blister right heel, cleanse with normal saline, pat dry, apply betadine, cover with dry dressing, wrap with Kerlix daily x 30 days.

On January 23, 2019 at 23:58, Nurse, Rachel Anderson, LPN noted dressing changed to bilateral lower extremities, no bleeding or drainage noted. Nurse also noted left leg elevated on pillows to prevent pressure on heel¹².

On January 24, 2019, Mr. Heifetz was again evaluated by nurse practitioner, Miriam Sithole for skilled follow up. Then seen again on January 25, 2019 and noted abductor brace noted left hip and no cyanosis of his extremities. She again noted left lower extremity lesions due to vascular insufficiency and wound care team to manage and treat as indicated.

¹⁰ HEIFETZ 000771. Resident Progress Note. Miriam Sithole, APRN. Date: 1/22/2019.

¹¹ HEIFETZ 000772. Resident Progress Note. Miriam Sithole, APRN. Date: 1/23/2019

¹² HEIFETZ 000773. Resident Progress Note. Rachel Anderson, LPN. Date: 1/23/2019

On January 24, 2019, orders from Dr. Allen's office noted "Ok to remove left hip abduction brace while standing for showering. Please pad any pressure points on brace. Please send reports of x-ray / ultrasound performed in facility with patient for post op visit tomorrow."

On January 25, 2019, Mr. Heifetz was seen by Dr. Mark Allen, orthopedic surgeon. Dr. Allen noted that he put Mr. Heifetz on hip precautions and then fitted him with an abduction brace and then discharged to rehabilitation. Dr. Allen noted that Mr. Heifetz had neuropathy in his legs and feet and had not been moving his feet well and developed posterior heel wounds. Dr. Allen noted Mr. Heifetz was being treated for the heel wound at the rehabilitation facility with wound care. He noted Mr. Heifetz was walking 400 feet with assistance and noted Mr. Heifetz was compliant with his brace. Dr. Allen noted he was allowing Mr. Heifetz to take off the abductor brace while standing in the shower but otherwise he was to wear the abductor brace 24/7. Dr. Allen also noted some pressure points on the lateral aspect of the brace over the thigh. Dr. Allen recommended to continue working with physical therapy for strengthening and range of motion. He also recommended Mr. Heifetz to continue his abduction brace for another 4 weeks. Dr. Allen also noted Spanish Hills to continue local wound care for Mr. Heifetz's heel blisters and to continue lower extremity compression for edema secondary to venous insufficiency. Dr. Allen noted Mr. Heifetz's sister was present for the follow up examination and noted he discussed Mr. Heifetz's condition and that he answered multiple questions¹³.

On January 25, 2019, on the handwritten referral form, Dr. Allen ordered to continue left total hip arthroplasty precautions with brace and may remove brace for showers. Continue wound care bilateral lower extremity wounds with edema control. Continue physical therapy, weight bearing as tolerated to left lower extremity with brace. He also noted do not discharge home until wounds are stable¹⁴.

¹³ HEIFETZ 001167-9. NV Ortho and Spine. Orthopedic Evaluation by Mark Allen, DO. Date 1/25/2019

¹⁴ HEIFETZ 000639. Spanish Hills Wellness Suites Referral Form. Follow up visit with Dr. Allen. Date: 1/25/2019

On January 28, 2019, Miriam Sithole, APRN, saw Mr. Heifetz for follow up and noted he is weight bearing as tolerated and to continue current pain management. He was seen again by Miriam Sithole, APRN on January 29, 2019.

On January 30, 2019, in the Discharge Instructions, Miriam Sithole, APRN, ordered wound care/treatment for Southwest Medical Associates Home Health Wound Care Team for daily wound management with the following orders: Deep Tissue Injury, left heel, cleanse with normal saline, pat dry, apply betadine solution and cover with dry dressing, wrap with Kerlix every day for 30 days. Fluid filled blister right heel: cleanse with normal saline, pat dry, apply betadine solution, cover with dry dressing wrap with Kerlix every day for 30 days¹⁵.

On January 30, 2019, Mr. Heifetz was discharged home with home health care. Miriam Sithole, APRN, noted in the discharge summary that Mr. Heifetz continued aggressive pain management and rehabilitation. At the time of discharge his functional status was minimal assist with bed mobility, stand by assist with bed transfers. He was ambulating 300 feet x2 with a rolling walker at the time of discharge¹⁶. He was moderately independent with upper body and supervision with lower body and supervision with toileting. He was noted to be in stable condition to be discharged home to live with his daughter for a couple days prior to him going to his home. She also noted the discharge plan was discussed with Mr. Heifetz, his sister, case management for Spanish Hills, case management for Optum and provider. He was given both written and verbal instructions in the information packet which was given to him at the time of discharge. He was also given information regarding Dispatch Health for 24/7 nursing services which the patient can utilize for any medical concerns prior to calling 911 or reporting to the emergency department. His medications were also reconciled, and pharmacy provided an updated medication list which she reviewed with Mr. Heifetz. She noted that he had concerns about the recall of losartan, and she instructed him to contact the pharmacy where he refills his medications to see if his medication was among the recalled batch. She also made arrangements for Mr. Heifetz

¹⁵ HEIFETZ 000319. Discharge Instructions

¹⁶ HEIFETZ 000424. Physical Therapy Encounter Note. Date 1/30/2019.

to be seen by his primary care provider, Dr. Asimenios on February 1, 2019 at 2 PM. She noted that her home health care wound care team has been notified by the case manager for daily treatment and assistance with management and monitoring of bilateral lesions to the lower extremities¹⁷.

Mr. Barry Heifetz developed left heel deep tissue injury and right heel blister, which was identified on January 23, 2019, by staff. Dr. Baltar gave appropriate orders when she was notified of the wounds. Dr. Baltar had already given orders for pressure relieving mattress at the time of admission and a wound care consult on January 15, 2019. Dr. Baltar also gave orders for staff to reposition patient every 2 hours and as needed. As noted earlier, Dr. Baltar ordered for wound care consult and wound care was facilitated by the wound care team as documented in the medical records and was not a function of Dr. Baltar or Miriam Sithole, APRN. Further, the Braden Scale for Predicting Pressure Sore Risk that is used to assess a patient's pressure injury risk upon admission is a nursing function and is performed by a licensed practical nurse (LPN) or registered nurse (RN) and not performed by the attending physician or their associated nurse practitioner/physician's assistant. The Braden Scale for Predicting Pressure Sore Risk is used by skilled nursing facilities upon admission to identify individuals who may be at risk for pressure injuries and used to develop individualized care plans to prevent pressure injuries. Spanish Hills nursing staff completed a Braden Scale for Predicting Pressure Sore Risk for Mr. Heifetz upon admission on January 14, 2019. The total Braden Scale Score was 15, which identified Mr. Heifetz as "At Risk" and interventions noted turning/repositioning program and surgical wound care.¹⁸

Miriam Sithole, APRN gave orders for compression stockings to be on for 12 hours and off for 12 hours, which Mr. Heifetz was using for the past 4 years for his chronic vascular insufficiency prior to his admission to Spanish Hills Wellness Suites¹⁹. The placement and removal of compression stockings as ordered by Miriam Sithole, APRN,

¹⁷ Spanish Hills Wellness Suites Discharge Summary by Miriam Sithole, APRN. Date: 1/30/2019.

¹⁸ HEIFETZ 000915. Observational Detail List Report. Date 1/14/2019.

¹⁹ Barry Heifetz Deposition Page 28: 10-13. March 12, 2021.

is a nursing function and not performed by the attending physician or their associated nurse practitioner / physician's assistant.

Mr. Heifetz saw Dr. Mark Allen, orthopedic surgeon, for his first follow up visit. Dr. Allen noted the wounds that had developed was due to Mr. Heifetz's neuropathy in his legs and feet and that he had not been moving his feet well and developed posterior heel wounds. Dr. Allen also noted some pressure points on the lateral aspect of the brace over the thigh. Dr. Allen noted he was allowing Mr. Heifetz to take off the abductor brace while standing in the shower, but otherwise he was to wear the abductor brace 24/7. Dr. Allen recommended Spanish Hills to continue local wound care for Mr. Heifetz's heel blisters and to continue lower extremity compression for edema secondary to venous insufficiency.

Mr. Heifetz's acute and chronic problems and the rehabilitation course were managed appropriately with improvement in his functional status as he has ambulating 300 feet x2 with a rolling walker at the time of discharge. Miriam Sithole, APRN, completed a thorough discharge plan to ensure Mr. Heifetz's continue treatment and therapy after being discharged from Spanish Hills Wellness Suites. She made appropriate discharge orders to have Southwest Medical Associates Home Health Wound Care Team to do daily wound care and gave specific orders for his heel wounds. Miriam Sithole, APRN also arranged for Mr. Heifetz to be seen by his primary care physician two days after his discharge.

Analysis of the above clinical chronology clearly demonstrates that from January 14, 2019 through January 30, 2019, Dr. Baltar and nurse practitioner Miriam Sithole provided excellent, attentive care to Mr. Barry Heifetz, meeting or exceeding the standard of care. Dr. Baltar and Miriam Sithole, APRN, under the supervision of Dr. Baltar frequently examined Mr. Heifetz. They appropriately responded to clinical issues raised by their examinations, facility staff report, concerns of the patient in a timely fashion. There is no evidence of any neglect or substandard care by either Dr. Baltar or Miriam Sithole, APRN in the medical records.

My opinions, as stated above, are given with a reasonable degree of medical probability, and may be modified and /or supplemented upon review of additional information and/or documentation.

Respectfully,

A handwritten signature in black ink, appearing to read "Mike Jeong, DO". The signature is fluid and cursive, with a period at the end.

Mike Jeong, DO, MPH, CMD

June 21, 2021

Exhibit F

MIKE JEONG, DO, MPH, CMD

Geriatric Medical Associates of Nevada LLC

9811 W. Charleston Blvd. Suite 2-304

Las Vegas, Nevada 89117

Answering Service [REDACTED]

Fax [REDACTED]
[REDACTED]

July 28, 2021

Brandon Verde, Esq.

John H. Cotton & Associates

7900 W. Sahara Blvd. Suite 200

Las Vegas, Nevada 89117

RE: *Barry Heifetz v. Baltar/Sithole*

REBUTTAL REPORT

Dear Mr. Verde,

I have had the opportunity to review the Amended Affidavit report by the plaintiff's medical expert dated June 22, 2021 and signed by Dr. Scott Bolhack on June 29, 2021. I have been specifically asked to opine on Dr. Bolhack's opinions regarding Dr. Shanna Baltar and Miriam Sithole, APRN care for Mr. Barry Heifetz during his stay at Spanish Hills Wellness Suites.

In reviewing Dr. Bolhack's Amended Affidavit report, many of the opinions do not pertain to Dr. Baltar and Miriam Sithole, APRN but groups them in with the facility's standard of care. Furthermore, I respectfully disagree with Dr. Bolhack's numerous opinions that Dr. Baltar and Miriam Sithole, APRN breached the standard of care in their care of Mr. Barry Heifetz.

Based on my review of the previously listed medical records, depositions, and expert reports, as well as my medical education, training, and experience, I have formed the following opinions incorporating my prior medical expert witness report of Heifetz v. Dr. Baltar and Sithole, APRN:

1. Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN failed to prevent the occurrence of pressure injuries, or the progression of pressure injuries.

However, his opinions are not supported by the medical records. Upon admission, Dr. Baltar ordered a pressure relieving mattress, staff to monitor Mr. Heifetz every 30 mins and to reposition him every 2 hours as needed, the use of side rails as he was independent with bed mobility to assist with turning side to side and approved an interdisciplinary plan of care.

2. Dr. Bolhack opines that Dr. Baltar and Miriam Sithole, APRN were not using the correct Braden Scale. The Braden Scale for Predicting Pressure Sore Risk that is used to assess a patient's pressure injury risk upon admission is a nursing function and is performed by a licensed practical nurse (LPN) or registered nurse (RN) and not performed by the attending physician or their associated nurse practitioner/physician's assistant. The Braden Scale for Predicting Pressure Sore Risk is used by skilled nursing facilities upon admission to identify individuals who may be at risk for pressure injuries and used to develop individualized care plans to prevent pressure injuries. Spanish Hills nursing staff completed a Braden Scale for Predicting Pressure Sore Risk for Mr. Heifetz upon admission on January 14, 2019. The total Braden Scale Score was 15, which identified Mr. Heifetz as "At Risk" and interventions noted turning/repositioning program and surgical wound care. Furthermore, Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN failed to accurately complete and document the Braden Scale. The completion and documentation of the Braden Scale is a function of the nursing staff and not a function of clinicians, Dr. Baltar and Miriam Sithole, APRN, which is common knowledge among clinicians who provide care in the skilled nursing facility setting.
3. Dr. Bolhack opines that Dr. Baltar and Miriam Sithole, APRN failed to recognize Mr. Heifetz was at-risk for pressure injuries and initiate a care plan for pressure injuries. This statement is not supported by the medical records. As noted earlier, upon admission, Dr. Baltar ordered a pressure relieving mattress, staff to monitor Mr. Heifetz every 30 mins and to reposition him every 2 hours as needed, the use of side rails as he was independent with bed mobility to assist with turning side to side and approved an interdisciplinary plan of care.
4. Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN, failed to initiate interventions in a timely manner to prevent the progression of pressure injuries and failed to recognize that Mr. Heifetz was a vulnerable adult requiring assistance with repositioning. Again, his opinion is not supported in the medical records. Dr. Baltar ordered a pressure relieving mattress, staff to monitor Mr. Heifetz every 30 mins and to reposition him every 2 hours as needed, the use of side rails as he was independent with bed mobility to assist with turning side to side.

5. Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN, failed to create a precise care plan on January 23, 2019. Dr. Bolhack failed to recognize that the care plan he is referring to is created by the nursing staff and not a function of Dr. Baltar and Miriam Sithole, APRN. Dr. Baltar gave detailed orders for wound care on January 23, 2019, when she was notified of Mr. Heifetz's wounds. On January 23, 2019, nurse, Javier Canan, noted that he spoke to Dr. Baltar regarding resident's heels and noted Dr. Baltar gave new orders and was carried out and Mr. Heifetz was made aware. Orders by Dr. Baltar on January 23, 2019, noted deep tissue injury left heel cleanse with normal saline, pat dry, apply betadine, cover with dry dressing, wrap with Kerlix daily x 30 days. Fluid filled blister right heel, cleanse with normal saline, pat dry, apply betadine, cover with dry dressing, wrap with Kerlix daily x 30 days.
6. Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN, failed to accurately document Mr. Heifetz's skin condition as noted by the document Observation Detail List Report on January 24, 2019 and the Minimum Data Set (MDS). Again, Dr. Bolhack failed to recognize that this is not a function of Dr. Baltar and Miriam Sithole, APRN. It is the responsibility of the nursing staff at Spanish Hills Wellness Suites to complete the aforementioned documents.
7. Dr. Bolhack opines that Dr. Baltar and Miriam Sithole, APRN failed to advocate for the resident for a stay based upon his need for the care of deep tissue injury of the left heel that required a skilled need. This opinion is not supported in the medical records. At the time of discharge his functional status was minimal assist with bed mobility, stand by assist with bed transfers. He was ambulating 300 feet x2 with a rolling walker at the time of discharge. He was moderately independent with upper body and supervision with lower body and supervision with toileting. He was noted to be in stable condition to be discharged home to live with his daughter for a couple days prior to him going to his home. Miriam Sithole, APRN also noted the discharge plan was discussed with Mr. Heifetz, his sister, case management for Spanish Hills, case management for Optum and provider. He was given both written and verbal instructions in the information packet which was given to him at the time of discharge. He was also given information regarding Dispatch Health for 24/7 nursing services which the patient can utilize for any medical concerns prior to calling 911 or reporting to the emergency department. His medications were also reconciled, and pharmacy provided an updated medication list which she reviewed with Mr. Heifetz. She noted that he had concerns about the recall of losartan, and she instructed him to contact the pharmacy where he refills his medications to see if his medication was among the recalled batch. She also made arrangements for Mr. Heifetz to be seen by his primary care provider, Dr. Asimenios on February 1, 2019 at 2 PM. She noted that her home health care wound care team has been notified by the

case manager for daily treatment and assistance with management and monitoring of bilateral lesions to the lower extremities.

8. Dr. Bolhack opines that Dr. Baltar and Miriam Sithole, APRN failed to advocate on the behalf of the resident when an unnecessary psychotropic medication was ordered for Mr. Heifetz. This is not supported in the medical records. The medical records indicates that on January 18, 2019, Mr. Heifetz was seen by nurse practitioner, Miriam Sithole. She noted that nursing and family members of Mr. Heifetz noted increased forgetfulness with confusion especially in the evenings. Her assessment was mild cognitive decline and addressed their concerns by requesting a psychiatry consultation. On January 19, 2019, Mr. Heifetz was seen by a psychiatrist, Dr. Anthony Quinn who prescribed Seroquel 25 mg at bedtime as needed for anxiety/sleep latency and to consider starting Aricept 5 mg at bedtime for memory. Miriam Sithole, APRN appropriately addressed the concerns of nursing staff and his family by consulting a specialist, Dr. Anthony Quinn, psychiatrist, to appropriately address Mr. Heifetz's condition. Dr. Bolhack speculates that the use of this medication (quetiapine) at the very least may have resulted in an adverse consequence due to sedation for Mr. Heifetz. This is not supported in the medical records as there was no evidence that Mr. Heifetz was sedated. Mr. Heifetz participated regularly with therapy and no further mention of increased forgetfulness with confusion especially in the evening.
9. Dr. Bolhack opines that Dr. Baltar and Miriam Sithole, APRN failed to "ensure the safety of compression garments on a patient with edema with 'chronic vascular insufficiency'. The arterial status of Mr. Heifetz was never determined." Again, this opinion is not supported by the medical records. On January 15, 2019, Dr. Baltar noted on her physical exam that Mr. Heifetz had 2/4 distal pulses which means his amplitude of the distal arterial pulses were described as expected or normal. Dr. Baltar was also aware of the chronic vascular insufficiency as she prescribed Vasculera to treat his chronic vascular insufficiency. Compression stockings were originally ordered by the prior acute facility, which Miriam Sithole, APRN continued the order for compression stockings to help improve blood flow and lessen the edema in Mr. Heifetz's lower extremities and to prevent his chances of getting deep vein thrombosis ("DVT"). Also, Dr. Allen, Mr. Heifetz's orthopedic surgeon noted in his follow-up with Mr. Heifetz on January 25, 2019, to continue local wound care for Mr. Heifetz's heel blisters and to continue lower extremity compression for edema secondary to venous insufficiency.
10. Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN failed in ensure that home health initiated daily wound care orders. It is not the standard of care for Dr. Baltar and Miriam Sithole, APRN to ensure that home health initiated daily

wound care order. However, the discharge summary and discharge orders reflects “DTI left heel cleanse with normal saline pat dry apply betadine solution and cover with dry dressing wrap with kerlix everyday x 30 days...fluid filled blister right heel cleanse with normal saline pat dry apply betadine solution cover with dry dressing wrap with kerlix everyday x 30 days... Southwest Medical Associates Home Health Wound Care Team for daily wound management.”

11. Dr. Bolhack opines that the clinicians, Dr. Baltar and Miriam Sithole, APRN failed to specify to the home health the treatment plan, the dressing, and follow-up for the wounds as the patient transitioned to the home setting. His opinion is not supported in the medical records. On January 30, 2019, in the Discharge Instructions, Miriam Sithole, APRN, ordered wound care/treatment for Southwest Medical Associates Home Health Wound Care Team for daily wound management with the following orders: Deep Tissue Injury, left heel, cleanse with normal saline, pat dry, apply betadine solution and cover with dry dressing, wrap with Kerlix every day for 30 days. Fluid filled blister right heel: cleanse with normal saline, pat dry, apply betadine solution, cover with dry dressing wrap with Kerlix every day for 30 days. Again, as noted previously, Miriam Sithole, APRN made arrangements for Mr. Heifetz to be seen by his primary care provider, Dr. Asimenios on February 1, 2019 at 2 PM, two days after his discharge to assume care and to ensure Mr. Heifetz was evaluated and treated by his primary care provider. She also noted that the home health care wound care team was notified by the case manager for daily treatment and assistance with management and monitoring of bilateral lesions to the lower extremities. She also noted the discharge plan was discussed with Mr. Heifetz, his sister, case management for Spanish Hills, case management for Optum and provider. He was given both written and verbal instructions in the information packet which was given to him at the time of discharge.
12. Dr. Bolhack was critical of Dr. Baltar and Miriam Sithole, APRN for discharging Mr. Heifetz when his wounds were allegedly not “stable.” However, the records indicate his wounds were healing properly and were stable. The discharge summary notes that Mr. Heifetz was in stable condition. Southwest Medical Home Health Wound Care Team would manage the healing of his wounds to heal properly.
13. Dr. Bolhack opines the knowledge base of Dr. Baltar of pressure injuries was lacking based on her deposition. Dr. Bolhack alleges that Dr. Baltar has a complete disregard for the care of an at-risk resident in a skilled nursing facility. Dr. Bolhack’s statement is not supported by the medical records or Dr. Baltar’s deposition. When asked “Do you believe that off-loading procedures should have been performed on Mr. Heifetz due to his risks of developing pressure injuries”, Dr. Baltar stated “based on my original documentation,

that would not have been on my radar.” She then testified “the patient was admitted for a recent surgery, and my initial H&P will generally focus on the acute reason for admission and reason for the stay and later states “that’s my reason for that not being on the radar, is because the initial complaint and reason for admission was the hip”. In the medical records, her history and physical at the time of initial visit on January 15, 2019, Dr. Baltar not only addresses Mr. Heifetz’s hip but also his pain, hypertension, chronic pain, osteoarthritis, neuropathy, hypothyroidism and glaucoma. This is far from a “complete disregard for the care of an at-risk resident in a skilled nursing facility”. In her deposition Dr. Baltar stated she is a board-certified fellowship trained geriatrician and she primarily trained in the skilled nursing facility and outpatient clinic setting (Baltar Page 9-10). Dr. Baltar is specially trained to take care of vulnerable at-risk residents in a skilled nursing facility.

Based upon clinical data, my education, training, and professional experience, it is my opinion to a reasonable degree of medical certainty that Dr. Baltar and Miriam Sithole, APRN, did not violate the standard of care. It is also my opinion to a reasonable medical degree of medical certainty that Dr. Baltar and Miriam Sithole, APRN did not act in negligence, carelessness, or recklessness.

In conclusion, I respect the opinions of Dr. Bolhack as an expert medical witness. However, I respectfully disagree with his opinion in based on the above facts.

The opinions stated in this rebuttal report are expressed within a reasonable degree of medical certainty. I reserve my right to amend, modify and/or supplement the opinions expressed in this report if further additional information becomes available to me.

Respectfully,

A handwritten signature in black ink, appearing to read "Mike Jeong, DO".

Mike Jeong, DO, MPH, CMD
July 28, 2021

Exhibit G

MIKE Y. JEONG, DO, MPH, CMD

9811 W. CHARLESTON BLVD. SUITE 2-304
LAS VEGAS, NEVADA 89117

Answering Service [REDACTED]

Cell phone [REDACTED]

Fax [REDACTED]

[REDACTED]

SUMMARY

Yale and UCLA trained geriatrician. Board Certified in both Geriatrics and Hospice and Palliative Care. Certified Post-Acute and Long-Term Care Medical Director. Fellowship trained in both geriatrics and geriatric medical management in post-acute and long-term care. Active clinical practice as a treating geriatrician, nursing home medical director and hospice chief medical officer. Experienced expert witness.

PROFESSIONAL CERTIFICATIONS

Board Certified in Hospice and Palliative Care Medicine
American Board of Internal Medicine, 2008-2018, 2017-2027

Board Certified in Geriatric Medicine
American Board of Internal Medicine, 2001-2021, 2011-2021

Board Certified in Internal Medicine
American Board of Internal Medicine, 2000-2010

Certified Medical Director (Post-Acute and Long-Term Care)
American Board of Post-Acute and Long-Term Care Medicine, 2000-2021

National Board of Osteopathic Medical Examiners
#27585, 1997

Certified Professional in Utilization Management
McKesson Health Solutions, LLC, 2003

Certified Professional in Utilization Review
McKesson Health Solutions, LLC, 2003

POSTGRADUATE TRAINING

UCLA School of Medicine
Advanced Fellowship
Geriatric Medical Management in Post-Acute and Long-Term Care
Los Angeles, California, January 1999 – June 2000

UCLA School of Medicine
Fellowship in Geriatric Medicine
Los Angeles, California, July 1998 – June 1999

Yale University School of Medicine
Residency
Primary Care Internal Medicine
New Haven, Connecticut, July 1996 – July 1998

Yale University School of Medicine
Internship
Primary Care Internal Medicine
New Haven, Connecticut, June 1995 – July 1996

EDUCATION

UCLA School of Public Health
Healthcare Policy and Management
Master of Public Health for Health Professionals
University of California, Los Angeles, June 2001

College of Osteopathic Medicine of the Pacific
Western University of Health Sciences, Pomona, CA
Doctor of Osteopathic Medicine, June 1995

University of California, Irvine
Bachelor of Science
Biological Sciences, June 1991

University of California, Irvine
Bachelor of Arts
Psychology, June 1991

PROFESSIONAL EXPERIENCE

Post-Acute Care Specialists (PACS)
Founding Member
Las Vegas, Nevada, August 2016 - Present

Geriatric Medical Associates of Nevada LLC
Founding Member
Las Vegas, Nevada, June 2008 – Present

Medical Expert Witness
Geriatric Medicine, Nursing Home, Skilled Nursing Facility, Hospice Care
Las Vegas, Nevada, 2013 – Present

PROFESSIONAL EXPERIENCE (Continued)

**Medical Director - Las Ventanas (CCRC)
Skilled Nursing Facility**
Las Vegas, Nevada, October 2007 – Present

Medical Director – Transitional Care of Las Vegas Post-Acute Care Facility
Las Vegas, Nevada, October 2019 – Present

Hospice Physician – ProCare Hospice
Las Vegas, Nevada, January 2021 – Present

Medical Director – Kindred Transitional Care and Rehabilitation
Las Vegas, Nevada, September 2017 – September 2019

Medical Director - Tenaya Inpatient Unit Nathan Adelson Hospice
Las Vegas, Nevada, February 2019 – August 2020

**Medical Director
Nathan Adelson Hospice**
Las Vegas, Nevada, 2003 – 2006, August 2014 – December 2020

**Interim Chief Medical Officer
Nathan Adelson Hospice**
Las Vegas, Nevada, March 2016 – June 2016

**Medical Director
In House Home Healthcare**
Las Vegas, Nevada, 2010 – March 2020

**Mike Y. Jeong, DO, Ltd. - Geriatrician/Internist
Private Practice**
Las Vegas, Nevada, August 2001 – June 2008

GeriNet of Nevada
President, May 2007 – March 2008
Chief Medical Officer, June 2006 – May 2007
Medical Director, January 2004 – June 2006

Medical Director – Las Vegas Solari Hospice Care
Las Vegas, Nevada, October 2008 – June 2014

Medical Director - Gentiva Home Health Services
Las Vegas, Nevada, 2005-2007, 2008-2010

Medical Director - New Hope Hospice
Las Vegas, Nevada, June 2007 – October 2008

**Medical Director - The Heights of Summerlin
Healthcare and Rehabilitation Center**
Las Vegas, Nevada, October 2004 – February 2007

**Medical Director of Utilization Review
Summerlin Hospital and Medical Center**
Las Vegas, Nevada, 2003 - 2005

**Medical Director of Intensive Care Unit
Summerlin Hospital and Medical Center**
Las Vegas, Nevada, 2003 - 2005

PROFESSIONAL EXPERIENCE (Continued)

Medical Director
Manor Healthcare Center
Skilled Nursing Facility
Las Vegas, Nevada, 2003 - 2004

Associate Medical Director
Odyssey Hospice, Las Vegas, Nevada, 2001 - 2003

Beverly Health & Rehabilitation Services, Inc.
Sherman Oaks, California, January 1999 – June 2000
Van Nuys, California, January 1999 – June 2000
Panorama City, California, January 1999 – June 2000

Reviewer for Geriatric Medicine Certification Exam
American Board of Internal medicine
Certification and Recertification Exam Questions, 2002 – 2007

ACADEMIC APPOINTMENTS

Clinical Assistant Professor of Internal Medicine - Geriatrics
University of Nevada, Las Vegas School of Medicine
Las Vegas, Nevada, October 2019 – June 2022

Associate Professor of Internal Medicine
Touro University Nevada, College of Osteopathic Medicine
Henderson, Nevada, May 2016 – July 2018, May 2019 – May 2022

Associate Professor of Geriatric Medicine
Health Clinic, Touro University, Nevada
Henderson, Nevada, August 2014 – July 2015

Faculty Supervisor – Family Medicine Residency
Valley Hospital Medical Center, July 2011 – 2015

Acting Chair
Department of Geriatric Medicine
Western University of Health Sciences
Pomona, California, August 2000 – May 2001

Assistant Professor
Department of Geriatric Medicine and Internal Medicine
Western University of Health Sciences
Pomona, California, August 2000 – May 2001

PROFESSIONAL LICENSURE

Nevada State Osteopathic Medical Board
License Number 1024, 5/5/2001 – Present (Active)

Osteopathic Medical Board of California
License Number 20A7150, 1997 – Present (Inactive)

Maryland Board of Physicians
License Number H0065658, 2007 – Present (Inactive)

CURRENT PROFESSIONAL MEMBERSHIPS

American Medical Directors Association
American Geriatrics Society

RESEARCH

Malnutrition in the Nursing Home

Under the direction of John Schnelle, PhD.

Investigator. Evaluation and treatment of nutritional problems in nursing home residents by implementing and validating a nutritional algorithm.

UCLA Geriatric Medical Management Fellowship, 1999-2000.

Validating the Alcohol-Related Problems Survey (ARPS):

Beeson Study Project, Hartford Foundation

Under the direction of Allison Moore, MD.

Investigator/Interviewer. Chart review, interview and physical exam of participants to be included in the study.

UCLA School of Medicine, 1999-2000

Goal-Setting in the Care of Patients with Dementia

Under the direction of Sidney Bogardus, MD and Mary Tinetti, MD

Assistant Investigator. Interviewing patients, family, case managers and physicians regarding their goals of care.

Yale University School of Medicine, 1998

COMMITTEE EXPERIENCE

Medical Executive Committee

Summerlin Hospital and Medical Center

Las Vegas, Nevada, 2004 - 2005

Medicine Department Committee

Summerlin Hospital and Medical Center

Las Vegas, Nevada, 2003 - 2005

Bylaws Committee

Summerlin Hospital and Medical Center

Las Vegas, Nevada, 2003 – 2005

JCAHO Steering Committee

Summerlin Hospital and Medical Center

Las Vegas, Nevada, 2003 – 2004

Community Acquired Pneumonia PI Focus Team

Summerlin Hospital and Medical Center

Las Vegas, Nevada, 2003 – 2005

INVITED PRESENTATIONS

Care of the Nursing Home Patient

Lecture presentation for Family Practice Residents

University of Nevada, School of Medicine, 2003

Role of the Medical Director in Long-Term Care

State of California Department of Health Services

Licensing and Certification Program, All Surveyor Conference, June 2000

Implementation of Best Practice Guidelines for Nutritional Care in Nursing Homes: Feasibility and Costs

Accepted for Poster Presentation at the American Geriatric Society Annual Scientific Meeting, May 2000

Resident Care Rounds in the Nursing Home

Poster Presentation at the American Medical Directors Association Annual Symposium, March 2000

Geriatric Core Curriculum Lecture Series

Western University of Health Sciences
College of Osteopathic Medicine of the Pacific, 2000-2001

SPECIAL TRAINING

PACE Program, East Boston Neighborhood Health Center

Senior Resident elective rotation, 1998
Yale University School of Medicine

Cultural Diversity in Aging

California Geriatric Education Center, Faculty Development Course
University of California, Los Angeles, 1999.

Geriatric Medicine Annual Review

Harvard Medical School, Division On Aging
Boston, Massachusetts, 2001, 2003, 2006, 2012, 2013.

UCLA Geriatric Medicine Review

Los Angeles, California, 1998 - 2000

HONORS AND AWARDS

Top Doctors, Geriatric Medicine, Las Vegas Life, 2011-2014, 2017, 2018

Physician of the Year, In Business Las Vegas, 2009

Student Body President, Western University of Health Sciences, 1993

Class President, Western University of Health Sciences, 1991-2

American Medical Directors Assoc. Young Career Scholarship, 2002

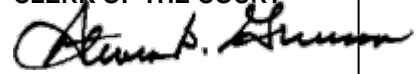
Asian-American Osteopathic Medicine Scholarship, 1995

Dean's Student Council Award, 1993

Richard Eby Leadership Scholarship, 1993

William H.G. Stahl Memorial Scholarship, 1992

Sigma Sigma Phi Honor Society, 1992



JOIN

ROBERT C. McBRIDE, ESQ.
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Attorneys for Defendant,
Spring Valley Healthcare, LLC
dba Spanish Hills Wellness Suites

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BARRY HEIFETZ, an individual

Plaintiff,

vs.

**CASE NO.: A-20-808436-C
DEPT NO.: XXI**

SPRING VALLEY HEALTHCARE, LLC, a
foreign limited-liability company d/b/a
SPANISH HILLS WELLNESS SUITES;
SHANNA MARIE BALTAR, DO an
individual; MIRIAM SITHOLE, APRN; an
individual; DOE NURSE I, an individual;
DOES I through X; ROE BUSINESS
ENTITIES XI through XX, inclusive,

Defendants.

**DEFENDANT SPANISH HILLS
WELLNESS SUITES' JOINDER TO
DEFENDANTS SHANNA MARIE
BALTAR, DO AND MIRIAM SITHOLE,
APRN'S AMENDED MOTION FOR
PARTIAL SUMMARY JUDGMENT**

**Hearing Date: January 26, 2022
Hearing Time: 2:00 p.m.**

COMES NOW, Defendant, SPRING VALLEY HEALTHCARE, LLC dba SPANISH
HILLS WELLNESS SUITES (hereinafter "Spanish Hills Wellness Suites"), by and through its
counsel, ROBERT C. McBRIDE, ESQ. of the law firm of McBRIDE HALL, and hereby submits
its Joinder to Defendants Shanna Marie Baltar, DO and Miriam Sithole, APRN's Amended Motion
for Partial Summary Judgment.

Defendant Spanish Hills Wellness Suites hereby adopts, as though fully set forth herein,

1 the points and authorities, arguments and papers contained in Defendants Shanna Marie Baltar,
2 DO and Miriam Sithole, APRN's Amended Motion for Partial Summary Judgment to the extent
3 that the arguments apply equally to Defendant Spanish Hills Wellness Suites.

4 DATED this 21st day of December, 2021. McBRIDE HALL

5

6

/s/ T. Charlotte Buys

7

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

8

T. CHARLOTTE BUYS, ESQ.

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Las Vegas, Nevada 89113

Attorneys for Defendant,

Spring Valley Healthcare, LLC

12

dba Spanish Hills Wellness Suites

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 21st day of December 2021, I served a true and correct
3 copy of the foregoing **DEFENDANT SPANISH HILLS WELLNESS SUITES' JOINDER TO**
4 **DEFENDANTS SHANNA MARIE BALTAR, DO AND MIRIAM SITHOLE, APRN'S**
5 **AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT** addressed to the following
6 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 Sean K. Claggett, Esq.
15 Jennifer Morales, Esq.
16 Shirley Blazich, Esq.
17 Shannon Wise, Esq.
18 **CLAGGETT & SYKES LAW FIRM**
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Attorneys for Plaintiff

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Katherine L. Turpen, Esq.
Brandon C. Verde, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 W. Sahara Blvd., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendants,
Shanna Marie Baltar, D.O.
and Miriam Sithole, APRN

19 Robert D. Rourke, Esq.
20 **ROURKE LAW FIRM**
10161 Park Runn Drive, Suite 150
Las Vegas, Nevada 89145
21 Attorney for Defendant,
22 *Spring Valley Healthcare, LLC*
dba Spanish Hills Wellness Suites

23
24
25 /s/ Natalie Jones
26 An Employee of *McBRIDE HALL*
27
28