

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 PHC-ELKO, INC. dba NORTHEASTERN NEVADA
4 REGIONAL HOSPITAL

5 *Petitioner,*

6 v.

7 THE FOURTH JUDICIAL DISTRICT COURT OF
8 THE STATE OF NEVADA ex rel. THE COUNTY
9 OF ELKO, AND THE HONORABLE JUDGE
10 KRISTON N. HILL,

11 *Respondents,*

12 and

13 DIANE SCHWARTZ, individually and as Special
14 Administrator of the Estate of Douglas R. Schwartz,
15 deceased,

16 *Real Party in Interest.*

17 **PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

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NRAP 26.1 DISCLOSURE

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

1. Legacy LifePoint Health, LLC owns 100% of Province Healthcare Company, LLC, which owns 100% of PHC-Elko Inc. dba Northeastern Nevada Regional Hospital.
2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court: Hall Prangle & Schoonveld, LLC, and Lewis Brisbois Bisgaard & Smith LLP.
3. If litigant is using a pseudonym, the litigant's true name: N/A

Dated this 31st day of October 2022.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Tyson Dobbs

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PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

Petitioner, PHC-ELKO, INC. dba NORTHEASTERN NEVADA REGIONAL HOSPITAL (“NNRH”), by and through their attorneys of record, Hall Prangle & Schoonveld, LLC, pursuant to Nevada Rule of Appellate Procedure 21 and based on this Court’s original jurisdiction as set forth in Article 6 § 4 of the Nevada Constitution and NRS 34.160, hereby respectfully petition this Honorable Court to issue a Writ of Mandamus and/or Prohibition directing the Honorable Kriston N. Hill (“Respondent”) to:

- 1) vacate that portion of her July 12, 2022 Order (Vol. 5, PA.1129-45) denying NNRH’s Motion for Partial Summary Judgment requesting a finding that NRS 41.503’s cap on civil damages applies to Plaintiff’s claims; and
- 2) enter an order finding, as a matter of law, that the injuries Mr. Schwartz suffered as a result of being struck by a vehicle traveling 35-40mph qualified as “traumatic injuries” under NRS 41.503(4)(b), and further direct Respondent to address whether NNRH met the other requirements for NRS 41.503 trauma cap to apply and/or whether its application was precluded by one or more of its enumerated exceptions.

1 1. This matter arises out of the care and treatment provided to
2 Douglas R. Schwartz in NNRH's emergency room where, after he was struck
3 by a car traveling 35-40 mph and sustained internal and external traumatic
4 injuries, he died from complications of an intubation procedure conducted in
5 preparation of being airlifted to a higher-level care facility. In her Third
6 Amended Complaint, Plaintiff Diane Schwartz asserted various claims
7 including, *inter alia*, professional negligence/wrongful death, corporate
8 negligence, vicarious liability/ostensible agency, lack of informed consent, and
9 medical battery, against Defendants David Garvey, M.D., the emergency room
10 physician involved in Mr. Schwartz' care and treatment; Crum, Stefanko &
11 Jones, LTD, Dr. Garvey's employer; NNRH; and Reach Air Medical Services.
12 Specifically, Plaintiff's complaint alleged that the defendants were negligent,
13 *inter alia*, in "deciding to intubate Mr. Schwartz without clinical indications for
14 intubation"; "failing to request an anesthesiologist to perform the intubation
15 due to the high risk of aspiration"; "assigning an RN to perform a high risk,
16 semi-elective intubation in a patient who he knew just ate a large meal";
17 "failing to obtain informed consent for Mr. Schwartz" prior to proceeding with
18 the intubation; and failing to have an adequately stocked "crash cart." (Vol.3,
19 PA.446-529).

2. Shortly after answering Plaintiff's complaint and initiating fact discovery, each defendant filed a motion (or joinder) seeking a determination by Respondent that all of Plaintiff's claims are subject to the requirements and limitations of NRS 41.503. Respondent ultimately denied Defendants' motions, finding that there was an issue of material fact as to whether Mr. Schwartz had suffered a traumatic injury, *i.e.*, "an acute injury which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities." NRS 41.503(4)(b). (Vol.2, PA.441-45). Specifically, Respondent explained that such a determination was improper at that time because there was a dispute as to whether Mr. Schwartz suffered a flail chest injury, which can be a life-threatening injury. (*Id.*). Co-defendant Dr. Garvey subsequently filed a petition for writ of mandamus with this Court, seeking review of the district court's order. This Court ultimately denied Dr. Garvey's Petition, finding that "*on this record and at this point in the proceeding*, extraordinary writ relief is not appropriate." *Garvey v. Fourth Judicial Dist. Ct.*, 509 P.3d 43, *1 (Nev. May 12, 2022) (unpublished disposition) (emphasis added).

3. While Dr. Garvey's Petition remained pending, and up to and through this Court's ultimate decision denying his petition, the parties proceeded to initiate and complete expert discovery. During that time, the

parties' expert witnesses continued to dispute whether Mr. Schwartz suffered a flail chest injury, but Plaintiff's liability experts (Seth Womack, M.D., Jonathan Burroughs, M.D., and Paramedic John Everlove) agreed that Mr. Schwartz suffered other traumatic injuries which required immediate treatment, including that he be airlifted to a higher-level care facility where he could be seen by a trauma surgeon. (Vol.1, PA.179 (56-57); Vol.2, PA.277(108-09), 288(151-52), 290(159-60), 291(163-64), 300(198), 316(262), 337(75), 340(87, 88), 386(269, 271-72), 388(278), 420-21(407-09)).

4. NNRH thereafter renewed its motion for partial summary judgment seeking, *inter alia*¹, entry of an order finding that NRS 41.503's cap on civil damages applied to Plaintiff's claims. (Vol.3, PA.530-660). In its renewed motion, NNRH asserted that it was now entitled to a finding that NRS 41.503 applied to Plaintiff's claims because notwithstanding the dispute over whether Mr. Schwartz had suffered a flail chest injury, Plaintiffs' experts' testimony established that there is now no dispute that he had in fact suffered a traumatic injury as defined by the statute. (Vol.3, PA.537-39).

5. In her Opposition, Plaintiff at first "concede[d] that Mr. Schwartz suffered a traumatic injury related to being hit by a car on June 22, 2016," but

¹ NNRH's Motion for Partial Summary Judgment also sought partial summary judgment on several of Plaintiff's claims. NNRH, however, does not herein seek review of those portions of Respondent's July 12, 2022 Order.

1 then argued that none of his injuries qualified as a traumatic injury “*as defined*
2 *by that statute.*” (Vol.4, PA.668) (emphasis in original). Specifically, Plaintiff
3 asserted that NRS 41.503 did not apply to her claims because Defendants had
4 failed to present evidence establishing that Mr. Schwartz’s injuries presented a
5 “significant risk of death or the precipitation of complications or disabilities”
6 (Vol. 4, PA. 669) as required under 41.503. (Vol.4, PA.668-71). Alternatively,
7 Plaintiff asserted that even if Mr. Schwartz had suffered a traumatic injury as
8 defined by 41.503(4)(b), NNRH’s motion should still be denied because one or
9 more of the statutory exceptions precluded its application to her claims.
10 (Vol.4, PA.671-79).

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12 6. Specifically, Plaintiff asserted that (1) NNRH’s negligent acts *e.g.*,
13 the intubation, were unrelated to Mr. Schwartz’s original traumatic injuries (*see*
14 NRS 41.503(2)(b)); (2) Mr. Schwartz was “stabilized” and “capable of
15 receiving medical treatment as a nonemergency patient (*see* NRS
16 41.503(2)(a)); and (3) Defendants’ conduct was “not in good faith and was
17 reckless, willful and/or wanton,” precluding application of the statute under
18 NRS 41.503((1)(e). (Vol.4, 671-79).

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20 7. In its Reply, NNRH asserted that despite her attempts to do so,
21 Plaintiff could not avoid her expert’s concessions establishing that Mr.
22 Schwartz suffered traumatic injuries for purposes of NRS 41.503. (Vol.5,
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1 PA.1081-1128). Indeed, after considering the mechanism of injury and the
2 specific injuries suffered, *e.g.*, multiple broken ribs, right pulmonary
3 contusions, a closed head injury with loss of consciousness, possible subdural
4 hematoma, a right partial pneumothorax, and hemoperitoneum (internal
5 abdominal bleeding), Plaintiff's experts agreed with Mr. Schwartz's care
6 providers' diagnosis "in the field" that his injuries met the clinical definition of
7 a traumatic injury. (Vol.5, PA.1083-85). And despite Plaintiff's experts'
8 assertions that none of Mr. Schwartz's injuries presented a "significant risk of
9 death" as described under NRS 41.503(4)(b), those same experts implicitly, if
10 not explicitly, conceded that Mr. Schwartz's injuries still posed a significant
11 risk of "the precipitation of complications or disabilities" – so much so that the
12 standard of care required he be transferred to a high-level care facility. (Vol.5,
13 PA.1083-85).
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19 8. Specifically, Plaintiff's ER physician expert Dr. Womack testified
20 that based on the results of a CT scan of Mr. Schwartz's chest, he had no
21 criticisms of Dr. Garvey's decision to have Mr. Schwartz airlifted to a trauma
22 center where he could be seen by a trauma surgeon. (Vol.2, PA.277(108-09)).
23 Dr. Womack conceded that the standard of care required that Mr. Schwartz be
24 transferred to a trauma center to have a surgical consultation "because this
25 could be a potential surgical injury," *i.e.*, an injury that will require surgery.
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(Vol.2, PA.277(108-09), 290(159), 291(163-64)). Plaintiff's other experts, Dr. Burroughs and Paramedic Everlove, either deferred to other experts or had no opinion on this issue. (Vol.1, PA.180(59); Vol.2, PA.375(226), 419(403)). Thus, even assuming, *arguendo*, that Mr. Schwartz's injuries did not present a significant risk of death, the parties' experts agreed that his injuries still presented a significant-enough risk of "the precipitation of complications or disabilities," such that the drastic measure of emergent air transfer to a higher level of care was required under the standard of care.

9. Likewise, and contrary to Plaintiff's assertions, none of NRS 41.503's exceptions applied to preclude application of its limitations on damages to Plaintiff's claims. (Vol.5, PA.1083-85). NNRH explained that NRS 41.503(2)(a) did not preclude application of the cap to Plaintiff's claims because the undisputed evidence established that Mr. Schwartz was neither "stable" nor "capable of receiving medical treatment as a nonemergency patient." NRS 41.503(2)(a). (Vol.5, PA.1083-84). While Plaintiff's experts opined that Mr. Schwartz's vital signs and injuries were "stable" prior to the intubation, the legislative history establishes that for a patient to qualify as stable as required under the statute, the patient had to no longer require emergent treatment and be ready for "discharge from the clinic," and Plaintiff

1 presented no evidence establishing that Mr. Schwartz met that standard. (Vol.5,
2 PA.1101, 1104).

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4 10. But even if Mr. Schwartz qualified as “stable” under NRS
5 41.503(2)(a), the undisputed evidence established that Mr. Schwartz did not
6 meet the second prong of the exception, *i.e.*, that he was “capable of receiving
7 medical treatment as a nonemergency patient.” *Id.* As discussed *supra*,
8 Plaintiff’s experts agreed that the standard of care required his emergent
9 transfer from NNRH to the University of Utah where he could be seen by a
10 trauma surgeon due to the risk that his internal bleeding required surgical
11 intervention. Thus, NNRH asserted that this exception to the application of
12 NRS 41.503’s limitation on damages did not apply because Plaintiff’s could
13 not establish that Mr. Schwartz met either, much less *both* prongs of NRS
14 41.503(2)(a), *i.e.*, that he was *both* stable *and* capable of receiving treatment as
15 a nonemergency patient.
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20 11. NNRH further urged that the undisputed evidence established that
21 the exception enumerated under NRS 41.503(2)(b), *i.e.*, that NNRH’s
22 negligence was “unrelated to [Mr. Schwartz’s] original traumatic injury,” also
23 did not preclude application of the statute to Plaintiff’s claims. (Vol.5,
24 PA.1084). Specifically, and contrary to Plaintiff’s assertions, her allegations of
25 negligence, *e.g.*, that Defendants were negligent in deciding to intubate Mr.
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1 Schwartz and/or in failing to properly stock the hospital “crash cart,” were all
2 at least tangentially, if not directly “related” to Mr. Schwartz’s “original
3 traumatic injur[ies].” *Id.*; NRS 41.503(2)(b). Indeed, the evidence irrefutably
4 establishes that Dr. Garvey made the decision to intubate Mr. Schwartz in
5 preparation for his transfer to the University of Utah because he was concerned
6 that the change in air pressure while flying at altitude could exacerbate the
7 partial pneumothorax Mr. Schwartz sustained as a result of the accident and
8 cause him to go into respiratory distress. (Vol.5, PA.1084). Likewise, any
9 negligence by NNRH in stocking the “crash cart” was also related to Plaintiff’s
10 original traumatic injury because the need for the crash cart was caused by a
11 complication arising from preparing Mr. Schwartz to receive additional
12 treatments for his original injuries. (Vol.5, PA.1084).² Thus, while Plaintiff
13 disputes the need for the intubation and/or the sufficiency of the contents of the
14 crash cart, both alleged acts of negligence were necessarily related to the
15 treatment of Mr. Schwartz’s injuries such that the exception enumerated
16 contained within NRS 41.503(2)(b) could not preclude application of the statute
17 to Plaintiff’s claims. *Id.*

26 ² As a result of the district court’s ruling granting NNRH’s Motion in Limine
27 No.2, Plaintiff is precluded from introducing any evidence or argument relating
28 to whether the trauma care was improperly stocked at the time of Mr. Schwartz
death at the time of trial. (Vol.6, PA.1146-67).

12. Nor was the application of the statute precluded under NRS 41.503(1)(e) on the grounds that Defendants rendered care in bad faith or in a manner amounting to gross negligence or willful and/or wanton conduct. (Vol.5, PA.1084-85). Despite Plaintiff's expert's absurd assertions that Defendants' conduct met this standard, NNRH explained that Respondent (and her predecessor judge) had already twice rejected these same claims, including barring Plaintiff from asserting any claim for exemplary/punitive damages. *Id.* Thus, none of the exceptions to the application of NRS 41.503 to Plaintiff's claims applied.

13. On July 12, 2022, after previously entertaining argument and reviewing the parties' submissions, Respondent entered an order denying that portion of NNRH's Motion seeking a finding that NRS 41.503 applies to Plaintiff's claims. In reaching this decision, Respondent stated that

“[w]hile Dr. Garvey indicates that Decedent suffered from a flail chest which created a significant risk of death, Drs. Burroughs and Womack state that Decedent's injury was not a flail chest and, whatever the nature of his pre-hospital injury, it did not create a significant risk of death, complications, or disabilities.”

(Vol.5, PA.1132). Thus, Respondent explained, “there remains at least one genuine issue of material fact as to whether Decedent suffered from a traumatic injury as defined by NRS 41.503(4)(b) before he arrived at NNRH.” (Vol.5, PA.1132, n.5). Despite the parties' briefing on the other statutory requirements

1 and exceptions, Respondent declined to address them. Notice of entry of
2 Respondent's order was subsequently filed and served on August 12, 2022.
3 (Vol. 6, PA. 1168-1171).
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5 14. NNRH respectfully contends that Respondent erred in denying its
6 motion for partial summary judgment on the application of NRS 41.503's
7 damages limitations to Plaintiff's claims because the undisputed evidence
8 established that Mr. Schwartz suffered a "traumatic injury" as defined by the
9 statute. Contrary to Respondent's assertion, none of Plaintiff's experts testified
10 that Mr. Schwartz's injuries did not present a significant risk of "complications
11 or disabilities." In fact, while the parties' experts disputed the severity of some
12 of Mr. Schwartz's injuries, *e.g.*, his head injury, and whether he suffered a flail
13 chest injury, all experts agreed that Dr. Garvey's decision to have Mr.
14 Schwartz emergently transferred to a higher level of care was
15 appropriate/consistent with the standard of care under the circumstances.
16 (Vol.1, PA.180(59); Vol.2, PA.277(108-09), 290(159), 291(163-64), 375(226),
17 419(403)). Indeed, there was no dispute that the emergent transfer was
18 necessary because his chest/abdominal injuries and internal bleeding presented
19 a potential "surgical injury" which would need to be treated by a trauma
20 surgeon/surgeon trained in trauma and no such surgeon was available at
21 NNRH. (*Id.*; Vol.1, 40(95); Vo.2, PA.291(163-64), 340(87-88), 376(231)).
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1 Thus, regardless of whether Mr. Schwartz suffered from a flail chest injury,
2 even Plaintiff's own experts' testimony establishes that his other acute injuries
3 "involve[d] a significant risk of . . . the precipitation of complications or
4 disabilities" such that they qualified as "traumatic injuries" as defined by the
5 statute.
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8 Wherefore, based on the foregoing and the accompanying Points and
9 Authorities, Petitioner respectfully requests this Court issue a Writ of
10 Mandamus ordering Respondent to vacate the July 12, 2022 Order, find that
11 Mr. Schwartz's injuries qualified as "traumatic injuries" as defined by NRS
12 41.503(4)(b), and further direct Respondent to address whether NNRH met the
13 other requirements for NRS 41.503 trauma cap to apply and/or whether its
14 application was precluded by one or more of its enumerated exceptions.
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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the attorney for Petitioner and knows the contents of the foregoing Petition; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes to be true. This verification is made by the undersigned attorney pursuant to NRS 15.010, on the ground that the matters stated, and relied upon, in the foregoing Petition are all contained in the prior pleadings and other records of the District Court, true and correct copies of which have been attached hereto.

TYSON J. DOBBS, ESQ.

SUBSCRIBED AND SWORN to before me
on this 31st day of October 2022

NOTARY PUBLIC in and for said
County of Clark and State of Nevada

POINTS AND AUTHORITIES

I. STATEMENT OF ISSUE PRESENTED FOR REVIEW.

Does an acute injury which the parties agree requires the patient to be emergently airlifted to a higher-level of care facility where he can be evaluated by a trauma surgeon due to the risk that his injuries will require surgical intervention qualify as a “traumatic injury” as defined by NRS 41.503(4)(b)?

II. ROUTING STATEMENT

Petitioner submits that this Petition for Writ of Mandamus falls within one of the categories of cases retained by this Court pursuant to NRAP 17(a). *See* NRAP 17(a): “Matters raising as a principal issue of question of statewide importance.” The principal issue here – the interpretation and application of NRS 41.503 – is a matter of statewide importance because the application of this statute and its limitations on civil damages will affect all qualifying Nevada Hospitals, physicians, or dentists who are named as defendants in actions arising out of their care or assistance when necessitated by traumatic injuries demanding immediate medical attention.

III. STATEMENT OF FACTS

Mr. Schwartz Is Struck By A Car And Taken By Ambulance To NNRH’s Emergency Room.

On June 29, 2018, fifty-eight-year old Mr. Schwartz was struck by a car traveling 35-40 mph as he was crossing the street on foot after eating dinner at

1 a local restaurant. (Vol.1, PA.6, 83). Mr. Schwartz was struck with such force
2 that he was thrown up and over the vehicle and onto the pavement. (*Id.*)
3 Paramedics arrived to find Mr. Schwartz lying on his side with various injuries,
4 including “positive trauma noted to right-shoulder/upper chest ribs/and knee.”
5 (Vol.1, PA.6). After placing him in full c-spine precautions with a c-collar,
6 backboard and spider straps, and securing him to a gurney, the paramedics
7 started him on supplemental oxygen as a precaution, and thereafter transferred
8 him to NNRH’s emergency room for further treatment. *Id.*

**Mr. Schwartz Is Evaluated By Dr. Garvey And Diagnosed
As Suffering From Multiple Trauma-Related Injuries.**

14 Upon his arrival at NNRH’s emergency room in a full C-spine collar on
15 a backboard, Mr. Schwartz was evaluated by emergency medicine physician
16 Dr. David Garvey. (Vol.1, PA.83). His Dr. Garvey ordered Mr. Schwartz to
17 undergo a battery of diagnostic testing, including CT scans of the head, spine,
18 chest, and abdomen, and various laboratory tests. (Vol.1, PA.86). At or about
19 that same time, Mr. Schwartz was placed on supplemental oxygen, first at 4
20 liters of oxygen per minute via a nasal cannula due to low blood-oxygen
21 saturations. (Vol.1, PA.84-85, 89-90). However, Mr. Schwartz’s oxygen
22 saturations did not improve and he was later placed on a 40% non-rebreather at
23 15 liters per minute of oxygen. (*Id.*). Even with the addition of this
24 supplemental oxygen, Mr. Schwartz remained hypoxic. (*Id.*). The various CT
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scans revealed that Mr. Schwartz had suffered “multiple trauma,” including multiple rib fractures with flail segment (ribs detached from the chest wall), right pulmonary contusions, a closed head injury with loss of consciousness, possible subdural hematoma, a right partial pneumothorax, and hemoperitoneum (internal abdominal bleeding). (Vol.1, PA.39-42 (92-104), 89-90, 98).

**Due To The Nature Of His Injuries, Dr. Garvey
Determined That Mr. Schwartz Needed To Be Airlifted
To An Area Trauma Center For Further Treatment.**

After reviewing these results and performing a physical examination, Dr. Garvey determined that Mr. Schwartz’s condition was deteriorating and that he required a surgeon skilled in trauma. (Vol.1, PA.42(104)). He thereafter contacted Dr. Ray at the University of Utah trauma service – a Level 1 trauma center – to request a transfer of Mr. Schwartz to that facility because, unlike NNRH, the University of Utah has trauma surgeons, pulmonologists, or other physicians with the specialized training, expertise and resources necessary to treat all of Mr. Schwartz’s injuries. (Vol.1, PA.40(93-96), 44-45(111-13), 85). Dr. Ray agreed to accept the transfer and requested a chest tube be placed and possibly intubation due to his suspected flail chest, pulmonary contusions, low oxygen saturations, and right pneumothorax prior to his transport via a fixed-wing aircraft. (*Id.*). Dr. Garvey ultimately decided that he would place the

1 chest tube while one of the members of the Reach critical care transport team
2 would perform the intubation. (Vol.1, PA.51(137)). Dr. Garvey decided to
3 move forward with an intubation because of the heightened risk to Mr.
4 Schwartz's health and increased difficulty in performing such procedures if
5 they were required midflight. (Vol.1, PA.49(130-31)).
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7
8 **Reach Critical Care Transport Team Attempts To Intubate Mr. Schwartz**
9 **And Encounters Complications Resulting In Mr. Schwartz's Death.**

10 Upon the Reach critical care transport team's arrival at NNRH, Mr.
11 Schwartz was given sedation and paralytic medications (Rocuronium and
12 Ketamine) in preparation for his intubation. (Vol.1, PA.85). Reach critical care
13 transport team member Bartlett attempted to intubate Mr. Schwartz while Dr.
14 Garvey prepared to insert the chest tube. (Vol.1, PA.51-52(139-41)). When
15 Mr. Bartlett's first attempt was unsuccessful, they bagged Mr. Schwartz for a
16 few minutes before making a second attempt. (*Id.*; Vol.1, PA.85). During their
17 second attempt, Mr. Schwartz vomited and aspirated the contents of his
18 stomach. (*Id.*). After initiating suctioning to remove large food particles from
19 Mr. Schwartz's airway, additional intubation attempts were made without
20 success. (*Id.*). CPR, a cricothyrotomy, and other procedures were performed
21 in attempts to achieve adequate oxygenation but Mr. Schwartz eventually went
22 into a full arrest and was subsequently pronounced dead at 1:33 a.m. (*Id.*).
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1 **IV. REASONS WHY A WRIT OF MANDAMUS SHOULD ISSUE.**

2 **A. Writ Standard.**

3 A writ of mandamus is available (1) “to compel the performance of an
4 act which the law requires as a duty resulting from an office, trust or station,”
5 NRS 34.160, (2) “to control a manifest abuse of or arbitrary or capricious
6 exercise of discretion” or (3) “to clarify an important issue of law.” *Bennett v.*
7 *Eighth Jud. Dist. Ct.*, 121 Nev. 802, 806, 121 P.3d 605, 608 (2005). When a
8 district court’s findings raise questions of law, such as those at issue in this
9 Petition, they are reviewed *de novo*. *Marquis & Aurbach v. Eighth Jud. Dist.*
10 *Ct.*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006). The writ shall be
11 issued in all cases where the petitioner does not have a plain, speedy and
12 adequate remedy in the ordinary course of law, NRS 34.170, or where “no
13 disputed factual issues exist” and summary judgment is clearly required by
14 statute or rule. *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 362, 325 P. 3d
15 1276, 1278 (2014) and *Nevada Assn’ Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130
16 Nev. 949, 953, 338 P.3d 1250, 1253 (2014).

17 A writ should issue here to correct the district court’s error in finding
18 that Plaintiff’s claims were not subject to NRS 41.503’s limitations on civil
19 damages because, contrary to its holding, the undisputed evidence established
20 that Mr. Schwartz’s injuries qualified as “traumatic injuries” under NRS
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1 41.503(4)(b). Indeed, even accepting the parties' dispute as to whether Mr.
2 Schwartz suffered a flail chest injury, Respondent's decision erroneously
3 ignored Plaintiff's experts' testimony conceding that he had suffered other
4 "traumatic injuries" as they define the term "in the field" when evaluating
5 patients under the same or similar circumstances. Furthermore, Respondent's
6 decision also ignored Plaintiff's experts' additional concessions that, due to the
7 nature of those other undisputed injuries, they had no criticisms of Dr.
8 Garvey's conclusion that Mr. Schwartz needed to be airlifted to an area trauma
9 center due to the risk that he would require surgery.
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13 Thus, taken together, Plaintiff's experts' concessions demonstrate that
14 Mr. Schwartz's injuries fell squarely within the definition of "traumatic
15 injuries" under NRS 41.503, *i.e.*, they constituted "acute injuries" which,
16 according to "standardized criteria for triage in the field," posed a significant
17 risk of "the precipitation of complications or disabilities," *e.g.*, surgery and/or
18 other injuries, such that even they agreed an emergent transfer to a trauma
19 facility was required under the standard of care. Accordingly, an order should
20 issue directing the district court to vacate its prior order, enter an order finding,
21 as a matter of law, that Mr. Schwartz's injuries qualified as "traumatic injuries"
22 for purposes of NRS 41.503, and further direct the district court to decide
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1 whether NNRH has satisfied all other remaining factors for application of the
2 trauma cap to Plaintiff's claims and/or whether one or more exceptions applies.

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4 Having already exhausted all available remedies with the District Court,
5 NNRH is now without a plain, speedy and adequate remedy to correct these
6 errors of law except to seek mandamus relief from this Court. *See ANSE, Inc. v.*
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8 *Eighth Judicial Dist. Court*, 124 Nev. 862, 867, 192 P.3d 738, 742 (2008)
9 (explaining that the Court will not normally entertain a writ petition that
10 challenges a denial of a motion for partial summary judgment but will do so
11 when "summary judgment is clearly required by a statute or rule, or an
12 important issue of law requires clarification."); *see also Badger v. Eighth Jud.*
13 *Dist. Court*, 132 Nev. 396, 401, 373 P.3d 89, 93 (2016) (same). Entry of an
14 order finding that Mr. Schwartz's injuries qualified as traumatic injuries for
15 purposes of NRS 41.503, and further directing Respondent to address whether
16 NNRH met the other requirements for NRS 41.503 trauma cap to apply and/or
17 whether its application was precluded by one or more of its enumerated
18 exceptions, will necessarily limit the issues at trial, promote judicial economy
19 and could "lead to meaningful pretrial settlement. . . ." *County of Clark ex rel.*
20 *University Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756
21 (1998). Accordingly, Petitioner respectfully requests that this Court grant its
22 petition.
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1 **B. Respondent Erred In Its Conclusion That An Issue Of**
2 **Material Fact Remained On Whether Mr. Schwartz Had**
3 **Suffered A “Traumatic Injury” As Defined By NRS**
4 **41.503(4)(b).**

5 As state above, Respondent erred as a matter of law in denying NNRH’s
6 motion for partial summary judgment because the undisputed evidence
7 establishes that Mr. Schwartz suffered a “traumatic injury” as that term is
8 defined by NRS 41.503(4)(b).
9

10 NRS 41.503 states in pertinent part that:

11 A hospital . . . that in good faith renders care or assistance
12 necessitated by a traumatic injury demanding immediate medical
13 attention, for which the patient enters the hospital through its
14 emergency room or trauma center, may not be held liable for more
15 than \$50,000 in civil damages, exclusive of interest computed
16 from the date of judgment, to or for the benefit of any claimant
17 arising out of any act or omission in rendering that care or
18 assistance if the care or assistance is rendered in good faith and in
19 a manner not amounting to gross negligence or reckless, willful or
20 wanton conduct.

21 2. The limitation on liability provided pursuant to this section does
22 not apply to any act or omission in rendering care or assistance:

23 (a) Which occurs after the patient is stabilized and is
24 capable of receiving medical treatment as a nonemergency patient,
25 unless surgery is required as a result of the emergency within a
26 reasonable time after the patient is stabilized, in which case the
27 limitation on liability provided by subsection 1 applies to any act
28 or omission in rendering care or assistance which occurs before
 the stabilization of the patient following the surgery; or

 (b) Unrelated to the original injury.

4. For the purposes of this section:

(a) “Reckless, willful or wanton conduct,” as it applies to a person to whom subsection 1 applies, shall be deemed to be that conduct which the person knew or should have known at the time the person rendered the care or assistance would be likely to result in injury so as to affect the life or health of another person, taking into consideration to the extent applicable:

(1) The extent or serious nature of the prevailing circumstances;

(2) The lack of time or ability to obtain appropriate consultation;

(3) The lack of a prior medical relationship with the patient;

(4) The inability to obtain an appropriate medical history of the patient; and

(5) The time constraints imposed by coexisting emergencies.

(b) “Traumatic injury” means any acute injury which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities. NRS 41.503.

Here, Respondent erred in denying NNRH’s motion for partial summary judgment because, even accepting a factual dispute on whether Mr. Schwartz suffered a flail chest injury, Plaintiff’s experts’ testimony established that he suffered other “traumatic injuries” as defined by NRS 41.503(4)(b). While the parties dispute whether Mr. Schwartz suffered a flail chest injury, Plaintiff’s experts agree that Mr. Schwartz suffered several other “traumatic injuries” as a result of the accident, including multiple rib fractures, right pulmonary contusions, a closed head injury with loss of consciousness, a possible subdural hematoma, a right partial pneumothorax, and hemoperitoneum (internal

1 abdominal bleeding where blood gathers in the peritoneal cavity). (Vol.1,
2 PA.179-80(56-58), 207(168); Vol.2, PA.277(108-09), 284(135-37), 285(141),
3 290-91(161-62), 295(181), 300(198), 315(262), 339(83), 340(88), 386(269,
4 272), 388(278), 439(481-82)).

5
6 Indeed, Plaintiff's hospital administration expert, Dr. Burroughs,
7 testified that based on his review of the medical records, he would classify Mr.
8 Schwartz as having suffered "moderate trauma" based on the criteria
9 promulgated by the American College of Surgeons. (Vol.2, PA.386(269)).
10 Similarly, Dr. Womack, Plaintiff's emergency medicine expert, and Paramedic
11 Everlove, also testified that Mr. Schwartz suffered a "traumatic injuries" as
12 they define the term based on their training and experience. (Vol.1, PA.179(56-
13 57); Vol.2, PA.277(108-9), 316(262)). Thus, even ignoring Dr. Burroughs'
14 reference to the American College of Surgeons criteria for traumatic injuries,
15 Plaintiff's experts' opinions that Mr. Schwartz's injuries qualified as traumatic
16 injuries were necessarily based on the same "standardized criteria for triage in
17 the field" that they use when faced with patients suffering from the same or
18 similar injuries.

19 Furthermore, while Plaintiff's experts disputed whether Mr. Schwartz's
20 injuries were life threatening (*e.g.*, Vol.2, PA.316(264)), they implicitly, if not
21 explicitly conceded that Mr. Schwartz's injuries still posed a significant risk of
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“the precipitation of complications or disabilities” to qualify as traumatic injuries under NRS 41.503(4)(b). Indeed, Dr. Womack testified that based on the results of the CT scan of Mr. Schwartz’s abdomen, he had no criticism of Dr. Garvey’s decision to have Mr. Schwartz airlifted to a trauma 1 hospital.³ (Vol.2, PA.277(108-09), 290(159-60), 291(163-64)). Dr. Womack explained that the transfer was required under the standard of care because Mr. Schwartz needed to be seen by a trauma surgeon due to the potential complication that he will require surgery to address his internal bleeding. (*Id.*). Specifically, Dr. Womack stated the following at his deposition:

Q: Why on earth would he need a surgical consultation if there’s so little to be worried about?

A: Because these potential injuries – or injuries – he did have trace hyperdense fluid in his belly. That’s a reason that this – for a surgical consult to happen, and it is the standard of care for somebody with this CT reading, which was Mr. Schwartz, to have a surgical consult.

Q: Well, why though, given that you say it’s so insignificant?

A: Because it’s the standard of care.

³ Despite initially deferring to other experts for an opinion concerning Dr. Garvey’s decision to transfer Mr. Schwartz to a higher level of care facility, Dr. Burroughs testified that under the American College of Surgeons Committee on Trauma, it was Mr. Schwartz’s chest injuries with his fractured ribs that would support transferring him to a level 2 or 1 trauma center for further monitoring. (Vol.2, PA.386(271-72)). Paramedic Everlove had no opinion on whether the standard of care required that Mr. Schwartz be transferred to a higher level of care facility due to his traumatic injuries. (Vol.1, PA.180(59)).

1 Q: Why is it the standard of care?

2
3 A: Because this is what an E.R. doctor would have done with a
4 CAT scan like that.

5 Q: Why?

6 A: He would have consulted a surgeon.

7
8 Q: Why if its so insignificant? Why does the standard of care
9 require surgical consultation?

10 A: Because this could be a potential surgical injury. (Vol.2,
11 PA.291(163-64)).

12 Thus, regardless of whether a dispute existed as to whether Mr. Schwartz
13 suffered a flail chest injury, this testimony and that of Plaintiff's other experts
14 establishes that Mr. Schwartz suffered other injuries which "involve[d] a
15 significant risk of . . . the precipitation of complications or disabilities." In fact,
16 those other injuries, *i.e.*, hemoperitoneum, presented such a risk to Mr.
17 Schwartz's health that even Plaintiff's experts agreed that the standard of care
18 required he be emergently transferred to a higher-level care facility so he could
19 be seen and evaluated by a trauma surgeon. Accordingly, this Court should
20 find that Mr. Schwartz's injuries qualified as "traumatic injuries" under NRS
21 41.503 as a matter of law.
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V. CONCLUSION

Accordingly, Petition PHC-Elko, Inc., d/b/a Northeastern Nevada Regional Hospital respectfully requests that this Honorable Court issue a Writ of Mandamus directing Respondent, the Honorable Kriston N. Hill, to vacate her July 12, 2022 Order, find that Mr. Schwartz's injuries qualified as "traumatic injuries" as defined by NRS 41.503(4)(b), and further direct Respondent to address whether NNRH met the other requirements for NRS 41.503 trauma cap to apply and/or whether its application was precluded by one or more of its enumerated exceptions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

7 This brief has been prepared in a proportionally spaced typeface using
8 Microsoft Word 2010 in Times New Roman 14-point type.
9

10 2. I further certify that this brief complies with the page- or type-
11 volume limitations of NRAP 21(d) because, excluding the parts of the brief
12 exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of
13 14 points or more, and contains 5,491 words.
14

15 3. I have read this Petition, and to the best of my knowledge,
16 information, and belief, it is not frivolous or interposed for any improper
17 purpose, and that it complies with all applicable Nevada Rules of Appellate
18 Procedure.
19
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21 4. I understand that I may be subject to sanctions if the
22 accompanying Petition is not in conformity with the requirements of the
23 Nevada Rules of Appellate Procedure.
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1 DATED this 31st day of October 2022.

2
3 HALL PRANGLE & SCHOONVELD, LLC

4 /s/ Tyson Dobbs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 2nd day of November 2022, I served a true and correct copy of the foregoing **PETITIONER PHC-ELKO, INC. d/b/a NORTHEASTERN NEVADA REGIONAL HOSPITAL PETITION FOR WRIT OF MANDAMUS** via the E-Service Master List for the above referenced matter in the Nevada Supreme Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, to the following:

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