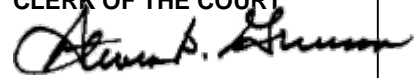


EXHIBIT 5

**Notice of Entry of Order Granting Defendants' Motion for Summary
Judgment filed on 12/11/2018**

EXHIBIT 5



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Attorneys for Defendants South Las Vegas
7 *Medical Investors LLC dba Life Care Center of*
South Las Vegas fka Life Care Center of Paradise
8 *Valley, South Las Vegas Investors, LP, Life Care*
Centers of America, Inc., Carl Wagner,

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 Estate of MARY CURTIS, deceased; LAURA
13 LATRENTA, as Personal Representative of
the Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

14 Plaintiffs,

15 vs.

16 SOUTH LAS VEGAS MEDICAL
17 INVESTORS, LLC dba LIFE CARE
CENTER OF SOUTH LAS VEGAS fka LIFE
18 CARE CENTER OF PARADISE VALLEY;
SOUTH LAS VEGAS INVESTORS
19 LIMITED PARTNERSHIP; LIFE CARE
CENTERS OF AMERICA, INC.; BINA
20 HRIBIK PORTELLO, Administrator; CARL
WAGNER, Administrator; and DOES 1-50
21 inclusive,

22 Defendants.

23 -----
24 Estate of MARY CURTIS, deceased; LAURA
25 LATRENTA, as Personal Representative of
the Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

26 Plaintiffs,

27 Vs.
28

CASE NO. A-17-750520-C
Dept. No.: XVII

Consolidated with:
CASE NO. A-17-754013-C

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

1 SAMIR SAXENA , M.D.,
2
3 Defendant
4

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

5 PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANTS' MOTION**
6 **FOR SUMMARY JUDGMENT** was entered with the Court in the above-captioned matter on the
7 7th day of December, 2018, a copy of which is attached hereto.

8 DATED this 11th day of December, 2018

9 LEWIS BRISBOIS BISGAARD & SMITH LLP
10
11

12 By /s/ Amanda J. Brookhyser
13 S. BRENT VOGEL
14 Nevada Bar No. 006858
15 AMANDA J. BROOKHYSER
16 Nevada Bar No. 11526
17 6385 S. Rainbow Boulevard, Suite 600
18 Las Vegas, Nevada 89118
19 Attorneys for Defendants South Las Vegas
20 Medical Investors LLC dba Life Care Center of
21 South Las Vegas fka Life Care Center of Paradise
22 Valley, South Las Vegas Investors, LP, Life Care
23 Centers of America, Inc., Carl Wagner,
24
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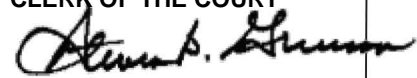
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 11th day of December, 2018, a true and correct copy
3 of **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR**
4 **SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using
5 the Wiznet Electronic Service system and serving all parties with an email-address on record, who
6 have agreed to receive Electronic Service in this action.

7
8
9
10 By /s/ Johana Whitbeck
11 an Employee of
12 LEWIS BRISBOIS BISGAARD & SMITH LLP
13
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Steven D. Grierson
CLERK OF THE COURT



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*Attorneys for Defendants South Las Vegas
7 Medical Investors LLC dba Life Care Center of
South Las Vegas fka Life Care Center of Paradise
8 Valley, South Las Vegas Investors, LP, Life Care
Centers of America, Inc., Carl Wagner,*

DISTRICT COURT

CLARK COUNTY, NEVADA

12 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of
13 the Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

14 Plaintiffs,

15 vs.

16 SOUTH LAS VEGAS MEDICAL
17 INVESTORS, LLC dba LIFE CARE
CENTER OF SOUTH LAS VEGAS fka LIFE
18 CARE CENTER OF PARADISE VALLEY;
SOUTH LAS VEGAS INVESTORS
19 LIMITED PARTNERSHIP; LIFE CARE
CENTERS OF AMERICA, INC.; BINA
20 HRIBIK PORTELLO, Administrator; CARL
WAGNER, Administrator; and DOES 1-50
21 inclusive,

22 Defendants.

23 -----
24 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
25 Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

26 Plaintiffs,

27
28 Vs.

CASE NO. A-17-750520-C
Dept. No.: XVII

Consolidated with:
CASE NO. A-17-754013-C

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

1 SAMIR SAXENA , M.D.,
2
3 Defendant
4

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

5 THIS MATTER, having come on for hearing the 31st day of October, 2018 on Defendants South
6 Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care Center
7 of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and Carl
8 Wagner's Motion for Summary Judgment, S. Brent Vogel, Esq., of the Law Firm Lewis Brisbois
9 Bisgaard & Smith, appearing on behalf of Defendants South Las Vegas Medical Investors LLC dba
10 Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas
11 Investors, LP, Life Care Centers of America, Inc., and Carl Wagner ("Defendants"); Vincent
12 Vitatoe, Esq., of the Law Firm John H. Cotton & Associates, Ltd., appearing on behalf of Annabelle
13 Socaoco, N.P.; IPC Healthcare, Inc. aka The Hospitalist Company, Inc.; INPATIENT
14 CONSULTANTS OF NEVADA, INC.; IPC Healthcare Services Of Nevada, Inc.; Hospitalists Of
15 Nevada, Inc. (collectively, "IPC Defendants"); and Melanie Bossie, Esq., of the Law Firm Wilkes
16 & McHugh, and Michael Davidson, Esq., of the Law Firm Kolesar and Leatham, appearing on
17 behalf of Plaintiffs Estate of Mary Curtis and Laura Latrenta, the Court, having considered the
18 papers and pleadings in this matter and after hearing oral argument, finds as follows:
19
20
21

FINDINGS OF FACT

- 22
- 23 1). Mary Curtis was a resident at Life Care Center of South Las Vegas fka Life Care
24 Center of Paradise Valley (LCCPV) from March 2, 2016 through March 8, 2016.
- 25 2). On March 7, 2016, Ersheila Dawson, LPN, administered to Ms. Curtis a dose of
26 morphine prescribed to another resident.
- 27 3). On March 8, 2016, Ms. Curtis was transferred from LCCPV to Sunrise Hospital.
28

1 granted. Plaintiffs state that by filing such a Motion after two years of litigation, the Defendants
2 have waived their objection to the affidavit requirement but more importantly, the claim is one of
3 abuse/neglect of an older person and not professional negligence under Chapter 41A, which does
4 not require an expert affidavit.

5 3). NRS 41A.015 defines professional negligence as a failure of a provider of healthcare,
6 in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar
7 circumstances by similarly trained and experienced health care professionals. NRS 41A.071
8 provides that for any action sounding in professional negligence, there is a requirement of an
9 affidavit of merit. Without such an affidavit, the case must be dismissed. If a complaint for
10 professional negligence fails to have attached thereto an affidavit of merit, the complaint is void *ab*
11 *initio*. Washoe Medical Center v. Second Dist. Court, 122 Nev. 1298, 1300 (2006).
12

13 4). The Court does not find the claim that Defendants waived the affidavit requirement
14 by filing their Motion after two years of litigation. If Plaintiffs' claims are based upon professional
15 negligence, there is an affidavit requirement. Such a complaint without an affidavit must be
16 dismissed since it is void *ab initio*. Additionally, given that the expert affidavit requirement is
17 jurisdictional, it cannot be waived. See, e.g., Jasper v. Jewkes, 50 Nev. 153, 254 P. 698
18 (1927); Liberty Mut. v. Thomasson, 317 P.3d 831 (2014); Padilla Constr.Co. v. Burley, 2016 Nev.
19 App. Unpub. LEXIS 10 (May 10, 2016); Finley v. Finley, 65 Nev. 113 (1948).
20

21 5). Defendants contend that they are entitled to the protections of Chapter 41A because
22 their liability is derivative of its nursing staff. In Deboer v. Senior Bridges at Sparks Family Hospital,
23 282 P.3d 727 (Nev. 2012), the Supreme Court distinguished between medical malpractice and
24 traditional negligence on the basis of the provision of medical services provided to the plaintiff, i.e.,
25 medical diagnosis, judgment or treatment. *Id.* at 732.
26

27 6). The Court finds that Defendants' liability is based on the acts (LPN Dawson's
28

1 administration of morphine to Mary Curtis) and omissions (failure to monitor Mary Curtis
2 thereafter) of its nursing staff. LPN Dawson and the other nursing staff monitoring Ms. Curtis are
3 providers of health care pursuant to NRS 41A.017. Said acts and omissions are a provision of
4 medical services which give rise to Defendants' liability. Therefore, the provisions of NRS Chapter
5 41A apply.

6
7 7). More fundamental to the determination by the Court is whether or not the allegations
8 are for general negligence resulting from non-medical services or for negligent medical treatment
9 which calls for an affidavit of merit. Szyborski v. Spring Mountain Treatment Ctr., 403 P.3d 1280
10 (Nev. 2017). Szyborski holds that a plaintiff's complaint can be based upon both general
11 negligence and professional negligence. The Nevada Supreme Court stated that the Court is to look
12 beyond the title to a particular cause of action and determine whether or not the claims actually
13 involve professional negligence or general negligence. *Id.* at 1284.

14
15 8). Abuse/neglect of an older person is codified in NRS 41.1395 as willful and
16 unjustified infliction of pain, injury or mental anguish or deprivation of food, shelter, clothing or
17 services which are necessary to maintain the physical or mental health of an older person or a
18 vulnerable person. Nev.Rev.Stat.41.1395. As stated in Szyborski and Egan v. Chambers, 299 P.3d
19 364, 366 (Nev. 2013), the courts should look to the nature of the grievance to determine the character
20 of the action, not the form of the pleadings. Cited with approval in Brown v. Mt. General Hospital,
21 3:12-CV-00461-LRH, 2013 WL 4523488 (D. Nev., Aug. 2013).

22
23 9). Although Plaintiffs use language from NRS 41.1395 in their complaint, the
24 underlying basis of the complaint is for medical malpractice. See Complaint, ¶18. Plaintiffs allege
25 that despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for proper
26 medication administration, they, on March 7, 2016, administered to her a dose of morphine
27 prescribed to another resident. Ms. Curtis was not prescribed morphine. See Complaint, ¶19.

1 10). Plaintiffs further allege that, despite Defendants' notice and knowledge that they had
2 wrongly administered morphine to Ms. Curtis, they failed to act timely upon that discovery, instead
3 retaining Ms. Curtis as a resident until March 8, 2016.

4 11). The administration of morphine by an LPN and failure to monitor the effects of the
5 administration of morphine is a claim of professional negligence requiring an affidavit pursuant to
6 NRS 41A.071. In other words, Plaintiffs allege that but for LPN Dawson's alleged nursing conduct
7 of improperly administering morphine and subsequent lack of nursing monitoring of Ms. Curtis, she
8 would not have died. As the gravamen of Plaintiffs' allegations sounds in professional negligence,
9 NRS Chapter 41A applies to all of Plaintiffs' claims to the exclusion of NRS 41.1395.

10 12). A claim is grounded in professional negligence and must adhere to NRS 41A.071
11 where the facts underlying the claim involve medical diagnosis, treatment, or judgment and the
12 standards of care pertaining to the medical issue require explanation to the jury from a medical
13 expert. Szymborski at 1288. This Court finds persuasive the holding in Brown v. Mt. Grant Gen.
14 Hosp., 3:12-CV-00461-LRH, 2013 WL 4523488 (D.Nev. Aug.26, 2-13), which sets forth the
15 following:
16

17 "Moreover, the Nevada Supreme Court has signaled a disapproval of artful
18 pleading for the purposes of evading the medical malpractice limitations.
19 For example, the Court concluded that medical malpractice claims extend
20 to both intentional and negligence-based actions. Fierle, 219 P.2d at 913 n.
21 8. This means that a plaintiff cannot escape the malpractice statutes damages
22 or timeliness limitations by pleadings intentional tort battery, say instead of
23 negligence. If the Nevada Supreme Court casts an jaundiced eye on the
24 artful pleading of intentional torts, it is likely to view the artful pleading of
25 elder abuse similarly. In the end, it seems, Nevada courts look to the nature
26 of the grievance to determine the character of the action, not the form of the
27 pleadings. Egan v. Chambers, 299 P.3d 364, 366 n.2 (Nev. 2013 (citing
28 State Farm Mut. Auto. Ins. Co. v. Wharton, 88 Nev. 183, 495 P.2d 359, 361
(1972)))."

Brown, at *8.

13). Plaintiffs' Complaint is grounded in and involves medical treatment and the standard

1 of care (administration of morphine and the failure to monitor). Thus, the gravamen of the
2 Complaint, and all claims therein, sounds in professional negligence, which requires an affidavit.

3 IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED, that
4 Defendants South Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka
5 Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America,
6 Inc., and Carl Wagner's Motion for Summary Judgment is hereby GRANTED.
7

8 It is further determined and ordered pursuant to Nev. R. Civ. P. 54(b), this is a final judgment
9 and there is no just reason for delay of entry of judgment in favor of Defendants.

10 IT IS SO ORDERED


11 DATED this 3 day of Dec., 2018.


DISTRICT COURT JUDGE

13 Submitted by:

14 LEWIS BRISBOIS BISGAARD & SMITH LLP


16 By:


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12 Arizona Bar No. 022825

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16 *Attorneys for Plaintiffs*
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Approved as to form and content by:

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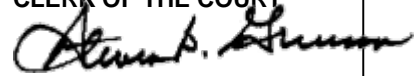
EXHIBIT 4

**Order Granting Defendants' Motion for Summary Judgment filed on
12/07/2018**

EXHIBIT 4

ORIGINAL

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12/7/2018 4:12 PM
Steven D. Grierson
CLERK OF THE COURT



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7 *Medical Investors LLC dba Life Care Center of*
South Las Vegas fka Life Care Center of Paradise
8 *Valley, South Las Vegas Investors, LP, Life Care*
Centers of America, Inc., Carl Wagner,
9

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of
13 the Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

14 Plaintiffs,

15 vs.

16 SOUTH LAS VEGAS MEDICAL
17 INVESTORS, LLC dba LIFE CARE
CENTER OF SOUTH LAS VEGAS fka LIFE
18 CARE CENTER OF PARADISE VALLEY;
SOUTH LAS VEGAS INVESTORS
19 LIMITED PARTNERSHIP; LIFE CARE
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20 HRIBIK PORTELLO, Administrator; CARL
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22 Defendants.

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25 Estate of MARY CURTIS; and LAURA
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27 Vs.
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CASE NO. A-17-750520-C
Dept. No.: XVII

Consolidated with:
CASE NO. A-17-754013-C

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

RECEIVED BY
DEPT 17 ON
DEC 03 2018

LEW
IS

1 SAMIR SAXENA , M.D.,
2 Defendant
3
4

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

5 THIS MATTER, having come on for hearing the 31st day of October, 2018 on Defendants South
6 Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care Center
7 of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and Carl
8 Wagner's Motion for Summary Judgment, S. Brent Vogel, Esq., of the Law Firm Lewis Brisbois
9 Bisgaard & Smith, appearing on behalf of Defendants South Las Vegas Medical Investors LLC dba
10 Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas
11 Investors, LP, Life Care Centers of America, Inc., and Carl Wagner ("Defendants"); Vincent
12 Vitatoe, Esq., of the Law Firm John H. Cotton & Associates, Ltd., appearing on behalf of Annabelle
13 Socaoco, N.P.; IPC Healthcare, Inc. aka The Hospitalist Company, Inc.; INPATIENT
14 CONSULTANTS OF NEVADA, INC.; IPC Healthcare Services Of Nevada, Inc.; Hospitalists Of
15 Nevada, Inc. (collectively, "IPC Defendants"); and Melanie Bossie, Esq., of the Law Firm Wilkes
16 & McHugh, and Michael Davidson, Esq., of the Law Firm Kolesar and Leatham, appearing on
17 behalf of Plaintiffs Estate of Mary Curtis and Laura Latrenta, the Court, having considered the
18 papers and pleadings in this matter and after hearing oral argument, finds as follows:
19
20
21

FINDINGS OF FACT

- 22
- 23 1). Mary Curtis was a resident at Life Care Center of South Las Vegas fka Life Care
24 Center of Paradise Valley (LCCPV) from March 2, 2016 through March 8, 2016.
- 25 2). On March 7, 2016, Ersheila Dawson, LPN, administered to Ms. Curtis a dose of
26 morphine prescribed to another resident.
- 27 3). On March 8, 2016, Ms. Curtis was transferred from LCCPV to Sunrise Hospital.
28

1 granted. Plaintiffs state that by filing such a Motion after two years of litigation, the Defendants
2 have waived their objection to the affidavit requirement but more importantly, the claim is one of
3 abuse/neglect of an older person and not professional negligence under Chapter 41A, which does
4 not require an expert affidavit.

5 3). NRS 41A.015 defines professional negligence as a failure of a provider of healthcare,
6 in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar
7 circumstances by similarly trained and experienced health care professionals. NRS 41A.071
8 provides that for any action sounding in professional negligence, there is a requirement of an
9 affidavit of merit. Without such an affidavit, the case must be dismissed. If a complaint for
10 professional negligence fails to have attached thereto an affidavit of merit, the complaint is void *ab*
11 *initio*. Washoe Medical Center v. Second Dist. Court, 122 Nev. 1298, 1300 (2006).
12

13 4). The Court does not find the claim that Defendants waived the affidavit requirement
14 by filing their Motion after two years of litigation. If Plaintiffs' claims are based upon professional
15 negligence, there is an affidavit requirement. Such a complaint without an affidavit must be
16 dismissed since it is void *ab initio*. Additionally, given that the expert affidavit requirement is
17 jurisdictional, it cannot be waived. See, e.g., Jasper v. Jewkes, 50 Nev. 153, 254 P. 698
18 (1927); Liberty Mut. v. Thomasson, 317 P.3d 831 (2014); Padilla Constr.Co. v. Burley, 2016 Nev.
19 App. Unpub. LEXIS 10 (May 10, 2016); Finley v. Finley, 65 Nev. 113 (1948).
20

21 5). Defendants contend that they are entitled to the protections of Chapter 41A because
22 their liability is derivative of its nursing staff. In Deboer v. Senior Bridges at Sparks Family Hospital,
23 282 P.3d 727 (Nev. 2012), the Supreme Court distinguished between medical malpractice and
24 traditional negligence on the basis of the provision of medical services provided to the plaintiff, i.e.,
25 medical diagnosis, judgment or treatment. *Id.* at 732.
26

27 6). The Court finds that Defendants' liability is based on the acts (LPN Dawson's
28

1 administration of morphine to Mary Curtis) and omissions (failure to monitor Mary Curtis
2 thereafter) of its nursing staff. LPN Dawson and the other nursing staff monitoring Ms. Curtis are
3 providers of health care pursuant to NRS 41A.017. Said acts and omissions are a provision of
4 medical services which give rise to Defendants' liability. Therefore, the provisions of NRS Chapter
5 41A apply.

6
7 7). More fundamental to the determination by the Court is whether or not the allegations
8 are for general negligence resulting from non-medical services or for negligent medical treatment
9 which calls for an affidavit of merit. Szyborski v. Spring Mountain Treatment Ctr., 403 P.3d 1280
10 (Nev. 2017). Szyborski holds that a plaintiff's complaint can be based upon both general
11 negligence and professional negligence. The Nevada Supreme Court stated that the Court is to look
12 beyond the title to a particular cause of action and determine whether or not the claims actually
13 involve professional negligence or general negligence. *Id.* at 1284.

14
15 8). Abuse/neglect of an older person is codified in NRS 41.1395 as willful and
16 unjustified infliction of pain, injury or mental anguish or deprivation of food, shelter, clothing or
17 services which are necessary to maintain the physical or mental health of an older person or a
18 vulnerable person. Nev.Rev.Stat.41.1395. As stated in Szyborski and Egan v. Chambers, 299 P.3d
19 364, 366 (Nev. 2013), the courts should look to the nature of the grievance to determine the character
20 of the action, not the form of the pleadings. Cited with approval in Brown v. Mt. General Hospital,
21 3:12-CV-00461-LRH, 2013 WL 4523488 (D. Nev., Aug. 2013).

22
23 9). Although Plaintiffs use language from NRS 41.1395 in their complaint, the
24 underlying basis of the complaint is for medical malpractice. See Complaint, ¶18. Plaintiffs allege
25 that despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for proper
26 medication administration, they, on March 7, 2016, administered to her a dose of morphine
27 prescribed to another resident. Ms. Curtis was not prescribed morphine. See Complaint, ¶19.
28

10). Plaintiffs further allege that, despite Defendants' notice and knowledge that they had wrongly administered morphine to Ms. Curtis, they failed to act timely upon that discovery, instead retaining Ms. Curtis as a resident until March 8, 2016.

11). The administration of morphine by an LPN and failure to monitor the effects of the administration of morphine is a claim of professional negligence requiring an affidavit pursuant to NRS 41A.071. In other words, Plaintiffs allege that but for LPN Dawson's alleged nursing conduct of improperly administering morphine and subsequent lack of nursing monitoring of Ms. Curtis, she would not have died. As the gravamen of Plaintiffs' allegations sounds in professional negligence, NRS Chapter 41A applies to all of Plaintiffs' claims to the exclusion of NRS 41.1395.

12). A claim is grounded in professional negligence and must adhere to NRS 41A.071 where the facts underlying the claim involve medical diagnosis, treatment, or judgment and the standards of care pertaining to the medical issue require explanation to the jury from a medical expert. Szymborski at 1288. This Court finds persuasive the holding in Brown v. Mt. Grant Gen. Hosp., 3:12-CV-00461-LRH, 2013 WL 4523488 (D.Nev. Aug.26, 2-13), which sets forth the following:

"Moreover, the Nevada Supreme Court has signaled a disapproval of artful pleading for the purposes of evading the medical malpractice limitations. For example, the Court concluded that medical malpractice claims extend to both intentional and negligence-based actions. Fierle, 219 P.2d at 913 n. 8. This means that a plaintiff cannot escape the malpractice statutes damages or timeliness limitations by pleadings intentional tort battery, say instead of negligence. If the Nevada Supreme Court casts an jaundiced eye on the artful pleading of intentional torts, it is likely to view the artful pleading of elder abuse similarly. In the end, it seems, Nevada courts look to the nature of the grievance to determine the character of the action, not the form of the pleadings. Egan v. Chambers, 299 P.3d 364, 366 n.2 (Nev. 2013 (citing State Farm Mut. Auto. Ins. Co. v. Wharton, 88 Nev. 183, 495 P.2d 359, 361 (1972)))."

Brown, at *8.

13). Plaintiffs' Complaint is grounded in and involves medical treatment and the standard

1 of care (administration of morphine and the failure to monitor). Thus, the gravamen of the
2 Complaint, and all claims therein, sounds in professional negligence, which requires an affidavit.

3 IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED, that
4 Defendants South Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka
5 Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America,
6 Inc., and Carl Wagner's Motion for Summary Judgment is hereby GRANTED.
7

8 It is further determined and ordered pursuant to Nev. R. Civ. P. 54(b), this is a final judgment
9 and there is no just reason for delay of entry of judgment in favor of Defendants.

10 IT IS SO ORDERED

11 DATED this 3 day of Dec., 2018.



DISTRICT COURT JUDGE

13 Submitted by:

14 LEWIS BRISBOIS BISGAARD & SMITH LLP

JM

16 By:



17 S. BRENT VOGEL, ESQ.
Nevada Bar No. 006858
18 AMANDA J. BROOKHYSER, ESQ.
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Approved as to form by:

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By: 

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Attorneys for IPC Defendants

1 Approved as to form by:

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16 *Attorneys for Plaintiffs*

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JOHN H. COTTON & ASSOCIATES, LTD.

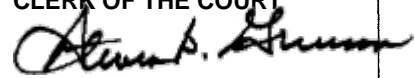
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EXHIBIT 3

**Stipulation to Dismiss Bina Hribik Poretello Without Prejudice filed on
07/18/2017**

EXHIBIT 3



SODWOP

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL INVESTORS,
LLC dba LIFE CARE CENTER OF SOUTH LAS
VEGAS f/k/a LIFE CARE CENTER OF
PARADISE VALLEY; SOUTH LAS VEGAS
INVESTORS LIMITED PARTNERSHIP; LIFE
CARE CENTERS OF AMERICA, INC.; BINA
HRIBIK PORTELLO, Administrator; CARL
WAGNER, Administrator; and DOES 1-50,
inclusive,

Defendants.

CASE NO. A-17-750520-C

DEPT NO. XXIII

**STIPULATION TO DISMISS
BINA HRIBIK PORTELLO
WITHOUT PREJUDICE**

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

COME NOW, the parties, by and through their undersigned attorneys, and respectfully requests the Court enter an Order dismissing Bina Hribik Portello without prejudice, each party to bear its own costs. The parties further stipulate to the withdrawal of Defendant Bina Hribik Portello's Motion for Summary Judgment and to vacate the hearing, currently scheduled for July 25, 2017.

This Stipulation shall not affect the status of Plaintiff's claims against the remaining Defendants.

DATED this 6 day of July, 2017

KOLESAR & LEATHAM

By: 

MICHAEL D. DAVIDSON, ESQ.
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400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
Arizona Bar No. 022825

WILKES & MCHUGH, P.A.
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260

Attorneys for Plaintiff

IT IS SO ORDERED.

DATED this ____ day of June, 2017.

Submitted by:

KOLESAR & LEATHAM

By: 

MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
400 South Rampart Boulevard, Suite 400
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-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*

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15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260

Attorneys for Plaintiffs

DATED this ____ day of July, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

S. BRENT VOGEL, ESQ.
Nevada Bar No. 006858
AMANDA J. BROOKHYSER, ESQ.
Nevada Bar No. 011526
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

Attorneys for Defendants

See next page

DISTRICT COURT JUDGE

COME NOW, the parties, by and through their undersigned attorneys, and respectfully requests the Court enter an Order dismissing Bina Hribik Portello without prejudice, each party to bear its own costs. The parties further stipulate to the withdrawal of Defendant Bina Hribik Portello's Motion for Summary Judgment and to vacate the hearing, currently scheduled for July 25, 2017.

This Stipulation shall not affect the status of Plaintiff's claims against the remaining Defendants.

DATED this ___ day of July, 2017

KOLESAR & LEATHAM

By: _____
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Attorneys for Plaintiff

DATED this 12 day of July, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
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Attorneys for Defendants

IT IS SO ORDERED.

DATED this 17 day of June, 2017.

Submitted by:
KOLESAR & LEATHAM

DISTRICT COURT JUDGE

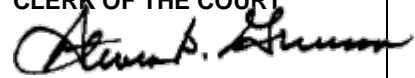
JUDGE STEFANY A. MILEY

By: _____
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Attorneys for Plaintiffs

EXHIBIT 2

Amended Complaint for Damages filed on 05/01/2018

EXHIBIT 2



ACOM

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
Administrator; and DOES 1-50, inclusive,

Defendants.

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SAMIR SAXENA, M.D.; ANNABELLE
SOCAOCO, N.P.; IPC HEALTHCARE, INC.
aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
INC.; IPC HEALTHCARE SERVICES OF

CASE NO. A-17-750520-C

DEPT NO. XVII

Consolidated with:

CASE NO. A-17-754013-C

**AMENDED COMPLAINT FOR
DAMAGES**

1. Abuse/Neglect of an Older Person
2. Wrongful Death by Estate
3. Wrongful Death by Individual Medical Malpractice

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

NEVADA, INC.; HOSPITALISTS OF
NEVADA, INC.; and DOES 51–100,

Defendant.

AMENDED COMPLAINT FOR DAMAGES

Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, individually, by and through their attorneys of record, Kolesar & Leatham and Wilkes & McHugh, P.A., hereby submit this Amended Complaint against Defendants Samir Saxena, M.D., Annabelle Socaoco, N.P., IPC Healthcare, Inc. aka IPC The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc., and Does 51 through 100, and allege as follows:

GENERAL ALLEGATIONS

1. Decedent Mary Curtis suffered while a resident at Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley significant physical injury and ultimately a painful death. At all times relevant she resided in the City of Las Vegas in the County of Clark, Nevada and was an “older person” under N.R.S. § 41.1395. She died on March 11, 2016 in Las Vegas.

2. At all times material Plaintiff Laura Latrenta was a natural daughter and surviving heir of Ms. Curtis. At all relevant times she was an individual and resident of Harrington Park, New Jersey.

3. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendant Samir Saxena, M.D. was a licensed physician who provided medical care at Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley and was Ms. Curtis’s treating physician thereat.

4. Defendant Samir Saxena, M.D., was and is a resident of the State of Nevada.

5. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendant Annabelle Socaoco, N.P., was a licensed nurse practitioner who provided medical care under Defendant Saxena’s supervision at Life Care Center of South Las Vegas f/k/a Life

Care Center of Paradise Valley.

6. Defendant Annabelle Socaoco, N.P., was and is a resident of the State of Nevada.

7. Defendant IPC Healthcare, Inc., a Delaware corporation aka The Hospitalist Company, Inc., and/or its affiliated entities Inpatient Consultants of Nevada, Inc., a California corporation; IPC Healthcare Services of Nevada, Inc., a California corporation; and Hospitalists of Nevada, Inc., a Missouri corporation, was at all relevant times employer of Defendants Samir Saxena, M.D., and Annabelle Socaoco, N.P.

8. Defendant IPC Healthcare, Inc., and/or its affiliated entities Inpatient Consultants of Nevada, Inc.; IPC Healthcare Services of Nevada, Inc.; and Hospitalists of Nevada, Inc., as employer of Defendants Saxena and Socaoco, who were at all relevant times acting within the course and scope of their employment, is vicariously liable for the acts, omissions, and failures of Defendants Saxena and Socaoco.

9. Plaintiffs are informed and believe and thereon allege that Defendants Does 51 through 100 are other individuals or entities that caused or contributed to injuries suffered by Ms. Curtis as discussed below. (Hereinafter "IPC Defendants" refers to Samir Saxena, M.D., Annabelle Socaoco, N.P., IPC Healthcare, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc., and Does 51 through 100.)

10. Plaintiffs will ask leave of Court to amend this Complaint to show such true names and capacities of Doe Defendants when the names of such defendants have been ascertained. Plaintiffs are informed and believe and thereon allege that each defendant designated herein as Doe is responsible in some manner and liable herein by reason of negligence and other actionable conduct and by such conduct proximately caused the injuries and damages hereinafter further alleged.

11. Every fact, act, omission, event, and circumstance herein mentioned and described occurred in Clark County, Nevada, and each Defendant is a resident of Clark County, has its principal place of business in Clark County, or is legally doing business in Clark County.

12. Each Defendant, whether named or designated as Doe, was the agent, servant, or employee of each remaining Defendant. Each Defendant acted within the course and scope of

1 such agency, service, or employment with the permission, consent, and ratification of each co-
2 Defendant in performing the acts hereinafter alleged which gave rise to Ms. Curtis's injuries.

3 **FIRST CAUSE OF ACTION – ABUSE/NEGLECT OF AN OLDER PERSON**

4 **(Abuse/Neglect of an older person by the Estate of Mary Curtis against IPC Defendants)**

5 13. Plaintiffs hereby incorporate the allegations in all the foregoing paragraphs as
6 though fully set forth herein.

7 14. Mary Curtis was born on 19 December 1926 and was therefore an "older person"
8 under N.R.S. § 41.1395.

9 15. On approximately 2 March 2016 Ms. Curtis was admitted to Life Care Center of
10 South Las Vegas f/k/a Life Care Center of Paradise Valley, a nursing home, for care and
11 supervision.

12 16. Upon entering Life Care Center of South Las Vegas f/k/a Life Care Center of
13 Paradise Valley Ms. Curtis's past medical history included dementia, hypertension, COPD, and
14 renal insufficiency. She had been hospitalized after being found on her bathroom floor on 27
15 February 2016; during her hospitalization it was determined that she would not be able to
16 immediately return to her previous living situation and so following her hospital course she was
17 transferred to Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley for
18 continuing care.

19 17. During her Life Care Center of South Las Vegas f/k/a Life Care Center of
20 Paradise Valley residency Ms. Curtis was dependent on IPC Defendants for medical care.

21 18. IPC Defendants knew that Ms. Curtis relied on them for her medical care and that
22 without that care she would be susceptible to injury and death.

23 19. Life Care Center staff on 7 March 2016 administered to Ms. Curtis, who had not
24 been prescribed morphine, morphine prescribed to another resident.

25 20. Despite Dr. Saxena's notice and knowledge that Life Care Center of South Las
26 Vegas staff had wrongly administered morphine to Ms. Curtis resulting in a morphine overdose,
27 and although a reasonably trained physician would have recognized that she required treatment
28 in an acute care setting, he failed to timely order that she be sent to an acute care setting, leading

1 to Ms. Curtis's retention at Life Care Center of South Las Vegas f/k/a Life Care Center of
2 Paradise Valley until 8 March 2016 and contributing to her injuries and death.

3 21. Despite Dr. Saxena's notice and knowledge of Ms. Curtis's morphine overdose,
4 and although a reasonably trained physician would have recognized that she required a Narcan
5 IV drip (or ongoing dosages of Narcan equivalent thereto), he failed to order such a treatment.
6 He also knew or should have known that she required the close observation that an acute care
7 hospital would provide. These failures contributed to her injuries and death.

8 22. Despite NP Socaoco's notice and knowledge that Life Care Center of South Las
9 Vegas staff had wrongly administered morphine to Ms. Curtis resulting in a morphine overdose,
10 and although a reasonably trained nurse practitioner would have recognized that she required
11 treatment in an acute care setting, NP Socaoco failed to timely order that she be sent to an acute
12 care setting, leading to Ms. Curtis's retention at Life Care Center of South Las Vegas f/k/a Life
13 Care Center of Paradise Valley until 8 March 2016 and contributing to her injuries and death. NP
14 Socaoco instead ordered that Ms. Curtis be given Narcan.

15 23. Despite NP Socaoco's notice and knowledge of Ms. Curtis's morphine overdose,
16 and although a reasonably trained nurse practitioner would have recognized that she required a
17 Narcan IV drip (or ongoing dosages of Narcan equivalent thereto), she failed to order such a
18 treatment. She also knew or should have known that Ms. Curtis required the close observation
19 that an acute care hospital would provide. These failures contributed to her injuries and death.

20 24. Life Care Center of South Las Vegas staff eventually called 911 and emergency
21 personnel transported Ms. Curtis to Sunrise Hospital, where she was diagnosed with anoxic brain
22 encephalopathy and put on a Narcan IV drip. She was later transferred to Nathan Adelson
23 Hospice on 11 March 2016 and died shortly thereafter.

24 25. Ms. Curtis's death certificate records that her immediate cause of death was
25 morphine intoxication.

26 26. As a result of IPC Defendants' failures and conscious disregard of Ms. Curtis's
27 life, health, and safety, she suffered unjustified pain, injury, mental anguish, and death.

28 27. IPC Defendants' actions were abuse under N.R.S. § 41.1395(4)(a) and neglect

under N.R.S. § 41.1395(4)(c).

28. IPC Defendants' failures were made in conscious disregard for Ms. Curtis's health and safety and they acted with recklessness, oppression, fraud, or malice in commission of their neglect or abuse of Ms. Curtis.

29. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal representative is entitled to recover double her actual damages under N.R.S. § 41.1395.

30. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal representative is entitled to attorney fees and costs under N.R.S. § 41.1395.

31. Despite IPC Defendants' notice and knowledge that Ms. Curtis was dependent on them for her medical care, they willfully and deliberately ignored and failed to avoid the substantial risk and probability that she would suffer injury and death, so that Plaintiff is entitled to punitive damages under N.R.S. § 42.001.

32. As a direct and proximate result of IPC Defendants' willful negligence and intentional and unjustified conduct, they contributed to Ms. Curtis's significant injuries and death. Their conduct was a direct consequence of the motive and plans set forth herein, and they are guilty of malice, oppression, recklessness, and fraud, justifying an award of punitive and exemplary damages.

SECOND CAUSE OF ACTION

(Wrongful Death by the Estate of Mary Curtis against IPC Defendants)

33. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing paragraphs as though fully set forth herein.

34. IPC Defendants, in providing medical care for Ms. Curtis, had a duty to exercise the level of knowledge, skill, and care of medical professionals in good standing in the community.

35. IPC Defendants breached their duties to Ms. Curtis and were negligent and careless in their actions and omissions as set forth above.

36. As a direct and proximate result of IPC Defendants' breaches Ms. Curtis died on 11 March 2016 in Las Vegas, Nevada.

37. As a direct and legal result of Ms. Curtis's death, her estate's personal representative is entitled to maintain all actions on her behalf and is entitled under N.R.S. § 41.085 to recover special damages, including medical expenses incurred by Ms. Curtis before her death, as well as funeral and burial expenses according to proof at trial.

38. Despite IPC Defendants' notice and knowledge that Ms. Curtis was dependent on them for her medical care, they willfully and deliberately ignored and failed to avoid the substantial risk and probability that she would suffer injury and death, so that Plaintiff is also entitled to punitive damages under N.R.S. § 42.001.

THIRD CAUSE OF ACTION

(Wrongful Death by Laura Latrenta individually against IPC Defendants)

39. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing paragraphs as though fully set forth herein.

40. Plaintiff Laura Latrenta is a surviving daughter and natural heir of Mary Curtis.

41. IPC Defendants, in providing medical care to Ms. Curtis, had a duty to exercise the level of knowledge, skill, and care of medical professionals in good standing in the community.

42. IPC Defendants breached their duties to Ms. Curtis and were negligent and careless in their actions and omissions as set forth above.

43. As a direct and proximate result of IPC Defendants' breaches Ms. Curtis died on 11 March 2016 in Las Vegas, Nevada.

44. Before her death, Ms. Curtis was a faithful, loving, and dutiful mother to her daughter Laura Latrenta.

45. As a further direct and proximate result of IPC Defendants' negligence Plaintiff Laura Latrenta has lost the love, companionship, comfort, affection, and society of her mother, all to her general damage in a sum to be determined according to proof.

46. Under N.R.S. § 41.085 Plaintiff Laura Latrenta is entitled to recover pecuniary damages for her grief, mental anguish, sorrow, physical pain, lost moral support, lost companionship, lost society, lost comfort, and mental and physical pain and suffering.

1 **FOURTH CAUSE OF ACTION**

2 **(Medical malpractice by all Plaintiffs against IPC Defendants)**

3 47. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing
4 paragraphs as though fully set forth herein.

5 48. Upon Ms. Curtis's admission to Life Care Center of South Las Vegas f/k/a Life
6 Care Center of Paradise Valley, IPC Defendants assumed responsibility for her medical care and
7 had a duty to use such skill, prudence, and diligence as other similarly situated medical
8 professionals in providing medical care to dependent and elderly residents such as Ms. Curtis.

9 49. Ms. Curtis was dependent on IPC Defendants for her medical care while at Life
10 Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley.

11 50. Despite IPC Defendants' knowledge of Ms. Curtis's dependence on them for
12 medical care, they failed to provide adequate medical care to her, as alleged above.

13 51. IPC Defendants failed to meet the applicable standard of care in their medical
14 care for Ms. Curtis, including by (1) failing to order that she be sent to an acute care hospital in
15 response to her morphine overdose; (2) failing to order that she receive a Narcan drip (or
16 ongoing dosages of Narcan equivalent thereto); and (3) failing to recognize or to act on their
17 recognition that she required the close observation that an acute care hospital would provide.

18 52. IPC Defendants' medical care of Ms. Curtis fell below the standard of care and
19 was a proximate cause of her injuries and damages, including by contributing to her death. This
20 allegation is supported by the Affidavit of Loren Lipson, MD, *see* Ex. 1, Lipson Aff., and by the
21 Affidavit of Kathleen Hill-O'Neill, RN, DNP, MSN, NHA. *See* Ex. 2, Hill-O'Neill Aff.

22 53. Ms. Curtis's injuries and death were therefore the result of IPC Defendants'
23 negligence.

24 54. The damages and injuries directly and proximately caused by IPC Defendants'
25 malpractice were permanent.

26 55. As a direct and proximate result of IPC Defendants' malpractice and Ms. Curtis's
27 resulting death, Laura Latrenta incurred damages of grief, sorrow, companionship, society,
28 comfort and consortium, and damages for pain and suffering, mental anguish, hospitalizations,

1 and medical and nursing care and treatment.

2 56. The damages and injuries directly and proximately caused by IPC Defendants'
3 malpractice were permanent, including future pain and suffering, loss of companionship, and
4 mental anguish from Ms. Curtis's untimely death.

5 57. Plaintiffs' past and future damages exceed \$10,000.

6 58. Wherefore, Plaintiffs pray for judgment against IPC Defendants as follows:

7 A. For compensatory damages in an amount in excess of \$10,000;

8 B. For special damages in an amount in excess of \$10,000;

9 C. For punitive damages in an amount in excess of \$10,000;

10 D. For reasonable attorney fees and costs incurred herein;

11 E. For additional damages pursuant to NRS Chapter 41;

12 F. For pre-judgment and post-judgment interest; and

13 G. For such other and further relief as the Court may deem just and proper in
14 the premises.

15 DATED this 1st day of May, 2018.

16 **KOLESAR & LEATHAM**

17 By /s/ Michael D. Davidson, Esq.

18 MICHAEL D. DAVIDSON, ESQ.

19 Nevada Bar No. 000878

20 400 South Rampart Boulevard, Suite 400

21 Las Vegas, Nevada 89145

22 -and-

23 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*

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26 Scottsdale, Arizona 85260

27 Attorneys for Plaintiffs

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(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

An Employee of KOLESAR & LEATHAM

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EXHIBIT 1

Complaint for Damages (Case No. A-17-750520-C) filed on 02/02/2017

EXHIBIT 1

DISTRICT COURT CIVIL COVER SHEET

A-17-750520-C

County, Nevada

XXIII

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Estate of Mary Curtis, deceased; Laura LaTrenta, as Personal Representative of the Estate of Mary Curtis; and Laura LaTrenta	Defendant(s) (name/address/phone): South Las Vegas Medical Investors, LLC d/b/a Life Care Center of South Las Vegas, f/k/a Life Care Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers of America, Inc.
Attorney (name/address/phone): Michael D. Davidson Esq. - Kolesar & Leatham 400 S. Rampart Blvd., Suite 400, Las Vegas, NV 89145 (702) 362-7800, telephone (702) 362-9472, facsimile	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input checked="" type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

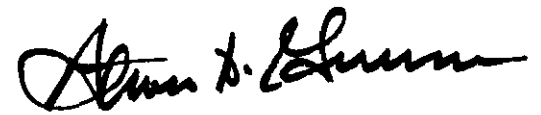
Business Court filings should be filed using the Business Court civil coversheet.

February 2, 2017

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

COMP

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

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E-Mail: Melanie@wilkesmchugh.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-17-750520-C

DEPT NO. XXIII

COMPLAINT FOR DAMAGES

1. Abuse/Neglect of an Older Person
2. Wrongful Death by Estate
3. Wrongful Death by Individual
4. Bad Faith Tort

Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of
the Estate of Mary Curtis; and Laura Latrenta, individually, by and through their attorneys of
record, Kolesar & Leatham and Wilkes & McHugh, P.A., hereby submit this Complaint against

Defendants South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers of America, Inc.; Bina Hribik Portello; Carl Wagner; and Does 1 to 50, inclusive, and allege as follows:

GENERAL ALLEGATIONS

1. Decedent Mary Curtis suffered significant physical injury while a resident at Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley and ultimately a painful death. At all times relevant she resided in the city of Las Vegas in the County of Clark, Nevada and was an "older person" under N.R.S. § 41.1395. Ms. Curtis died on March 11, 2016 in Las Vegas, Nevada.

2. At all times material Plaintiff Laura Latrenta was a natural daughter and surviving heir of Ms. Curtis. At all relevant times she was an individual and resident of Harrington Park, New Jersey.

3. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendant South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley was a limited liability company duly authorized, licensed, and doing business in Clark County, Nevada and was at all relevant times in the business of providing care to residents while subject to the requirements of federal and state law, located at 2325 E. Harmon Ave., Las Vegas, NV 89119.

4. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendants Life Care Centers of America, Inc.; South Las Vegas Investors Limited Partnership; South Las Vegas Medical Investors, LLC; and Does 1 through 25, and each of them, were and are owners, operators, and managing agents of South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, such that they controlled the budget for said Defendant which impacted resident care, collected accounts receivable, prepared audited financial statements, contracted with various vendors for services, and provided direct oversight for said Defendants in terms of financial and patient care responsibility.

1 5. Plaintiffs are informed and believe and thereon allege that at all relevant times
2 Defendants Bina Hribik Portello and Carl Wagner were and are administrators of Life Care
3 Center of South Las Vegas f/k/a Life Care Center of Paradise Valley.

4 6. Plaintiffs are informed and believe and thereon allege that Defendants Does 26
5 through 50 are other individuals or entities that caused or contributed to injuries suffered by Ms.
6 Curtis as discussed below. (Hereinafter "Defendants" refers to South Las Vegas Medical
7 Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise
8 Valley; South Las Vegas Investors Limited Partnership; Life Care Centers of America, Inc.; Bina
9 Hribik Portello; Carl Wagner; and Does 1 through 50.)

10 7. Plaintiffs will ask leave of Court to amend this Complaint to show such true
11 names and capacities of Doe Defendants when the names of such defendants have been
12 ascertained. Plaintiffs are informed and believe and thereon allege that each defendant
13 designated herein as Doe is responsible in some manner and liable herein by reason of
14 negligence and other actionable conduct and by such conduct proximately caused the injuries
15 and damages hereinafter further alleged.

16 8. Plaintiffs are informed and believe and thereon allege that at all relevant times
17 Defendants and each of them were the agents, servants, employees, and partners of their co-
18 Defendants and each of them; and that they were acting within the course and scope of
19 employment. Each Defendant when acting as principal was negligent in the selection, hiring,
20 training, and supervision of each other Defendant as its agent, servant, employee, and partner.

21 9. Every fact, act, omission, event, and circumstance herein mentioned and
22 described occurred in Clark County, Nevada, and each Defendant is a resident of Clark County,
23 has its principal place of business in Clark County, or is legally doing business in Clark County.

24 10. Each Defendant, whether named or designated as Doe, was the agent, servant, or
25 employee of each remaining Defendant. Each Defendant acted within the course and scope of
26 such agency, service, or employment with the permission, consent, and ratification of each co-
27 Defendant in performing the acts hereinafter alleged which gave rise to Ms. Curtis's injuries.

28 ///

FIRST CAUSE OF ACTION – ABUSE/NEGLECT OF AN OLDER PERSON

(Abuse/Neglect of an older person by the Estate of Mary Curtis against all Defendants)

11. Plaintiffs hereby incorporate the allegations in all the foregoing paragraphs as though set forth at length herein.

12. Mary Curtis was born on 19 December 1926 and was therefore an “older person” under N.R.S. § 41.1395.

13. On approximately 2 March 2016 Ms. Curtis was admitted to Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, a nursing home, for care and supervision. Defendants voluntarily assumed responsibility for her care and to provide her food, shelter, clothing, and services necessary to maintain her physical and mental health.

14. Upon entering Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley Ms. Curtis’s past medical history included dementia, hypertension, COPD, and renal insufficiency. She had been hospitalized after being found on her bathroom floor on 27 February 2016; during her hospitalization it was determined that she would not be able to return to her previous living situation and so following her hospital course she was transferred to Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley for continuing subacute and memory care.

15. During her Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley residency Ms. Curtis was dependent on staff for her basic needs and her activities of daily living.

16. Defendants knew that Ms. Curtis relied on them for her basic needs and that without assistance from them she would be susceptible to injury and death.

17. Despite Defendants’ notice and knowledge of Ms. Curtis’s fall risk they permitted her to fall (causing her injuries) shortly after she entered Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley.

18. Despite Defendants’ notice and knowledge that Ms. Curtis was dependent on them for proper medication administration, they on 7 March 2016 administered to her a dose of morphine prescribed to another resident. Ms. Curtis was not prescribed morphine.

19. Despite Defendants' notice and knowledge that they had wrongly administered morphine to Ms. Curtis, they failed to act timely upon that discovery, instead retaining Ms. Curtis as a resident until 8 March 2016.

20. Defendants eventually called 911 and emergency personnel transported Ms. Curtis to Sunrise Hospital, where she was diagnosed with anoxic brain encephalopathy. She was later transferred to Nathan Adelson Hospice on 11 March 2016 and died shortly thereafter.

21. Ms. Curtis's death certificate records that her immediate cause of death was morphine intoxication.

22. As a result of Defendants' failures and conscious disregard of Ms. Curtis's life, health, and safety, she suffered unjustified pain, injury, mental anguish, and death.

23. The actions of Defendants and each of them were abuse under N.R.S. § 41.1395(4)(a) and neglect under N.R.S. § 41.1395(4)(c).

24. Defendants' failures were made in conscious disregard for Ms. Curtis's health and safety and they acted with recklessness, oppression, fraud, or malice in commission of their neglect or abuse of Ms. Curtis.

25. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal representative is entitled to recover double her actual damages under N.R.S. § 41.1395.

26. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal representative is entitled to attorney fees and costs under N.R.S. § 41.1395.

27. Despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for her basic needs and safety, they willfully and deliberately ignored and failed to avoid the substantial risk and probability that she would suffer injury and death, so that Plaintiff is entitled to punitive damages under N.R.S. § 42.001.

28. As a direct and proximate result of Defendants' willful negligence and intentional and unjustified conduct, Ms. Curtis suffered significant injuries and death. Defendants' conduct was a direct consequence of the motive and plans set forth herein, and Defendants are guilty of malice, oppression, recklessness, and fraud, justifying an award of punitive and exemplary damages.

SECOND CAUSE OF ACTION

(Wrongful Death by the Estate of Mary Curtis against all Defendants)

29. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth herein.

30. Defendants, their staff, and employees, in caring for Ms. Curtis, had a duty to exercise the level of knowledge, skill, and care of those in good standing in the community.

31. Defendants had a duty to properly train and supervise their staff and employees to act with the level of knowledge, skill, and care of nursing homes in good standing in the community.

32. Defendants and their agents and employees breached their duties to Ms. Curtis and were negligent and careless in their actions and omissions as set forth above.

33. As a direct and proximate result of Defendants' breaches Ms. Curtis died on 11 March 2016 in Las Vegas, Nevada.

34. As a direct and legal result of Ms. Curtis's death, her estate's personal representative is entitled to maintain all actions on her behalf and is entitled under N.R.S. § 41.085 to recover special damages, including medical expenses incurred by Ms. Curtis before her death, as well as funeral and burial expenses according to proof at trial.

35. Despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for her basic needs and safety, they willfully and deliberately ignored and failed to avoid the substantial risk and probability that she would suffer injury and death, so that Plaintiff is also entitled to punitive damages under N.R.S. § 42.001.

THIRD CAUSE OF ACTION

(Wrongful Death by Laura Latrenta individually against all Defendants)

36. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing paragraphs as though fully set forth herein.

37. Plaintiff Laura Latrenta is a surviving daughter and natural heir of Mary Curtis.

38. Defendants, their staff, and employees, in caring for Ms. Curtis, had a duty to exercise the level of knowledge, skill, and care of those in good standing in the community.

50. Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley's betrayal of this relationship goes beyond the bounds of ordinary liability for breach of contract and results in tortious liability for its perfidy.

51. Defendants' perfidy constitutes malice, oppression, recklessness, and fraud, justifying an award of punitive and exemplary damages.

52. Wherefore, Plaintiffs pray for judgment against all Defendants and each of them as follows:

- A. For compensatory damages in an amount in excess of \$10,000;
- B. For special damages in an amount in excess of \$10,000;
- C. For punitive damages in an amount in excess of \$10,000;
- D. For reasonable attorney's fees and costs incurred herein;
- E. For additional damages pursuant to NRS Chapter 41;
- F. For pre-judgment and post judgment interest; and
- G. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 2 day of February, 2017.

KOLESAR & LEATHAM

By

MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
Pending

WILKES & MCHUGH, P.A.
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260

Attorneys for Plaintiffs

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF MARY CURTIS,
DECEASED; LAURA LATRENTA, AS
PERSONAL REPRESENTATIVE OF
THE ESTATE OF MARY CURTIS;
AND LAURA LATRENTA,
INDIVIDUALLY,

Appellants,

vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC, D/B/A LIFE CARE
CENTER OF SOUTH LAS VEGAS,
F/K/A LIFE CARE CENTER OF
PARADISE VALLEY; SOUTH LAS
VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE
CENTERS OF AMERICA, INC.; AND
CARL WAGNER, ADMINISTRATOR,

Respondents.

Supreme Court Case No. 77810

District Court Case No. 17-0520
Electronically Filed
Jan 24 2019 04:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

DOCKETING STATEMENT CIVIL APPEALS

Appellants, Laura Latrenta, as Personal Representative of The Estate of Mary Curtis, and Laura Latrenta, Individually, by and through the undersigned counsel, hereby submit this Docketing Statement.

1. Judicial District: Eighth Judicial District

Department: XVII

County: Clark Judge: Michael P. Villani

District Ct. Case No.: A-17-750520-C

2. Attorney filing this docketing statement:

Michael Davidson, Esq.
Kolesar & Leatham
Nevada Bar No. 000878
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Attorney for Appellants

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Bennie Lazzara, Jr., Esq.- *Pro Hac Vice*
Wilkes & McHugh, P.A.
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Tampa, FL 33609
(813) 873-0026
Attorney for Appellants

Clients: Estate of Mary Curtis, Deceased; Laura Latrenta, As Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, Individually

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

S. Brent Vogel, Esq.
Lewis Brisbois Bisgaard & Smith
6835 S. Rainbow Blvd, Suite 600
Las Vegas, Nevada 89118
Attorney for Respondents

Amanda J. Brookhyser, Esq.
Lewis Brisbois Bisgaard & Smith
6835 S. Rainbow Blvd, Suite 600
Las Vegas, Nevada 89118
Attorney for Respondents

Client(s): South Las Vegas Medical Investors, LLC, d/b/a Life Care Center Of South Las Vegas, f/k/a Life Care Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers Of America, Inc.; and Carl Wagner

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Case consolidated with Case No. A-17-750520-C:

Estate of Mary Curtis v. Samir Saxena, M.D, et al.

Case No. A-17-754013-C

Eighth Judicial District Court (Clark County)

Case No. A-17-754013-C is currently pending in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

On February 2, 2017, in Case No. A-17-750520-C, Appellants filed a Complaint against Respondents South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, South Las Vegas Investors Limited Partnership (“the facility”); Life Care Centers Of America, Inc.; and Carl Wagner (“Life Care Respondents” or “Respondents”) alleging causes of action for (1) abuse/neglect of an older person pursuant to N.R.S. § 41.1395, (2) wrongful death (by the Estate), (3) wrongful death (by Ms. Curtis’ surviving daughter), and (3) bad faith tort.

In short, Appellants' claims against Life Care Respondents are based upon the injuries Ms. Curtis sustained during her residency at Respondents facility. The facility admitted Ms. Curtis on March 2, 2016. Mary Curtis was 90 years old at the time of her admission and therefore was considered an "older person" under NRS 41.1395. Within a week of her admission, Life Care Respondents twice permitted her to fall. Additionally and outrageously, Life Care Respondents administered a drug to Mrs. Curtis that had not been prescribed for her—morphine, in fact. As found by the District Court, Ms. Curtis was administered "a dose of morphine prescribed to another resident." Life Care Respondents knew they had wrongly administered morphine to Ms. Curtis yet failed to act timely upon that discovery, instead retaining Ms. Curtis as a resident until March 8, 2016. Only after Ms. Curtis' daughter discovered Ms. Curtis in distress on March 8, 2016, did Life Care Respondents call 911 and emergency personnel transport Ms. Curtis to the hospital. At hospital she was diagnosed with anoxic brain encephalopathy. Ms. Curtis died three days later of morphine intoxication.

On September 10, 2018, almost two years after Appellants filed the Complaint against the Life Care Respondents, the Life Care Respondents filed their Motion for Summary Judgment arguing that Appellants' allegations were essentially allegations of professional negligence under 41A.015 and, so, Appellants had been required to file an expert affidavit at the time the Complaint was Appellants initially filed. Life

Care Respondents argued that pursuant to NRS 41A.017, the case must be dismissed because an affidavit of merit was not included. In the alternative, Life Care Respondents argued that if the District Court did not want to apply the entirety of Chapter 41A to Appellants' claims, then the District Court should still apply 41A.035 to limit Appellants' pain and suffering damages to \$350,000.

On October 4, 2018, Appellants filed a Response to Life Care Respondents' Motion for Summary Judgment.

On October 31, 2018, the District Court held a hearing on Respondents' Motion for Summary Judgment.

On December 7, 2018, the District Court entered its Order Granting Respondents' Motion for Summary Judgment.

On December 11, 2018, Life Care Respondents filed the Notice of Entry of Order Granting Respondents' Motion for Summary Judgment. In the Order Granting Respondents' Motion for Summary Judgment, the District Court directed entry of judgment in accordance with NRCP 54(b).

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

This appeal poses multiple questions of statewide public importance, including the obvious inconsistency between the decision of the District Court and the language of Nevada's statutes. The District Court improperly applied Chapter 41A to the case by expanding the plain meaning of NRS 41A.015 ("Professional

negligence” defined”) and NRS 41A.017 (“Provider of health care” defined). A nursing home is not included in the definition of “provider of health care” and, in fact, was intentionally and deliberately excluded from the definition in the most recent 2015 amendment to the statute. However, the District Court expanded the meaning to include the Life Care Respondents and, in effect, eviscerated NRS 41.1395, the statute enacted in 1997 to protect the State’s older and vulnerable persons from abuse, neglect or exploitation. The legislative history establishes that nursing homes were contemplated by the legislature as being included under NRS 41.1395.

In addition to ignoring the language of the statutes and eviscerating the State’s statute intended to protect the vulnerable elderly population, the issues in this appeal are of statewide public importance because non-health care providers (*e.g.*, management, making resource decisions)—the conduct of which cannot realistically be the subject of an expert affidavit—can hereafter use a health care provider as a shield to demand the expert affidavit. Further, here the District Court, contrary to public policy, essentially ruled that nursing homes can avoid liability for their own conduct by hiring and hiding behind nurses (which are included in the definition of “provider of health care”) when management makes it impossible for those nurses to do their jobs competently. Ms. Curtis, an older person, would not have been allowed to fall or been given the morphine but for the fact that management (*i.e.* the

Life Care Respondents that are not providers of health care) created, promoted and maintained a toxic environment that predictably and inevitably led to her death.

In addition to the decision of the District Court and the language of the statutes outlined above, in the event Chapter 41A applies to some of Appellants' causes of action, the District Court's decision is inconsistent with the language of 41A.100 and with the published decision of the Supreme Court in *Szydel v. Markman*, 121 Nev. 453, 117 P.3d 200 (2005). In *Szydel*, the Supreme Court held that an expert affidavit in a *res ipsa loquitur* case under NRS 41A.100(1) is unnecessary. NRS 41A.100 provides that a plaintiff may condemn a licensed facility with its own regulations instead of using expert testimony. In this case, the Life Care Respondents' own regulations and the federal regulations required the staff to ensure that the right resident receives the right medication and the staff to provide residents adequate care and attention. Therefore, even if some of the claims were considered professional negligence claims, no expert affidavit was required and it would be unreasonable to require Appellants to expend unnecessary effort and expense to obtain an affidavit from a medical expert when expert testimony was not necessary to succeed at trial.

Another question of statewide public importance, should the Supreme Court find that some or all of Appellants' claims were subject to the affidavit requirement, is whether there can ever be closure on the affidavit question; or whether, to the

contrary, all litigation at any stage may be challenged for the lack and/or insufficiency of an expert affidavit. In the District Court, the Life Care Respondents raised noncompliance with NRS 41A.071 as an affirmative defense. This point notwithstanding, the Life Care Respondents litigated the case vigorously for years, engaging in extensive briefing, filing various motions, and conducting discovery—including receiving expert reports supporting the case and deposing the experts who authored them. Only then, almost two years into litigation and with trial in sight, did Respondents file a motion for summary judgment raising the expert affidavit defense. While it is conceivable that some cases first require exploration of the available medical testimony in order to determine the necessity of the affidavit, this is not one of those cases. The facility gave Ms. Curtis morphine prescribed for another nursing home resident. Whether such a circumstance as a matter of law requires an expert affidavit, is not an issue requiring two years of depositions to raise to the trial court. Nonetheless, and despite the wasted years in the trial court and the prejudice suffered by Appellants, the District Court held that the Life Care Respondents did not waive the defense.

Finally, the principal issues on appeal are questions of statewide public importance because the decision of the District Court flouts the published decision of the Supreme Court in *Szymborski v. Spring Mountain Treatment Ctr.*, 403 P.3d 1280 (Nev. 2017), thereby putting the continued precedential authority of

Szymborski into question. In *Szymborski*, the Supreme Court instructed that “the medical malpractice claims that fail to comply with NRS 41A.071 must be severed and dismissed, while allowing the claims for ordinary negligence to proceed.” 403 P.3d at 1285. Although Appellants brought four separate causes of action (including ordinary negligence claims) based upon the direct liability and vicarious liability of the Respondents, the District Court failed to follow precedent by failing to distinguish between the various causes of actions and theories of liability and, instead, dismissed the entire complaint for want of an expert affidavit in support of any professional negligence claims.

- 10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

- 11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

- 12. Other issues.** Does this appeal involve any of the following issues?

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

Reversal of well-settled Nevada precedent (identify the case(s))

- *Szymborski v. Spring Mountain Treatment Ctr.*, 403 P.3d 1280 (Nev. 2017). The District Court failed to follow (and, in essence, attempts to annul) the well-settled Nevada precedent stated in *Szymborski* by failing to distinguish between the various causes of actions and theories of liability and, instead, dismissed the entire complaint for want of an expert affidavit in support of any professional negligence claims. In addition to defying *Szymborski*, the District Court's ruling is in direct contradiction to the unambiguous language of Chapter 41A and NRS 41.1395, as well as the legislative history of Chapter 41A and NRS 41.1395.

A substantial issue of first impression

- Does Chapter 41A effectively pre-empt NRS 41.1395, when the causes of action for abuse or neglect of an older person are brought against a nursing home and the nursing home's parent and management companies?

Issues having secondary effects on public policy

- If Chapter 41A effectively eviscerates NRS 41.1395 when the causes of action for abuse or neglect of an older person are brought against a nursing home (and the nursing home's parent and management companies), then the State's vulnerable elderly population is no longer protected. Rather, nursing homes may avoid liability for their own conduct in neglecting and abusing older persons by hiring and hiding behind nurses or other providers of health care when management makes it impossible for those providers of health care to do their jobs competently.
- If a defendant is allowed to continue to litigate a case for years, and only belatedly raise the defense of failure to file an expert affidavit in accordance with NRS 41A.071, then defendants will effectively be allowed to waste judicial resources and time, manipulate the judicial system (*e.g.*, engage in other substantive defenses first, while holding on to this procedural defense as a last resort), as well as be allowed to prejudice the opposing party, contrary to public policy. Furthermore, such a circumstance in Nevada law will invite affidavit challenges to extend to any stage of litigation in the future.

- 13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes

that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively retained by the Supreme Court under NRAP 17(a)(12) as the matters on appeal raise questions of statewide public importance and are upon which there is an inconsistency between the published decision of the Supreme Court and the District Court's rulings.

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

December 7, 2018

17. Date written notice of entry of judgment or order was served

December 11, 2018

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Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

N/A

☐ NRCP 50(b) ☐ NRCP 52(b) ☐ NRCP 59

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

N/A

(c) Date written notice of entry of order resolving tolling motion was served

N/A

19. Date notice of appeal filed

December 27, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

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- 20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

- 21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) applies because Appellants are appealing the final judgment entered in the action or proceeding commenced in the court in which the judgment was rendered.

- 22. List all parties involved in the action or consolidated actions in the District Court:**

(a) Parties:

Estate of Mary Curtis

Laura Latrenta (as Personal Representative of the Estate and individually)

South Las Vegas Medical Investors, LLC, d/b/a Life Care Center Of South

Las Vegas, f/k/a Life Care Center of Paradise Valley

South Las Vegas Investors Limited Partnership

Life Care Centers Of America, Inc.

Bina Hribik Poretello

Carl Wagner

Samir Saxena, M.D.

Annabelle Socaoco, N.P.

IPC Healthcare, Inc. aka The Hospitalist Company, Inc.

Inpatient Consultants of Nevada, Inc.

IPC Healthcare Services of Nevada, Inc.

Hospitalists of Nevada, Inc.

(b) If all parties in the District Court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The parties stipulated to the dismissal of Bina Hribik Poretello. On July 17, 2017, the District Court entered an order dismissing Bina Hribik Portello pursuant to the stipulation.

Appellants settled claims with Samir Saxena, M.D. The District Court approved the settlement on July 2, 2018.

Annabelle Socaoco, N.P., IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., and Hospitalists of Nevada, Inc. (the “IPC Defendants”) are not parties to the appeal

because the final judgment was entered against only the Respondents of Case No. A-17-750520-C. The case involving the IPC Defendants was consolidated with Case No. A-17-750520-C but contain separate allegations that were not adjudicated in the final judgment on appeal.

- 23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

N/A

- 24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

- 25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

Wrongful Death by Estate against the IPC Defendants

Wrongful Death by Individual against the IPC Defendants

Medical Malpractice against the IPC Defendants

(b) Specify the parties remaining below:

All IPC Defendants: Annabelle Socaoco, N.P., IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc.

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(c) Did the District Court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the District Court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Estate of Mary Curtis, Laura Latrenta, as Michael D. Davidson, Esq.

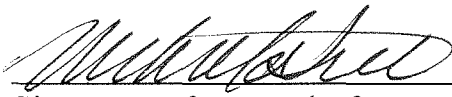
Personal Representative and Individually Kolesar & Leatham

Name of Appellants

Name of counsel of record

January 24, 2019

Date


Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

S. Brent Vogel, Esq.

Amanda J. Brookhyser, Esq.

LEWIS BRISBOIS BISGAARD & SMITH

6835 S. Rainbow Blvd, Suite 600

Las Vegas, Nevada 89118

Israel L. Kunin, Esq.

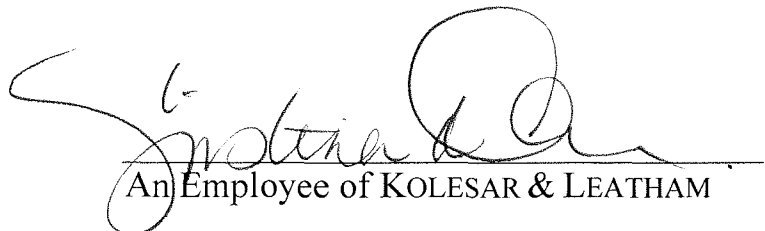
KUNIN LAW GROUP

3551 East Bonanza Rd # 110

Las Vegas, Nevada 89110

Settlement Judge

Attorneys for Respondent


An Employee of KOLESAR & LEATHAM