

**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,

Electronically Filed  
Jan 17 2020 03:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appellants,

vs.

**Supreme Court Case No. 79396**  
Appeal from District Court Case No.  
A-19-790152-C

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.

---

**JOINT APPENDIX**

---

Michael Davidson, Esq.  
**KOLESAR & LEATHAM**  
Nevada Bar No. 000878  
400 S. Rampart Blvd., Suite 400  
Las Vegas, NV 89145  
(702) 362-7800

Melanie L. Bossie, Esq.  
**BOSSIE, REILLY & OH, P.C.**  
*Pro Hac Vice*  
1430 E. Missouri Ave., Suite B225  
Phoenix, AZ 85014  
(602) 553-4552

*Attorneys for Appellants, The Estate  
of Mary Curtis, Laura Latrenta, as  
Personal Representative of the Estate,  
and Laura Latrenta, individually*

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c)(1)(E), I certify that I am an employee of Kolesar & Leatham and on the 17th day of January, 2020, I submitted the foregoing ***Joint Appendix*** to the Supreme Court of Nevada's electronic docket for filing and service upon the following:

S. Brent Vogel, Esq.  
Erin E. Jordan, Esq.  
**LEWIS BRISBOIS BISGAARD & SMITH**  
6835 S. Rainbow Blvd, Suite 600  
Las Vegas, Nevada 89118

/s/ PATRICIA A. FERRUGIA  
An Employee of Kolesar & Leatham

## ALPHABETICAL INDEX

<b>Description</b>	<b>Date Filed</b>	<b>Vol.</b>	<b>Page No.</b>
Affidavit of Service – Carl Wagner	April 12, 2019	I	0028-0029
Affidavit of Service – Life Care Centers of America, Inc.	April 16, 2019	I	0030-0031
Affidavit of Service – South Las Vegas Investors Limited Partnership	April 16, 2019	I	0032-0033
Affidavit of Service – South Las Vegas Medical Investors, LLC	April 16, 2019	I	0034-0035
Complaint	February 27, 2019	I	0004-0027
Defendants’ Motion to Dismiss Plaintiffs’ Complaint Pursuant to NRCP 12(b)(5)	May 3, 2019	I	0036-0141
Defendants’ Reply in Support of Their Motion to Dismiss Plaintiffs’ Complaint	May 30, 2019	I	0173-0179
Notice of Appeal	August 8, 2019	I	0210-0212
Ntoice [sic] of Entry of Order Granting Defendants’ Motion to Dismiss	July 15, 2019	I	0204-0209
Order Granting Defendants’ Motion to Dismiss	July 15, 2019	I	0200-0203
Plaintiffs’ Case Appeal Statement	August 8, 2019	I	0213-0222
Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Complaint Pursuant to NRCP 12(b)(5)	May 13, 2019	I	0142-0172
Transcript of Proceedings Re: Motion to Dismiss	June 4, 2019	I	0180-0199

## CHRONOLOGICAL INDEX

<b>Description</b>	<b>Date Filed</b>	<b>Vol.</b>	<b>Page No.</b>
Complaint	February 27, 2019	I	0004-0027
Affidavit of Service – Carl Wagner	April 12, 2019	I	0028-0029
Affidavit of Service – Life Care Centers of America, Inc.	April 16, 2019	I	0030-0031
Affidavit of Service – South Las Vegas Investors Limited Partnership	April 16, 2019	I	0032-0033
Affidavit of Service – South Las Vegas Medical Investors, LLC	April 16, 2019	I	0034-0035
Defendants’ Motion to Dismiss Plaintiffs’ Complaint Pursuant to NRCP 12(b)(5)	May 3, 2019	I	0036-0141
Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Complaint Pursuant to NRCP 12(b)(5)	May 13, 2019	I	0142-0172
Defendants’ Reply in Support of Their Motion to Dismiss Plaintiffs’ Complaint	May 30, 2019	I	0173-0179
Transcript of Proceedings Re: Motion to Dismiss	June 4, 2019	I	0180-0199
Order Granting Defendants’ Motion to Dismiss	July 15, 2019	I	0200-0203
Ntoice [sic] of Entry of Order Granting Defendants’ Motion to Dismiss	July 15, 2019	I	0204-0209
Notice of Appeal	August 8, 2019	I	0210-0212
Plaintiffs’ Case Appeal Statement	August 8, 2019	I	0213-0222



## DISTRICT COURT CIVIL COVER SHEET

A-19-790152-C

County, Nevada

Department 29

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

Attorney (name/address/phone):

Attorney (name/address/phone):

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

Real Property	Negligence	Torts
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <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	Construction Defect & Contract	Judicial Review/Appeal
<b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ	Other Civil Filing	
<b>Civil Writ</b> <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	<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

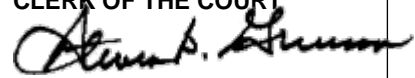
Business Court filings should be filed using the Business Court civil coversheet.

Date

/s/ Michael D. Davidson, Esq.

Signature of initiating party or representative

See other side for family-related case filings.



**COMP**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

-and-

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

**WILKES & McHUGH, P.A.**

15333 N. Pima Rd., Ste. 300

Scottsdale, Arizona 85260

Telephone: (602) 553-4552

Facsimile: (602) 553-4557

E-Mail: [Melanie@wilkesmchugh.com](mailto: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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NOA-19-790152-C

DEPT NO. Department 29

**COMPLAINT FOR DAMAGES**

- 1. Abuse/Neglect of an Older Person**
- 2. 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.; Carl Wagner; and Does 1 to 50, inclusive, and allege as follows:

**GENERAL ALLEGATIONS**

**THE PARTIES**

**PLAINTIFFS**

1. At all relevant times, Mary Curtis resided in the city of Las Vegas in the County of Clark, Nevada. Mary Curtis was born on December 19, 1926 and died on March 11, 2016 in Las Vegas, Nevada.

2. 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. Ms. Curtis's injuries and death were caused by events that occurred in the city of Las Vegas in the County of Clark, Nevada.

3. At all times material Plaintiff Laura Latrenta was the natural daughter and surviving heir of Ms. Curtis. At all relevant times she was an individual and resident of Harrington Park, New Jersey. Laura Latrenta is also the Personal Representative of Ms. Curtis's estate for purposes of this litigation.

**DEFENDANTS**

4. At all relevant times, Defendants Defendant South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, a limited liability company, and Does 1 through 12 (hereinafter "Facility Defendants") were licensed and doing business as Life Care Center of Paradise Valley in Las Vegas, Nevada, Clark County, which is located at 2325 E. Harmon Ave., Las Vegas, NV 89119 (hereinafter "Facility").

5. At all relevant times, Defendants South Las Vegas Investors Limited Partnership, Life Care Centers Of America, Inc., and Does 13 through 25 (hereinafter "Management Defendants") owned, operated, and/or managed Facility, and furthermore participated in, authorized, and/or directed the conduct of Facility and its respective agents and employees.

6. At all relevant times, Facility was in the business of providing long-term care as a 24-hour nursing facility and as such was subject to the requirements of all corresponding statutes and regulations governing the operation of a 24-hour nursing facility.

7. Plaintiffs are informed and believe and thereon allege that at all relevant times, Defendants Carl Wagner and Does 26 through 38 were employed as the licensed administrators of Facility (hereinafter "Administrators").

8. At all relevant times, Carl Wagner was and is a resident of the State of Nevada.

9. Plaintiffs are informed and believe and thereon allege that Defendants Does 39 through 50 are other individuals or entities that caused or contributed to injuries suffered by Ms. Curtis as discussed below.

10. Defendants Does 1 through 50 are persons and/or entities whose relationships to the named Defendants, or whose acts or omissions, give rise to legal responsibility for the damages incurred by Ms. Curtis, but whose true identities, at the present time, are unknown to Plaintiffs. These persons are hereby notified of Plaintiffs' intention to join them as defendants if and when additional investigation or discovery reveals the appropriateness of such joinder. 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. (Hereinafter "Defendants" refers to Facility, Management Defendants, Administrators, and Does 1 through 50).

11. Each 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. Because Defendants are not "providers of health care," as explicitly defined in NRS 41A.017, the provisions of NRS Chapter 41A do not apply to this case. However, in an abundance of caution, Plaintiffs have attached an expert affidavit (**Exhibit 1**) that supports the allegations in this Complaint.

**DIRECT AND VICARIOUS LIABILITY**

13. At all relevant times, Defendants owned, operated, and/or managed the Facility, and furthermore participated in, authorized, and/or directed the conduct of the Facility and its respective agents and employees. Defendants are therefore directly liable for their own negligence, recklessness, and other tortious conduct, in the hiring and management of their agents and employees, as is more fully alleged herein.

14. At all relevant times, Facility and Management Defendants provided management services to the Facility, which governed and controlled the nursing care and custodial services provided to Ms. Curtis, and by virtue of their management and control over the Facility, Facility and Management Defendants voluntarily and intentionally assumed responsibility for and provided supervisory services for the nursing care and custodial services provided to Ms. Curtis while she was a resident at the Facility.

15. Facility and Management Defendants, through their managers, directors, presidents, vice-presidents, executive officers, and other agents, directly oversaw, managed, and/or controlled all aspects of the operation and management of the Facility, including budget, staffing, staff training, policy and procedures manual(s), licensing, accounts payable, accounts receivable, development and leasing, general accounting, cash management, pricing, reimbursement, capitalization, and profit and loss margins.

16. Facility and Management Defendants, through their managers, directors, presidents, vice-presidents, executive officers, and other agents, created budgets, policies and procedures that the Facility's employees and agents were required to implement and follow.

17. Facility and Management Defendants employed all of those persons who attended to and provided care and basic needs to Ms. Curtis while she was a resident at Facility, and employed those persons in management and supervisory positions who directed the operations of Facility, all of whom were acting within the course and scope of their employment, during Ms. Curtis's residency.

18. Facility and Management Defendants, through their administrators, directors and managing agents, condoned and ratified all conduct of the Facility alleged herein.

1           19. At all relevant times, Defendants were the knowing agents and/or alter-egos of  
2 one another, inclusive, and Defendants' officers, directors, and managing agents, directed,  
3 approved, and/or ratified the conduct of each of the other Defendants' officers, agents and  
4 employees, and are therefore vicariously liable for the acts and/or omissions of their co-  
5 defendants, their agents and employees, as is more fully alleged herein. Moreover, at all relevant  
6 times, all Defendants were acting within the course and scope of their employment.

7           20. Defendants' tortious acts and omissions, as alleged herein, were done in concert  
8 with each other and pursuant to a common design and agreement to accomplish a particular  
9 result: maximizing profits by operating Facility in such a manner that Facility was underfunded  
10 and understaffed. Moreover, Facility and Management Defendants aided and abetted each other  
11 in accomplishing the acts and omissions alleged herein.

12           21. Defendants, by their acts and omissions as alleged herein, operated pursuant to an  
13 agreement, with a common purpose and community of interest, with an equal right of control,  
14 and subject to participation in profits and losses, as further alleged herein, such that they  
15 operated a joint enterprise or joint venture, subjecting each of them to liability for the acts and  
16 omissions of each other.

17                           **FACTUAL SUMMARY/PLAINTIFFS' INJURIES**

18           22. On approximately March 2, 2016, Ms. Curtis was admitted as a resident to  
19 Facility for care and supervision. Defendants voluntarily assumed responsibility for her care and  
20 to provide her food, shelter, clothing, and services necessary to maintain her physical and mental  
21 health. Ms. Curtis remained a resident at Facility until March 8, 2016 — three days before her  
22 death.

23           23. Defendants knew that Ms. Curtis was in a compromised state: she had a history of  
24 dementia, hypertension, COPD, renal insufficiency, and had recently been hospitalized after  
25 being found on her bathroom floor on February 27, 2016.

26           24. As a result of Ms. Curtis's condition, she required supervision, monitoring, and  
27 attention to ensure her health, safety and wellbeing.  
28

1           25. Defendants knew that by virtue of her physical and mental state, Ms. Curtis was  
2 dependent upon staff for her safety, basic needs, and her activities of daily living.

3           26. Despite Defendants' knowledge and awareness of Ms. Curtis's needs, Defendants  
4 failed to provide her the attention and care necessary to prevent her from falling, and as a result  
5 Defendants permitted her to fall (causing her injuries) shortly after she entered Facility.

6           27. Despite Defendants' knowledge and awareness of Ms. Curtis's needs, on March  
7 7, 2016, Defendants caused Ms. Curtis to ingest a dose of morphine prescribed to another  
8 resident. Ms. Curtis was not prescribed morphine.

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

12           29. Ms. Curtis was transported to Sunrise Hospital where she was diagnosed with  
13 anoxic brain encephalopathy. She was later transferred to Nathan Adelson Hospice on March 11,  
14 2016 and died shortly thereafter.

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

17           31. Although the direct mechanism of Ms. Curtis's death was morphine intoxication,  
18 Defendants created, promoted and maintained a toxic and unsafe environment that predictably  
19 and inevitably led to and ultimately caused Ms. Curtis's death.

20           32. Ms. Curtis's injuries were entirely preventable had Defendants simply provided  
21 the Facility with sufficient practices, sufficient supplies, and sufficient staff, in number and  
22 training, to provide Ms. Curtis with the amount of supervision and care that the laws and  
23 regulations required.

24           33. Ms. Curtis's injuries, including death, would not have occurred but for the  
25 complete willful disregard by Defendants of their duties owed to her.

26           34. Ms. Curtis was subjected to pain and suffering and ultimately died as a result of the  
27 toxic and unsafe environment created, promoted and maintained by Defendants.  
28

35. Accordingly, Defendants may be held directly, as well as vicariously, liable for the injuries and death of Ms. Curtis.

**DEFENDANTS' KNOWLEDGE, DUTIES, AND WRONGFUL CONDUCT**

36. During Ms. Curtis's residency at Facility, Defendants knew or had reason to know that she was an older person under N.R.S. § 41.1395 and that she was incapable of independently providing for all of her daily and personal needs without reliable assistance.

37. At all relevant times, Defendants held themselves and the Facility out as being competent and qualified to provide adequate services, including custodial care services, to their residents, including Ms. Curtis.

38. Defendants assumed responsibility for Ms. Curtis's total care, including the provisions of activities of daily living, nutrition, skilled nursing, rehabilitation, and ordinary custodial services.

39. Because Defendants were in the business of providing long-term care as a skilled nursing facility, Defendants were subject to the requirements of all corresponding statutes and regulations governing the operation of a skilled nursing facility.

40. At all times mentioned herein, Defendants owed a duty to Ms. Curtis to provide services and care for her in such a manner and in such an environment as to attain or maintain the highest practicable physical, mental, and psychosocial well-being of Ms. Curtis.

41. At all times mentioned herein, Defendants had an obligation to establish practices that addressed the needs of the residents of the Facility, including Ms. Curtis, with respect to the care and services which were necessary to maintain the physical and mental health of residents.

42. At all times mentioned herein, Defendants had a duty to employ sufficient staff to provide services to attain or maintain the highest practicable physical and mental well-being of Ms. Curtis.

43. At all times mentioned herein, Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure timely care and services which were necessary to maintain the physical and mental health of residents, such Ms. Curtis.



1           44.     At all times mentioned herein, Defendants had a duty to provide for the safety of  
2 residents, including Ms. Curtis, particularly residents who were impaired and in need of special  
3 precautions for their safety, by providing each resident, including Ms. Curtis, with adequate  
4 supervision, assistance, and intervention to prevent injury or deterioration of their health.

5           45.     As Administrators for Facility, Administrator Defendants' duties included (a)  
6 appointing and supervising a medical director to be responsible for resident medical care at  
7 Facility; (b) appointing and supervising a Director of Nursing for Facility; (c) supervising and  
8 evaluating staff performance at Facility; and (d) developing and implementing written policies  
9 and procedures for nursing services, personnel, staff orientation and in-service training,  
10 admission and discharge of residents, safety and emergency plans, and quality management plans  
11 for Facility.

12           46.     Despite their obligations and duties, Defendants made a conscious decision to  
13 operate and/or manage the Facility so as to maximize profits at the expense of the care required  
14 to be provided to their residents, including Ms. Curtis.

15           47.     In their efforts to maximize profits, Defendants negligently, intentionally and/or  
16 recklessly mismanaged and/or reduced staffing levels below the level necessary to provide  
17 adequate care to the residents and implemented practices in disregard to the safety of the  
18 residents.

19           48.     Despite their knowledge of the likelihood of harm due to insufficient staffing  
20 levels, and despite complaints from staff members about insufficient staffing levels, Defendants  
21 intentionally, recklessly and/or negligently disregarded the consequences of their actions, and  
22 caused staffing levels at the Facility to be set at a level such that the personnel on duty could not  
23 and did not meet the needs of the Facility's residents, including Ms. Curtis.

24           49.     Despite their knowledge of the likelihood of harm due to inadequate practices,  
25 Defendants intentionally, recklessly and/or negligently disregarded the consequences of their  
26 actions, and prevented personnel on duty to meet the needs of the Facility's residents, including  
27 Ms. Curtis.  
28

1           50.     In an effort to increase profits and at the direction of the Management Defendants,  
2 Defendants intentionally increased and attempted to improperly retain the number of high-level  
3 acuity residents that required more complex care and services.

4           51.     Defendants knew that this increase in the acuity care levels of the resident  
5 population would substantially increase the need for staff, services, and supplies necessary for  
6 the resident population.

7           52.     However, in an effort to increase profits and at the direction of the Management  
8 Defendants, Defendants failed to provide the resources necessary, including sufficient staff, to  
9 meet the needs of the residents, including Ms. Curtis.

10          53.     Defendants knowingly disregarded patient acuity levels while making staffing  
11 decisions, and also knowingly disregarded the minimum time required by the staff to perform  
12 essential day-to-day functions and services.

13          54.     The acts and omissions of Defendants were motivated by a desire to increase the  
14 profits of the nursing homes they own, including the Facility, by knowingly, recklessly, and with  
15 total disregard for the health and safety of the residents, reducing expenditures for needed  
16 staffing, training, supervision, and care to levels that would inevitably lead to severe injuries,  
17 such as those suffered by Ms. Curtis.

18          55.     Defendants ratified the conduct of each Defendant in that they mandated, were  
19 aware of, and/or accepted chronic understaffing, inadequate training, inadequate supplies and  
20 inadequate practices at the Facility, were aware of the Facility's customary practice of receiving  
21 complaints and notices of deficiencies relating to the care of residents, and were aware that such  
22 understaffing, inadequate training, and deficiencies led to injury and death to residents.

23          56.     The aforementioned acts directly caused injury to Ms. Curtis and were known by  
24 Defendants.

25          57.     Defendants knowingly sacrificed the quality of services received by all residents,  
26 including Ms. Curtis, by failing to manage, care, monitor, document, chart, prevent and/or treat  
27 the injuries suffered by Ms. Curtis, which included falls, intoxication, unnecessary pain and  
28 suffering, and, ultimately, an untimely death.

1           58.     Ms. Curtis's injuries, as alleged herein, would not have occurred but for the utter  
2 and complete willful disregard by Defendants of their duties to Ms. Curtis.

3           59.     Defendants allowed Ms. Curtis to suffer in a hazardous environment, and she was  
4 therefore forced to suffer poor quality of life.

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

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

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

9           61.     Mary Curtis was born on 19 December 1926 and was therefore an "older person"  
10 under N.R.S. § 41.1395.

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

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

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

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

27          66.     Despite Defendants' notice and knowledge that Ms. Curtis was dependent on  
28 them to provide sufficient and adequate staff to provide her with her basic needs, Defendants

1 failed to provide sufficient and adequate staff to properly and safely provide her with her basic  
2 needs and caused her injuries and death.

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

6 68. Despite Defendants' notice and knowledge that Ms. Curtis was dependent on  
7 them for proper medication administration, on 7 March 2016, Defendants caused Ms. Curtis to  
8 ingest a dose of morphine prescribed to another resident. Ms. Curtis was not prescribed  
9 morphine.

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

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

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

18 72. Although the direct mechanism of Ms. Curtis's death was morphine intoxication,  
19 Defendants created, promoted and maintained a toxic and unsafe environment that predictably  
20 and inevitably led to and ultimately caused Ms. Curtis's death.

21 73. Defendants may be held liable on various theories of liability including direct  
22 liability based on their conduct in creating, promoting and maintaining a toxic and unsafe  
23 environment for the residents, including Ms. Curtis.

24 74. Defendants may also be held liable as participants in the joint venture or  
25 enterprise. Specifically, Defendants, by their acts and omissions as alleged above, operated  
26 pursuant to an agreement, with a common purpose and community of interest, with an equal  
27 right of control, and subject to participation in profits and losses, as further alleged above, such  
28

1 that they operated a joint enterprise or joint venture, subjecting each of them to liability for the  
2 acts and omissions of each other.

3 75. Defendants may also be held vicariously liable for the acts that occurred during  
4 the agency relationship. Specifically, Defendants were the knowing agents of one another,  
5 inclusive, and Defendants' officers, directors, and managing agents, directed, approved, and/or  
6 ratified the conduct of each of the other Defendants' officers, agents and employees, and are  
7 therefore vicariously liable for the acts and/or omissions of their co-defendants and their agents,  
8 as is more fully alleged above.

9 76. Defendants may also be held vicariously liable for the acts that occurred during  
10 the employment relationship. Specifically, Defendants' officers, directors, and managing agents,  
11 directed, approved, and/or ratified the conduct of each of the other Defendants' employees, and  
12 are therefore vicariously liable for the acts and/or omissions of their employees, as is more fully  
13 alleged above. Moreover, at all relevant times, all Defendants were acting within the course and  
14 scope of their employment

15 77. Management Defendants may also be held liable under a theory of alter-ego as  
16 Facility Defendants were the knowing alter-egos of Management Defendants such that  
17 Management Defendants exercised substantial total control over the management and activities  
18 of Facility Defendants.

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

21 79. The actions of Defendants and each of them were abuse under N.R.S. §  
22 41.1395(4)(a) and neglect under N.R.S. § 41.1395(4)(c).

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

26 81. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal  
27 representative is entitled to recover double her actual damages under N.R.S. § 41.1395.  
28

83. 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.

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

## SECOND CAUSE OF ACTION

**(Bad Faith Tort by the Estate of Mary Curtis against all Defendants)**

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

86. A contract existed between Mary Curtis and Life Care Center of South Las Vegas  
f/k/a Life Care Center of Paradise Valley.

18           87.     The contract, like every contract, had an implied covenant of good faith and fair  
19     dealing.

88. Mary Curtis's vulnerability and dependence on Defendants created a special relationship between her and Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley.

23 89. Mary Curtis's vulnerability and dependence on Defendants meant that she had a  
24 special reliance on Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise  
25 Valley.

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

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

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

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

13 DATED this 27<sup>th</sup> day of February, 2019.

14 **KOLESAR & LEATHAM**

15  
16 By /s/ Michael D. Davidson, Esq.  
MICHAEL D. DAVIDSON, ESQ.  
Nevada Bar No. 000878  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145

17  
18 -and-

19  
20 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
*Pending*  
21 **WILKES & MCHUGH, P.A.**  
15333 N. Pima Rd., Ste. 300  
22 Scottsdale, Arizona 85260  
Telephone: (602) 553-4552  
23 Facsimile: (602) 553-4557  
E-Mail: [Melanie@wilkesmchugh.com](mailto:Melanie@wilkesmchugh.com)

24 *Attorneys for Plaintiffs*  
25  
26  
27  
28

# EXHIBIT 1

# EXHIBIT 1



**AOM**

MICHAEL D. DAVIDSON, ESQ.  
Nevada Bar No. 000878

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Telephone: (702) 362-7800  
Facsimile: (702) 362-9472  
E-Mail: mdavidson@klnevada.com

-and-

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

**WILKES & MCHUGH, P.A.**

15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260  
Telephone: (602) 553-4552  
Facsimile: (602) 553-4557  
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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

Case No.:

Dept. No.:

**AFFIDAVIT OF KATHLEEN HILL-  
O'NEILL, RN, DNP, MSN, NHA**

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 Affidavit of Kathleen Hill-O'Neill, RN, DNP, MSN, NHA.

**AFFIDAVIT OF KATHLEEN HILL-O'NEILL, RN, DNP, MSN, NHA**

STATE OF PENNSYLVANIA

COUNTY OF BUCKS

1. I am a registered nurse licensed in the State of Pennsylvania. I am also certified as a Nursing Home Administrator and as a Gerontological Nurse Practitioner.

2. I earned my BS in nursing from Gwynedd Mercy College in 1987 and my MS in gerontological nurse clinician/practitioner studies from the University of Pennsylvania in 1989. I earned my certificate as a nursing home administrator in 1996 and received my doctor of nursing practice from the University of Arizona in 2017.

3. My curriculum vitae accurately reflects my education, training, and experience as a nurse, administrator, and nurse practitioner in the care and treatment of the elderly.

4. I have extensive training and experience in gerontological patient care. I am currently practicing as a gerontological nurse practitioner and as a nursing instructor. I also work as a consultant and provide consultation services to assess the quality of patient care in long-term care settings. I have worked as a consultant/federal monitor for the Office of the Inspector General, Department of Health and Human Services. In this role, I complete on-site visits and review records, policies, budgets, staffing, and statistics related to patient care. I have also worked for the U.S. Department of Justice. In addition, I am on the faculty of the University of Pennsylvania where I teach in the adult/gerontology nurse practitioner program.

5. I have extensive training in and experience in caring for residents in nursing homes and assisted living facilities. I also have experience supervising registered nurses, licensed practical nurses, certified nursing assistants, and unlicensed caregivers.

6. I have experience in reviewing medical records to determine whether the appropriate standards of care have been met and whether violations of the standard of care caused any injuries.

7. I am familiar with the prevailing standards of care required of nursing home facilities and by nurse practitioners in the care, treatment, and protection of vulnerable or older adults. In

addition, I am familiar with the statutes, rules, and regulations promulgated by the State of Nevada for the protection of individuals like Mary Curtis.

8. I have reviewed the following records as they pertain to Mary Curtis:

HealthSouth Rehabilitation Hospital of Henderson	01/21/16-02/06/16
Desert Springs Hospital	02/27/16-03/02/16
Life Care Center – Paradise Valley	03/02/16-03/08/16
Clark American Medical Response	03/08/16
Sunrise Medical Center	03/08/16-03/11/16 (DOD)
Nathan Adelson Hospice	03/11/16 (DOD)
Death Certificate	
Toxicology Report	
Clark County Medical Examiner’s Report	
03/09/16 – Three photos of Mary at Sunrise Medical Center	
Date unknown – Ten photos of Mary	

Videos of Ms. Curtis:

- 11/11/15
- 12/15/15 – talking about a hair cut
- 12/19/15 – on her birthday
- 02/06/16
- 02/16/16 – dancing
- 03/06/16 – Video of Mary after a fall at Life Care
- 03/06/16
- 03/07/16
- 03/08/16 – Video of Mary incoherent at Life Care
- 03/08/16
- 03/11/16 – Video of Mary waiting for hospice transfer

Discovery and Depositions:

Incident Report – 03/03/16  
Incident Report – 03/07/16  
Typed investigation by Director of Nursing  
Ersheila Dawson’s handwritten note re 03/07/16  
Medical Director Agreement with Dr. Saxena  
Letter re: Termination of Agreement between Dr. Saxena and Life Care  
Employee File: Ersheila Dawson  
Selected Medical Records from “Patient X”  
Federal DHS Survey of Life Care Center of South Las Vegas, 04/21/16  
Deposition of Laura Latrenta  
Deposition of Isabella Reyes, CNA  
Deposition of Cecilia Sansome, RN  
Deposition of Cherry Uy, CNA  
Deposition of Mariver Delloro, CNA  
Deposition of Weseret Werago, CNA  
Deposition of Thelma Olea, DON

1 Deposition of Jesus Alcantra, CNA  
2 Deposition of Regina Ramos, LPN  
3 Deposition of Jannel McCraney, CNA  
4 Deposition of Theresa Piloto, CNA  
5 Deposition of Adelita Stucker, CNA  
6 Deposition of Eunice Muniz, caregiver  
7 Deposition of Ileana Rebolledo Correa, caregiver  
8 Deposition of Jesus Correa, caregiver  
9 Deposition of Samir Saxena, MD  
10 Deposition of Loretta Chatman, director of staff development  
11 Deposition of Debra Johnson, LPN  
12 Deposition of Tiffany Searcy, CNA  
13 Deposition of Ersheila Dawson, LPN  
14 Deposition of Annabelle Socaoco, NP  
15  
16 Ernie Tosh report and Excel spreadsheets  
17 Life Care in-service documentation  
18 Life Care selected punch detail reports  
19 Life Care medication error reports  
20 Life Care medication tracking log  
21 Nevada Nurse Practice Act  
22 Code of Federal Regulations, Title 42, Part 483, Subpart B  
23 Nevada skilled nursing regulations  
24 NRS 41.1395  
25 NRS 200.5092

9. Based on my review of Ms. Curtis's medical records and the documents listed above, as well as on my education, training, and experience as a nurse practitioner, it is my opinion, within a reasonable degree of probability, that the acts, errors, and omissions of Life Care staff; of Life Care Center of South Las Vegas (LCCPV); of LCCPV's administrator; and of the Life Care corporate Defendants (South Las Vegas Investors Limited Partnership and Life Care Centers of America, Inc.) violated minimum standards of care, constituted an egregious indifference to Ms. Curtis's rights, safety, and wellbeing, caused her preventable injuries, pain, and suffering, and ultimately contributed to her death.

10. Mary Curtis, an 89-year-old widow with a past medical history of dementia, hypertension, COPD, and renal insufficiency, entered Life Care Center of South Las Vegas on 2 March 2016 for post-hospitalization continuing care.

11. Ms. Curtis, who had not been prescribed morphine, was given another resident's prescribed morphine on 7 March 2016.

12. Ms. Curtis was thereafter given two doses of Narcan in an effort to reverse the morphine's effects.

13. On the morning of 8 March 2016, Ms. Curtis was found in an altered mental state with low blood oxygen saturation. Emergency medical services transported her to Sunrise Hospital, where she was diagnosed with anoxic brain encephalopathy.

14. Ms. Curtis was transferred to Nathan Adelson Hospice on 11 March 2016 and died shortly thereafter. Her death certificate records that her immediate cause of death was morphine intoxication.

15. The standard of care and 42 C.F.R. § 483.25(d)(2) require that a facility ensure that each resident receives adequate supervision and assistance devices to prevent accidents. Yet LCCPV and its staff, although documenting Mary's risk factors, failed to recognize her risk of falling and to put measures in place to prevent her from falling, and so she fell on 3 and 6 March 2016 (the latter of which falls LCCPV and its staff failed to even document). The failure of LCCPV and its staff to ensure that Mary received adequate supervision and assistance devices to prevent her falls breached their duty and fell below the standard of care.

16. The standard of care and 42 C.F.R. § 483.45(f)(2) require that a facility ensure that residents are free of any significant medication errors. Yet only five days after her admission Mary was given a high dose of a narcotic pain medication that was ordered not for her but for another resident. LCCPV and its staff then failed to provide appropriate care and treatment following that significant medication error although morphine is a strong narcotic pain medication with significant side effects including respiration depression. The failure of LCCPV and its staff to ensure that Mary was free of significant medication errors breached their duty and fell below the standard of care.

17. The standard of care and 42 C.F.R. § 483.20 require that a facility conduct assessments of each resident's functional capacity. Yet LCCPV and its staff failed to complete adequate and appropriate assessments of Mary after she was given morphine and failed to communicate those assessments from shift to shift. The failure of LCCPV and its staff to assess Mary breached their duty and fell below the standard of care.

1 18. The standard of care and 42 C.F.R. § 483.21(b) require that a facility develop and  
2 implement a person-centered care plan for each resident describing the services to be furnished to  
3 attain or maintain the resident's highest practical physical, mental, and psychosocial wellbeing.  
4 Yet Mary's fall prevention care plan was generic and not individualized to her, nor was it revised  
5 after her 3 March 2016 fall; moreover, she had no care plan to address the erroneous administration  
6 of morphine. The failure of LCCPV and its staff to develop and implement a person-centered care  
7 plan for Mary breached their duty and fell below the standard of care.

8 19. The standard of care requires that a facility adequately monitor a resident for a change in  
9 condition, timely recognize such a change, timely address it, and timely document it. And the  
10 standard of care and 42 C.F.R. § 483.10(g)(14)(i)(B) require that a facility consult with a resident's  
11 physician when there is a significant change in the resident's physical, mental, or psychosocial  
12 status. Yet LCCPV and its staff failed to maintain a clinical record accurately reflecting Mary's  
13 condition, failed to document timely notification of Mary's physician and family regarding the  
14 significant changes in her condition; and failed to accurately document her medication error and  
15 the related sequence of events. The failure of LCCPV and its staff to adequately monitor Mary,  
16 timely recognize and address her changes in condition, and timely document those changes  
17 breached their duty and fell below the standard of care.

18 20. The standard of care requires that if a serious medication error (such as giving a controlled  
19 narcotic to the wrong resident) occurs then a facility must ensure that all necessary staff members  
20 are made aware both of the incident and of the care and treatment to be given the resident thereafter.  
21 Yet LCCPV and its staff failed to ensure adequate and appropriate communication among staff.  
22 For example, they failed to update Mary's care plan and failed to inform oncoming staff and the  
23 physician regarding the morphine administration. The failure of LCCPV and its staff to ensure that  
24 necessary staff members were made aware of Mary's incident and of the care and treatment to be  
25 given her breached their duty and fell below the standard of care.

26 21. The corporate Defendants and LCCPV failed to provide administrative oversight,  
27 management, and patient care monitoring; and failed to ensure that all staff members were trained  
28 on the medication administration policy despite their knowledge of LCCPV's failures in

medication administration before Mary's residency. The failure of the corporate Defendants and LCCPV to provide oversight, management, and monitoring; and to ensure that staff members were adequately trained, breached their duty and fell below the standard of care.

22. The standard of care and 42 C.F.R. § 483.35 requires that a facility have sufficient staff with the appropriate competencies and skills sets to provide nursing and related services to ensure resident safety and attain or maintain the highest practical physical, mental, and psychosocial wellbeing of each resident. Yet LCCPV was understaffed during Mary's stay, and its insufficient staffing in number and qualification (for example, staffing was high in LPNs and limited in RNs) negatively affected Mary's care. According to a staffing analysis, the corporate Defendants saved considerable money by understaffing LCCPV during and after Mary's residency. The failure of the corporate Defendants and of LCCPV to ensure that LCCPV had sufficient staff to ensure Mary's safety and maintain her wellbeing breached their duty and fell below the standard of care.

23. The standard of care and 42 C.F.R. § 483.24 require that a facility provide the necessary care and services to attain or maintain a resident's highest practicable physical, mental, and psychosocial wellbeing consistent with her comprehensive assessment and plan of care. Yet all Life Care Defendants failed to ensure that Mary was provided that necessary care and services. Their failure breached their duty and fell below the standard of care.

24. All the opinions in this affidavit are expressed within a reasonable degree of probability and are based on my education, training, and experience, as well as on my review of the records and documents provided to me.

25. This affidavit is preliminary. It is not intended to and does not contain all the opinions that I have reached concerning Mary's care and treatment at Life Care Center of South Las Vegas.

//

//

//

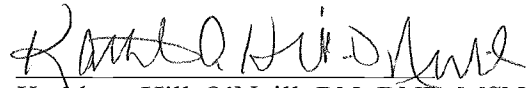
//

//

//

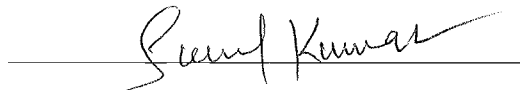
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

26. To my knowledge, no previous opinion rendered by me has been rejected by any court.



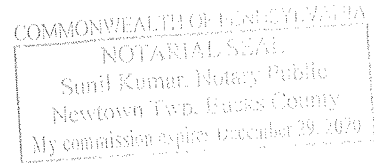
Kathleen Hill-O'Neill, RN, DNP, MSN, NHA

Sworn to and subscribed before me this <sup>th</sup>26 day of February, 2019.



NOTARY PUBLIC, STATE OF PENNSYLVANIA

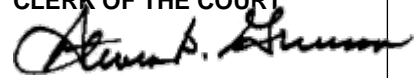
My commission expires: 12/29/2020



Personally known ☐ OR produced identification ☒

Type of identification produced: PA Driver Lic (20317543)





**AOS**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 004975

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

[mdushoff@knevada.com](mailto:mdushoff@knevada.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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. XXIX

**AFFIDAVIT OF SERVICE**

**Defendant, CARL WAGNER, Administrator**

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

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY  
CLARK COUNTY, STATE OF NEVADA

ESTATE OF MARY CURTIS, deceased; et al.,

Plaintiff(s)

v.

SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba  
LIFE CARE CENTER OF SOUTH LAS VEGAS f/k/a  
LIFE CARE CENTER OF PARADISE VALLEY; et al.,

Defendant(s)

Case No.:A-19-790152-C

Michael D. Davidson, Esq., Bar No. 000878

KOLESAR & LEATHAM

400 S. Rampart Blvd, Suite 400

Las Vegas, NV 89145

(702) 362-7800

Attorneys for the Plaintiff(s)

Client File# 9770-1.002

I, Tyler Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons - Defendant, Carl Wagner; Complaint For Damages, from KOLESAR & LEATHAM

That on 4/4/2019 at 6:44 PM at 10598 Cliff Lake Street, Las Vegas, NV 89179 I served Carl Wagner with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Carl Wagner.

That the description of the person actually served is as follows:

Gender: Male, Race: Caucasian, Age: 40, Height: 5'8", Weight: 170 lbs., Hair: Bald/Shaved, Eyes:Blue

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/11/19

Tyler Trewet  
Registered Work Card# R-073823  
State of Nevada

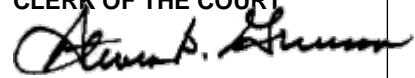
(No Notary Per NRS 53.045)

Service Provided for:  
Nationwide Legal Nevada, LLC  
626 S. 7th Street  
Las Vegas, NV 89101  
(702) 385-5444  
Nevada Lic # 1656



Control #:NV175828  
Reference: 9770-1.002

APP0029



**AOS**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 004975

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

[mdushoff@knevada.com](mailto:mdushoff@knevada.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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. XXIX

**AFFIDAVIT OF SERVICE**

**Defendant, Life Care Centers of America, Inc.**

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

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY  
CLARK COUNTY, STATE OF NEVADA

Estate of MARY CURTIS, deceased; et al.,

Plaintiff(s)

v.

SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba  
LIFE CARE CENTER OF SOUTH LAS VEGAS f/k/a  
LIFE CARE CENTER OF PARADISE VALLEY; et al.,

Defendant(s)

Case No.:A-19-790152-C

Michael D. Davidson, Esq., Bar No. 000878

KOLESAR & LEATHAM

400 S. Rampart Blvd, Suite 400

Las Vegas, NV 89145

(702) 362-7800

Attorneys for the Plaintiff(s)

Client File# 9770-1.002

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons - Defendant, Life Care Centers of America, Inc.; Complaint for Damages, from KOLESAR & LEATHAM

That on 4/4/2019 at 2:54 PM I served the above listed documents to Life Care Centers of America, Inc. - c/o CSC Services of Nevada, Inc., Registered Agent by personally delivering and leaving a copy at 2215-B Renaissance Drive, Las Vegas, NV 89119 with Frances Gutierrez - Customer Service Specialist, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Latino, Age: 30's, Height: Seated, Weight: 120 lbs., Hair: Black, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/15/19

  
Judith Mae All

Registered Work Card# R-040570

State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:

Nationwide Legal Nevada, LLC

626 S. 7th Street

Las Vegas, NV 89101

(702) 385-5444

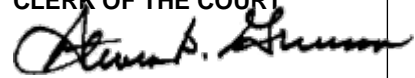
Nevada Lic # 1656



Control #:NV175802

Reference: 9770-1.002

APP0031



**AOS**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 004975

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

[mdushoff@knevada.com](mailto:mdushoff@knevada.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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. XXIX

**AFFIDAVIT OF SERVICE**

**Defendant, South Las Vegas Investors Limited Partnership**

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



AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY  
CLARK COUNTY, STATE OF NEVADA

Estate of MARY CURTIS, deceased; et al.,

Plaintiff(s)

v.

SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba  
LIFE CARE CENTER OF SOUTH LAS VEGAS f/k/a  
LIFE CARE CENTER OF PARADISE VALLEY; et al.,

Defendant(s)

Case No.: A-19-790152-C

Michael D. Davidson, Esq., Bar No. 000878

KOLESAR & LEATHAM

400 S. Rampart Blvd, Suite 400

Las Vegas, NV 89145

(702) 362-7800

Attorneys for the Plaintiff(s)

Client File# 9770-1.002

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons - Defendant, South Las Vegas Investors Limited Partnership; Complaint for Damages, from KOLESAR & LEATHAM

That on 4/4/2019 at 2:54 PM I served the above listed documents to South Las Vegas Investors Limited Partnership - c/o CSC Services of Nevada, Inc., Registered Agent by personally delivering and leaving a copy at 2215-B Renaissance Drive, Las Vegas, NV 89119 with Frances Gutierrez - Customer Service Specialist, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Latino, Age: 30's, Height: Seated, Weight: 120 lbs., Hair: Black, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/15/19

Judith Mae All  
Registered Work Card# R-040570  
State of Nevada

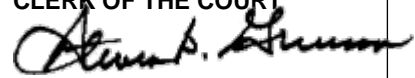
(No Notary Per NRS 53.045)

Service Provided for:  
Nationwide Legal Nevada, LLC  
626 S. 7th Street  
Las Vegas, NV 89101  
(702) 385-5444  
Nevada Lic # 1656



Control #: NV175795  
Reference: 9770-1.002

APP0033



**AOS**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 004975

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

[mdushoff@knevada.com](mailto:mdushoff@knevada.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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. XXIX

**AFFIDAVIT OF SERVICE**

**Defendant, South Las Vegas Medical Investors, LLC dba Life Care Center of South Las  
Vegas f/k/a Life Care Center of Paradise Valley**

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

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY  
CLARK COUNTY, STATE OF NEVADA

Estate of MARY CURTIS, deceased; et al.,

Plaintiff(s)

v.

SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba  
LIFE CARE CENTER OF SOUTH LAS VEGAS f/k/a  
LIFE CARE CENTER OF PARADISE VALLEY; et al.,

Defendant(s)

Case No.:A-19-790152-C

Michael D. Davidson, Esq., Bar No. 000878

KOLESAR & LEATHAM

400 S. Rampart Blvd, Suite 400

Las Vegas, NV 89145

(702) 362-7800

Attorneys for the Plaintiff(s)

Client File# 9770-1.002

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons - Defendant, South Las Vegas Medical Investors, LLC; Complaint for Damages, from KOLESAR & LEATHAM

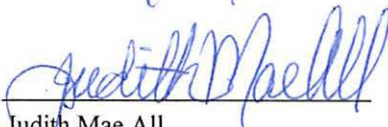
That on 4/4/2019 at 2:54 PM I served the above listed documents to South Las Vegas Medical Investors, LLC - c/o CSC Services of Nevada, Inc., Registered Agent by personally delivering and leaving a copy at 2215-B Renaissance Drive, Las Vegas, NV 89119 with Frances Gutierrez - Customer Service Specialist, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Latino, Age: 30's, Height: Seated, Weight: 120 lbs., Hair: Black, Eyes: Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/15/19



Judith Mae All  
Registered Work Card# R-040570  
State of Nevada

(No Notary Per NRS 53.045)

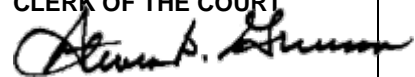
Service Provided for:  
Nationwide Legal Nevada, LLC  
626 S. 7th Street  
Las Vegas, NV 89101  
(702) 385-5444  
Nevada Lic # 1656



Control #:NV175786  
Reference: 9770-1.002

APP0035





1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
ERIN E. JORDAN  
3 Nevada Bar No. 10018  
Erin.Jordan@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
9

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 f/k/a  
18 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
19 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
20 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

21 Defendants.  
22

CASE NO. A-19-790152-C  
Dept. No.: XXIX

**DEFENDANTS SOUTH LAS VEGAS  
MEDICAL INVESTORS, LLC Dba LIFE  
CARE CENTER OF SOUTH LAS VEGAS  
Fka LIFE CARE CENTER OF PARADISE  
VALLEY'S; SOUTH LAS VEGAS  
INVESTORS LIMITED  
PARTNERSHIP'S; LIFE CARE  
CENTERS OF AMERICA, INC.'S; And  
CARL WAGNER'S MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT  
PURSUANT TO NRCP 12(b)(5)**

**HEARING REQUESTED**

24 COME NOW DEFENDANTS South Las Vegas Medical Investors LLC dba Life Care  
25 Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors,  
26 LP, Life Care Centers of America, Inc., and Carl Wagner ("Defendants"), by and through their  
27 counsel of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS  
28 BISGAARD & SMITH LLP, and moves this Court for an order dismissing PLAINTIFFS' (Estate

1 of MARY CURTIS, deceased; LAURA LATRENTA, as Personal Representative of the Estate of  
2 MARY CURTIS; and LAURA LATRENTA, individually, collectively, the “Plaintiffs”)  
3 complaint (the “New Complaint”) in this matter, filed on Feb. 27, 2019. The New Complaint fails  
4 to state a claim against Defendants because it merely repackages their fatally flawed complaint  
5 from A-17-750520-C (consolidated with A-17-754013-C), which the Court dismissed via  
6 summary judgment on Dec. 7, 2018, and which now is the subject of an appeal before the Nevada  
7 Supreme Court. As Plaintiffs are not entitled to two bites of the same apple, the New Complaint  
8 must be dismissed in its entirety with prejudice.

9 Defendants make and base this motion on the Memorandum of Points and Authorities  
10 below, all papers and pleadings herein, and any oral argument this Court may entertain.

## 11 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 12 **I.**

#### 13 **INTRODUCTION**

14 Plaintiffs improperly initiated a new lawsuit based on the same set of transactions,  
15 occurrences, parties, facts, and issues that were the subject of “vigorous” litigation for several  
16 years until the Court granted summary judgment to Defendants—and these same transactions,  
17 occurrences, parties, facts, and issues are on appeal right now in the Nevada Supreme Court.  
18 Having filed their appeal (Nev. Sup. Ct. Case No. 77810), Plaintiffs cannot simply bring a new  
19 action in the district court regarding the same set of facts and circumstances because they did not  
20 like the findings of fact and legal conclusions in the original actions below. *See Five Star Capital*  
21 *Corp. v. Ruby*, 124 Nev. 1048, 1060, 194 P.3d 709, 716 (2008) (“This is the exact type of case for  
22 which claim preclusion is necessary--to prevent a party from continually filing additional lawsuits  
23 until it obtains the outcome it desires . . .”). As such, as Plaintiffs cannot state a set of facts in this  
24 action that could entitle them to relief, the Court must dismiss this action in its entirety. To do  
25 otherwise, and to allow this matter to proceed any further, would vitiate the Order granting  
26 summary judgment to Defendants in Clark County Case No. A-17-750520-C, consolidated with  
27 A-17-754013-C, and create a parallel track between Plaintiffs’ appeal of that Order and with  
28 litigation in the instant matter. Only dismissal with prejudice precludes such an absurd result.

**II.****REQUEST FOR JUDICIAL NOTICE**

Pursuant to NRS 47.130 and 47.150, Defendants respectfully request the Court take judicial notice of the following court proceedings in the Eighth Judicial District and Nevada Supreme Court:

A. Clark County Case No. A-17-750520-C, consolidated with A-17-754013-C, specifically, the original complaint on file therein, and the Order granting summary judgment to Defendants; and,

B. Nev. Sup. Ct. Case No. 77810, specifically, the Docketing Statement and the Order Reinstating Briefing.

These court proceedings are at issue in the New Complaint, and because they are capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned, this Court may take judicial notice thereof upon request of a party. *See* NRS 47.130 and 47.150. *See also Ainsworth v. Combined Ins. Co.*, 105 Nev. 237, 267 n.20, 774 P.2d 1003, 1024 (1989) (“We may appropriately take judicial notice of the public record of the state district court proceedings, and we have done so.”) (citing *Jory v. Bennight*, 91 Nev. 763, 542 P.2d 1400 (1975); *Cannon v. Taylor*, 88 Nev. 89, 493 P.2d 1313 (1972)) (where Nevada Supreme Court took judicial notice and reviewed “pertinent orders entered by the district court”).

**III.****STATEMENT OF FACTS**

Defendants present the following material factual allegations as set forth in the New Complaint:

1. Plaintiffs allege that Mary Curtis (“Ms. Curtis”) was born on December 19, 1926. (New Compl. at ¶61).

2. They allege Ms. Curtis was admitted at Life Care Center of South Las Vegas, a nursing home, for subacute and memory care on March 2, 2016. (Id. at ¶¶62, 63).

3. They allege that staff there allowed Ms. Curtis to fall and caused her on March 7, 2016 to ingest a dose of morphine prescribed to another resident, even though she was not

1 prescribed morphine. (Id. at ¶¶67-68).

2 4. They allege Defendants wrongly retained Ms. Curtis at Life Care Center of South  
3 Las Vegas after she ingested the morphine until March 8, 2016. (Id. at ¶69).

4 5. They allege that Ms. Curtis was transported to Sunrise Hospital, then to Nathan  
5 Adelson Hospice on March 11, 2016, and that Ms. Curtis died shortly thereafter. (Id. at ¶¶69,70).

6 6. They allege that Ms. Curtis' death certificate states the cause of death as morphine  
7 intoxication. (Id. at ¶71).

8 7. They allege Defendants' failures and conscious disregard of Ms. Curtis' life,  
9 health, and safety caused Ms. Curtis to suffer pain, injury, mental anguish, and death. (Id. at ¶78).

10 8. They allege Defendants' actions were abuse under NRS 41.1395(4)(a) and neglect  
11 under NRS 41.1395(c). (Id. at ¶79).

12 9. They allege that Defendants' actions were willful and deliberately malicious,  
13 oppressive, reckless, and fraudulent, thereby entitling Plaintiffs to an award of punitive damages.  
14 (Id. at ¶¶83, 84).

15 10. They allege that a contract existed between Ms. Curtis and Life Care Center of  
16 South Las Vegas. (Id. at ¶86).

17 11. They allege that Ms. Curtis' vulnerability and dependence on Defendants gave rise  
18 to a special relationship between her and Life Care Center of South Las Vegas, and this means that  
19 she had a special reliance on them. (Id. at ¶¶88, 89).

20 12. They allege Defendants betrayed this relationship and it "goes beyond the bounds  
21 of ordinary liability for breach of contract and results in tortious liability for its perfidy." (Id. at  
22 ¶90).

23 13. They allege Defendants' perfidy constitutes malice, oppression, recklessness, and  
24 fraud, thereby justifying punitive damages. (Id. at ¶91).

25 14. Plaintiffs allege that Defendants are not "providers of health care" as defined in  
26 NRS 41A.017, but they nonetheless attach an "expert affidavit" pursuant to NRS 41A.071 to the  
27 New Complaint. (Id. at ¶12).

28 The following facts were alleged in Plaintiffs' complaint from A-17-750520-C (the

1 “Original Complaint”), *Estate of Mary Curtis, deceased; Laura Latrenta, as Personal*  
2 *Representative of the Estate of Mary Curtis; and Laura Latrenta, individually vs. South Las Vegas*  
3 *Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of*  
4 *Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers of America;*  
5 *Bina Hribik Portello, Administrator, and Carl Wagner, Administrator.*

6 15. Plaintiffs alleged that Mary Curtis (“Ms. Curtis”) was born on December 19, 1926.  
7 (**Exhibit 1**, the Original Compl. at ¶12).

8 16. They alleged that staff there allowed Ms. Curtis to fall and caused her on March 7,  
9 2016 to ingest a dose of morphine prescribed to another resident, even though she was not  
10 prescribed morphine. (Id. at ¶¶13, 17, 18).

11 17. They alleged Defendants wrongly retained Ms. Curtis at Life Care Center of South  
12 Las Vegas after she ingested the morphine until March 8, 2016. (Id. at ¶19).

13 18. They alleged that Ms. Curtis was transported to Sunrise Hospital, then to Nathan  
14 Adelson Hospice on March 11, 2016, and that Ms. Curtis died shortly thereafter. (Id. at ¶¶19-20).

15 19. They alleged that Ms. Curtis’ death certificate states the cause of death as morphine  
16 intoxication. (Id. at ¶21).

17 20. They alleged Defendants’ failures and conscious disregard of Ms. Curtis’ life,  
18 health, and safety caused Ms. Curtis to suffer pain, injury, mental anguish, and death. (Id. at ¶22).

19 21. They alleged Defendants’ actions were abuse under NRS 41.1395(4)(a) and neglect  
20 under NRS 41.1395(c). (Id. at ¶23).

21 22. They alleged that Defendants’ actions were willful and deliberately malicious,  
22 oppressive, reckless, and fraudulent, thereby entitling Plaintiffs to an award of punitive damages.  
23 (Id. at ¶¶24, 27).

24 23. They alleged that a contract existed between Ms. Curtis and Life Care Center of  
25 South Las Vegas. (Id. at ¶46).

26 24. They alleged that Ms. Curtis’ vulnerability and dependence on Defendants gave  
27 rise to a special relationship between her and Life Care Center of South Las Vegas, and this means  
28 that she had a special reliance on them. (Id. at ¶¶48-49).

1           25.     They alleged Defendants' perfidy constitutes malice, oppression, recklessness, and  
2 fraud, thereby justifying punitive damages. (Id. at ¶51).

3           The following facts were found by the Court in A-17-750520-C (*Estate of Mary Curtis,*  
4 *deceased; Laura Latrenta, as Personal Representative of the Estate of Mary Curtis; and Laura*  
5 *Latrenta, individually vs. South Las Vegas Medical Investors, LLC dba Life Care Center of South*  
6 *Las Vegas f/k/a Life Care Center of Paradise Valley; South Las Vegas Investors Limited*  
7 *Partnership; Life Care Centers of America; Bina Hribik Portello, Administrator, and Carl*  
8 *Wagner, Administrator*) in its Order Granting Summary Judgment to Defendants:

9           26.     Ms. Curtis was a resident at Life Care Center of South Las Vegas fka Life Care  
10 Center of Paradise Valley (LCCPV) from March 2, 2016 through March 8, 2016. (**Exhibit 2,**  
11 Order Granting Defendants' Motion for Summary Judgment, A-17-750520-C, consolidated with  
12 A-17-754013-C, at pp. 2-3).

13           27.     On March 7, 2016, Ersheila Dawson, LPN administered to Ms. Curtis a dose of  
14 morphine prescribed to another resident. (Id.)

15           28.     On March 8, 2016, Ms. Curtis was transferred from LCCPV to Sunrise Hospital.  
16 (Id.).

17           29.     On March 11, 2016 Ms. Curtis passed away. (Id.).

18           30.     On February 2, 2017, Plaintiffs filed their complaint in Case No. A-17-750520-C  
19 against Defendants South Las Vegas Medical Investors LLC dba Life Care Center of South Las  
20 Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers  
21 of America, Inc., and Carl Wagner. The Complaint included causes of action for wrongful death,  
22 abuse/neglect of an older person, and bad faith tort. The Complaint did not include an affidavit of  
23 merit. (Id.).

24           The Court in Case No. A-17-750520-C (*Estate of Mary Curtis, deceased; Laura Latrenta,*  
25 *as Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, individually vs.*  
26 *South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care*  
27 *Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers of*  
28 *America; Bina Hribik Portello, Administrator, and Carl Wagner, Administrator*) concluded:

1           31). Defendants brought their Motion for Summary Judgment on the basis that although  
2 Plaintiffs' causes of action are titled abuse/neglect of an older person, wrongful death, and bad  
3 faith tort, the claims are actually professional negligence covered under NRS 41A.015. Further,  
4 since the claims involve professional negligence, there is an affidavit of merit requirement  
5 pursuant to NRS 41A.071 and since an affidavit was not attached to the complaint, summary  
6 judgment should be granted. Plaintiffs state that by filing such a Motion after two years of  
7 litigation, the Defendants have waived their objection to the affidavit requirement but more  
8 importantly, the claim is one of abuse/neglect of an older person and not professional negligence  
9 under Chapter 41A, which does not require an expert affidavit. (Id. at pp. 2-3).

10           32). NRS 41A.015 defines professional negligence as a failure of a provider of  
11 healthcare, in rendering services, to use the reasonable care, skill or knowledge ordinarily used  
12 under similar circumstances by similarly trained and experienced health care professionals. NRS  
13 41A.071 provides that for any action sounding in professional negligence, there is a requirement  
14 of an affidavit of merit. Without such an affidavit, the case must be dismissed. If a complaint for  
15 professional negligence fails to have attached thereto an affidavit of merit, the complaint is void  
16 *ab initio*. *Washoe Medical Center v. Second Dist. Court*, 122 Nev. 1298, 1300 (2006). (Ex. 2 at  
17 pp. 3-4).

18           33). The Court does not find the claim that Defendants waived the affidavit requirement  
19 by filing their Motion after two years of litigation. If Plaintiffs' claims are based upon professional  
20 negligence, there is an affidavit requirement. Such a complaint without an affidavit must be  
21 dismissed since it is void *ab initio*. Additionally, given that the expert affidavit requirement is  
22 jurisdictional, it cannot be waived. *See, e.g., Jasper v. Jewkes*, 50 Nev. 153, 254 P. 698  
23 (1927); *Liberty Mut. v. Thomasson*, 317 P.3d 831 (2014); *Padilla Constr.Co. v. Burley*, 2016 Nev.  
24 App. Unpub. LEXIS 10 (May 10, 2016); *Finley v. Finley*, 65 Nev. 113 (1948). (Ex. 2 at p. 4).

25           34). Defendants contend that they are entitled to the protections of Chapter 41A because  
26 their liability is derivative of its nursing staff. In *Deboer v. Senior Bridges at Sparks Family*  
27 *Hospital*, 282 P.3d 727 (Nev. 2012), the Supreme Court distinguished between medical  
28 malpractice and traditional negligence on the basis of the provision of medical services provided

1 to the plaintiff, *i.e.*, medical diagnosis, judgment, or treatment. *Id.* at 732. (Ex. 2 at p. 4).

2 35). The Court finds that Defendants' liability is based on the acts (LPN Dawson's  
3 administration of morphine to Mary Curtis) and omissions (failure to monitor Mary Curtis  
4 thereafter) of its nursing staff. LPN Dawson and the other nursing staff monitoring Ms. Curtis are  
5 providers of health care pursuant to NRS 41A.017. Said acts and omissions are a provision of  
6 medical services which give rise to Defendants' liability. Therefore, the provisions of NRS  
7 Chapter 41A apply. (*Id.* at pp. 4-5).

8 36). More fundamental to the determination by the Court is whether or not the  
9 allegations are for general negligence resulting from non-medical services or for negligent medical  
10 treatment which calls for an affidavit of merit. *Szymborski v. Spring Mountain Treatment Ctr.*, 403  
11 P.3d 1280 (Nev. 2017). *Szymborski* holds that a plaintiff's complaint can be based upon both  
12 general negligence and professional negligence. The Nevada Supreme Court stated that the Court  
13 is to look beyond the title to a particular cause of action and determine whether or not the claims  
14 actually involve professional negligence or general negligence. *Id.* at 1284. (Ex. 2 at p. 5).

15 37). 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. NRS 41.1395. As stated in *Szymborski* and *Egan v. Chambers*, 299 P.3d 364,  
19 366 (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). (Ex. 2 at p. 5).

22 38). Although Plaintiffs use language from NRS 41.1395 in their complaint, the  
23 underlying basis of the complaint is for medical malpractice. *See* Complaint, ¶18. Plaintiffs allege  
24 that despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for proper  
25 medication administration, they, on March 7, 2016, administered to her a dose of morphine  
26 prescribed to another resident. Ms. Curtis was not prescribed morphine. *See* Complaint, ¶19. (Ex.  
27 2 at p. 5).

28 39). Plaintiffs further allege that, despite Defendants' notice and knowledge that they



1 had wrongly administered morphine to Ms. Curtis, they failed to act timely upon that discovery,  
2 instead retaining Ms. Curtis as a resident until March 8, 2016. (Id. at p. 6).

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

10 41). 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*, 403 P.3d at 1288. This Court finds persuasive the holding in *Brown v. Mt.*  
14 *Grant Gen. Hosp*, 3:12-CV-00461-LRH, 2013 WL 4523488 (D. Nev. Aug.26, 2-13), which sets  
15 forth the following:

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

28 *Brown*, at \*8. (Ex. 2 at p. 6).

42). Plaintiffs' Complaint is grounded in and involves medical treatment and the  
standard of care (administration of morphine and the failure to monitor). Thus, the gravamen of  
the Complaint, and all claims therein, sounds in professional negligence, which requires an  
affidavit. (Id. at pp. 6-7).

1 The Court in Case No. A-17-750520-C (*Estate of Mary Curtis, deceased; Laura Latrenta,*  
2 *as Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, individually vs.*  
3 *South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care*  
4 *Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers of*  
5 *America; Bina Hribik Portello, Administrator, and Carl Wagner, Administrator*) ordered that:

6 43). Defendants South Las Vegas Medical Investors LLC dba Life Care Center of South  
7 Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care  
8 Centers of America, Inc., and Carl Wagner's Motion for Summary Judgment is hereby  
9 GRANTED. (Ex. 2 at p. 7).

10 44). There is no just reason for delay and that the entry of judgment shall be entered for  
11 Defendants. (Id.).

12 Plaintiffs' Docketing Statement in Nev. Sup. Ct. Case No. 77810 argues that:

13 45). The District Court "eviscerated" NRS 41.1395 when it expanded the meaning of  
14 "provider of health care" in NRS 41A.017 to include the Life Care Respondents. (**Exhibit 3**, Dktg.  
15 Stmt., Nev. Sup. Ct. Case No. 77810, at p. 7).

16 46). No expert affidavit was required "even if some of the claims were considered  
17 professional negligence claims." (Id. at p. 8).

18 47). Even though the Life Care Respondents "raised noncompliance with NRS 41A.071  
19 as an affirmative defense," they "litigated the case vigorously for years," and this caused  
20 Appellants to suffer prejudice because the District Court did not order that the Life Care  
21 Respondents had waived the defense. (Id. at pp. 8-9).

22 48). Even if some of the claims were medical malpractice claims, the District Court  
23 erred and should have severed the professional negligence claims from the negligence claims. (Id.  
24 at pp. 9-10).

25 49). The Nevada Supreme Court ordered briefing reinstated. (**Exhibit 4**, Order  
26 Reinstat'g Brief'g, Apr. 4, 2019).

27 ///

28 ///

## IV.

**LEGAL ARGUMENT**

Claim preclusion bars this action. Therefore, this Court must dismiss the New Complaint with prejudice.

**A. Legal Standard for Dismissal of Complaint**

Under NRCP 12(b)(5), a complaint must be dismissed for failure to state a claim where it appears that a plaintiff can prove no set of facts which, if accepted by the trier of fact as true, would entitle him to relief. *Simpson v. Mars*, 113 Nev. 188, 929 P.2d 966 (1997). However, dismissal is appropriate where the allegations, taken at “face value” and construed favorably in the nonmoving party’s behalf, fail to state a cognizable claim for relief. *Morris v. Bank of America*, 110 Nev. 1274, 886 P.2d 454 (1994). “[I]f a pleader cannot allege definitively and in good faith the existence of an essential element of his claim, it is difficult to see why this basic deficiency should not be exposed at the point of minimum expenditure of time and money by the parties and the court.” *Danning v. Lum’s Inc.*, 86 Nev. 868, 870, 478 P.2d 166, 167 (1970). In such cases, a complaint is properly dismissed for a plaintiff’s failure to state a claim upon which relief can be granted. NRCP 12(b)(5); *Danning*, 86 Nev. at 869, 478 P.2d at 166-67. In ruling on a motion to dismiss, a court may take into account all matters of public record, orders, items present in the records of the case, and any exhibits attached to the complaint. *Breliant v. Preferred Equities Corporation*, 109 Nev. 842, 847, 858 P.2d 1258 (1993).

**B. This Court Must Dismiss the New Complaint Because Plaintiffs’ Claim Therein were Adjudicated and Disposed of via Summary Judgment and are Currently on Appeal in the Nevada Supreme Court.**

“Claim preclusion—or res judicata, as it formerly was called—is a policy-driven doctrine, designed to promote finality of judgments and judicial efficiency by requiring a party to bring all related claims against its adversary in a single suit, on penalty of forfeiture.” *Boca Park Marketplace Syndications Grp. v. HIGCO, Inc.*, 407 P.3d 761, 763 (Nev. 2017) (citing *Weddell v. Sharp*, 350 P.3d 80, 83-85 (Nev. 2015)). The claim preclusion doctrine allows a party to obtain finality by preventing another party in the same suit from filing another suit that is based on the

1 same set of facts that were present in the initial suit. *See Five Star Capital Corp.*, 194 P.3d at 712.

2 In Nevada, claim preclusion applies whenever:

3 (1) there has been a valid, final judgment in a previous action;

4 (2) the subsequent action is based on the same claims or any part of them that were  
5 or could have been brought in the first action; and

6 (3) the parties or their privies are the same in the instant lawsuit as they were in the  
7 previous lawsuit, *or* the defendant can demonstrate that he or she should have been  
8 included as a defendant in the earlier suit and the plaintiff fails to provide a ‘good  
9 reason’ for not having done so.

10 *Weddell*, 350 P.3d at 86. A valid, final judgment that fails to comply with the minimum standards  
11 of due process, in which a non-moving party did not have a full and fair opportunity to litigate his  
12 or her claim will not be given a preclusive effect. *Clements v. Airport Auth. Of Washoe County*, 69  
13 F.3d., 321, 327 (9th Cir. 1995). Summary judgment is a valid, final judgment when it “disposes of  
14 all the issues presented in the case, and leaves nothing for the future consideration of the court,  
15 except for post-judgment issues such as attorney's fees and costs.” *Lee v. GNLV Corp.*, 116 Nev.  
16 424, 426, 996 P.2d 416, 417 (2000). “This court determines the finality of an order or judgment by  
17 looking to what the order or judgment actually *does*, not what it is called.” *Valley Bank v.*  
18 *Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994).

19 The New Complaint satisfies each of the elements for claim preclusion. First, the Order  
20 granting Defendants summary judgment (Ex. 2) states that, “It is further determined and ordered  
21 pursuant to Nev. R. Civ. P. 54(b) that there is no just reason for delay and that the entry of  
22 judgment shall be entered for Defendants.” (Ex. 2 a p. 7). Thus, no claims remain against  
23 Defendants at the district court, and the matter is proceeding on course through its appeal.  
24 Second, as evidenced by the sameness of the material factual allegations, and even a mere cursory  
25 review of the Original Complaint and the New Complaint, this lawsuit is based on the same claims  
26 or any part of them that were or could have been brought in the first action. Specifically,  
27 Plaintiff’s original action pleaded four causes of action: elder abuse/fraud, wrongful death by  
28 estate, wrongful death by individual, and tortious bad faith. (See Ex. 1). Plaintiff’s new action

1 pleads two causes of action: elder abuse/fraud, and tortious bad faith. (See New Compl.). Both  
2 complaints rely on many of the same facts and alleged wrongful conduct of Defendants, allegedly  
3 leading to the death of Ms. Curtis by morphine intoxication, as set forth in the Statement of Facts,  
4 *supra*. That additional factual allegations have been added or removed is of no moment. See *Five*  
5 *Star Capital Corp.*, 124 Nev. at 1058, 194 P.3d at 715 (“As explained above, claim preclusion  
6 applies to prevent a second suit based on all grounds of recovery that were or could have been  
7 brought in the first suit. Since the second suit was based on the same facts and alleged wrongful  
8 conduct of Ruby as in the first suit, the breach of contract claim could have been asserted in the  
9 first suit. As a result, claim preclusion applies . . .”). Here, too, the additional factual allegations,  
10 *especially as to inclusion of an NRS 41A.071 affidavit*, could have been asserted in the first suit.  
11 That Plaintiffs elected not to do so is of their making, not Defendants. Third, and finally, the  
12 parties in both actions are the same, with the exception of Plaintiffs’ non-inclusion of Bina Hribik  
13 Portello, who was dismissed from the Original action. (See Exs. 1 and 2).

14 As set forth in the Restatement (Second) of Judgments, the purposes of claim preclusion  
15 are “based largely on the ground that fairness to the defendant, and sound judicial administration,  
16 require that at some point litigation over the particular controversy come to and end . . . especially  
17 if the plaintiff has failed to avail himself of opportunities to pursue his remedies in the first  
18 proceeding . . .” Restatement (Second) of Judgments section 19, comment a. With these purposes  
19 in mind, and the elements of claim preclusion in Nevada as set forth above, it is plainly evident  
20 that no set of facts as set forth in the New Complaint can entitle Plaintiffs to relief in a new action.  
21 Finally, crystallizing the wastefulness of this new action is the fact that the basis of Plaintiffs  
22 appeal is the very same basis as the new action. See Exs. 3 and 4 (docketing statement and order  
23 reinstating briefing schedule).

24 Simply, Plaintiffs cannot file multiple lawsuits against the same defendants when they  
25 don’t like the outcome of the original suit.

26 ///

27 ///

28 ///

1 **C. CONCLUSION**

2 Based on the foregoing, Defendants respectfully request the Court grant this Motion to  
3 Dismiss.

4 DATED this 3rd day of May, 2019

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By /s/ S. Brent Vogel

8 S. BRENT VOGEL

9 Nevada Bar No. 006858

10 ERIN E. JORDAN

11 Nevada Bar No. 10018

12 6385 S. Rainbow Boulevard, Suite 600

13 Las Vegas, Nevada 89118

14 Tel. 702.893.3383

15 *Attorneys for Defendants South Las Vegas*

16 *Medical Investors LLC dba Life Care Center of*

17 *South Las Vegas fka Life Care Center of Paradise*

18 *Valley, South Las Vegas Investors, LP, Life Care*

19 *Centers of America, Inc., Carl Wagner*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of May, 2019, a true and correct copy of **DEFENDANTS SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba LIFE CARE CENTER OF SOUTH LAS VEGAS fka LIFE CARE CENTER OF PARADISE VALLEY'S; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP'S; LIFE CARE CENTERS OF AMERICA, INC.'S; and CARL WAGNER'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Michael D. Davidson, Esq.  
Matthew T. Dushoff, Esq.  
KOLESAR & LEATHAM  
400 S. Rampart Blvd., Suite 400  
Las Vegas, NV 89145  
Tel: 702.362.7800  
Fax: 702.362.9472  
[mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)  
[mdushoff@klnevada.com](mailto:mdushoff@klnevada.com)  
*Attorneys for Plaintiffs*

By /s/ Johana Whitbeck  
an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

# **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**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input checked="" type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <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

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)

-and-

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

**WILKES & MCHUGH, P.A.**

15333 N. Pima Rd., Ste. 300

Scottsdale, Arizona 85260

Telephone: (602) 553-4552

Facsimile: (602) 553-4557

E-Mail: [Melanie@wilkesmchugh.com](mailto: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

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

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

5  
6 **GENERAL ALLEGATIONS**

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

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

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

21 4. Plaintiffs are informed and believe and thereon allege that at all relevant times  
22 Defendants Life Care Centers of America, Inc.; South Las Vegas Investors Limited Partnership;  
23 South Las Vegas Medical Investors, LLC; and Does 1 through 25, and each of them, were and  
24 are owners, operators, and managing agents of South Las Vegas Medical Investors, LLC dba  
25 Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, such that they  
26 controlled the budget for said Defendant which impacted resident care, collected accounts  
27 receivable, prepared audited financial statements, contracted with various vendors for services,  
28 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.

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

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

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

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

11           23. The actions of Defendants and each of them were abuse under N.R.S. §  
12 41.1395(4)(a) and neglect under N.R.S. § 41.1395(4)(c).

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

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

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

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

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

1 39. Defendants had a duty to properly train and supervise their staff and employees to  
2 act with the level of knowledge, skill, and care of those in good standing in the community.

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **(Bad Faith Tort by the Estate of Mary Curtis against all Defendants)**

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

19 46. A contract existed between Mary Curtis and Life Care Center of South Las Vegas  
20 f/k/a Life Care Center of Paradise Valley.

21 47. The contract, like every contract, had an implied covenant of good faith and fair  
22 dealing.

23 48. Mary Curtis's vulnerability and dependence on Defendants created a special  
24 relationship between her and Life Care Center of South Las Vegas f/k/a Life Care Center of  
25 Paradise Valley.

26 49. Mary Curtis's vulnerability and dependence on Defendants meant that she had a  
27 special reliance on Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise  
28 Valley.



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.

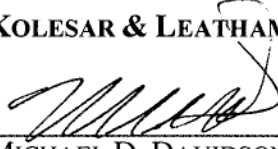
52. Wherefore, Plaintiffs pray for judgment against all Defendants and each of them as follows:

- 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-

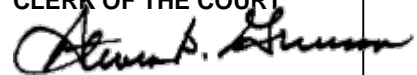
MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
*Pending*  
WILKES & MCHUGH, P.A.  
15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260

Attorneys for Plaintiffs

# **Exhibit 2**

ORIGINAL

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



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
AMANDA J. BROOKHYSER  
3 Nevada Bar No. 11526  
Amanda.Brookhyser@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
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  
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**

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

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

Brown, at \*8.

13           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:

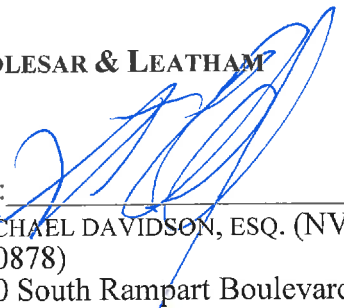
  
17 S. BRENT VOGEL, ESQ.  
Nevada Bar No. 006858  
18 AMANDA J. BROOKHYSER, ESQ.  
Nevada Bar No. 011526  
19 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118

20 *Attorneys for Life Care Defendants*  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Approved as to form by:

**KOLESAR & LEATHAM**

By:   
MICHAEL DAVIDSON, ESQ. (NV Bar No. 000878)  
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 Plaintiffs*

Approved as to form and content by:

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

By: \_\_\_\_\_  
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*

1 Approved as to form by:

2

3 **KOLESAR & LEATHAM**

4

5 By: \_\_\_\_\_  
6 MICHAEL DAVIDSON, ESQ. (NV Bar No.  
7 000878)  
8 400 South Rampart Boulevard, Suite 400  
9 Las Vegas, Nevada 89145

10 -and-

11 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
12 Arizona Bar No. 022825  
13 **WILKES & MCHUGH, P.A.**  
14 15333 N. Pima Rd., Ste. 300  
15 Scottsdale, Arizona 85260

16 *Attorneys for Plaintiffs*

17

18

19

20

21

22

23

24

25


26

27

28

Approved as to form and content by:

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

By:  \_\_\_\_\_  
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*

# **Exhibit 3**

**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. A750520

**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  
400 S. Rampart Blvd, Suite 400  
Las Vegas, NV 89145  
(702)362-7800  
*Attorney for Appellants*

Melanie L. Bossie, Esq. - *Pro Hac Vice*  
Wilkes & McHugh, P.A.  
15333 N. Pima Road, Suite 300  
Scottsdale, AZ 85260  
(602) 553-4552  
*Attorney for Appellants*

Bennie Lazzara, Jr., Esq.- *Pro Hac Vice*  
Wilkes & McHugh, P.A.  
One North Dale Mabry Highway, Suite 700  
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))

- *Szyborski 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 *Szyborski* 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 *Szyborski*, 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

///

///

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

///

///

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.

///

(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

///

///

///

///

///

///

///

## 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 24<sup>th</sup> 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

*Attorneys for Respondent*

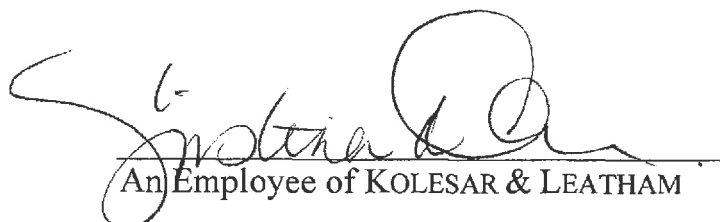
**Israel L. Kunin, Esq.**

**KUNIN LAW GROUP**

3551 East Bonanza Rd # 110

Las Vegas, Nevada 89110

*Settlement Judge*

  
An Employee of KOLESAR & LEATHAM

# **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**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input checked="" type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <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

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Telephone: (702) 362-7800  
Facsimile: (702) 362-9472  
E-Mail: [mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice Pending*  
**WILKES & MCHUGH, P.A.**  
15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260  
Telephone: (602) 553-4552  
Facsimile: (602) 553-4557  
E-Mail: [Melanie@wilkesmchugh.com](mailto: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

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

5 **GENERAL ALLEGATIONS**

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

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

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

20 4. Plaintiffs are informed and believe and thereon allege that at all relevant times  
21 Defendants Life Care Centers of America, Inc.; South Las Vegas Investors Limited Partnership;  
22 South Las Vegas Medical Investors, LLC; and Does 1 through 25, and each of them, were and  
23 are owners, operators, and managing agents of South Las Vegas Medical Investors, LLC dba  
24 Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, such that they  
25 controlled the budget for said Defendant which impacted resident care, collected accounts  
26 receivable, prepared audited financial statements, contracted with various vendors for services,  
27 and provided direct oversight for said Defendants in terms of financial and patient care  
28 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.

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

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

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

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

11           23.     The actions of Defendants and each of them were abuse under N.R.S. §  
12 41.1395(4)(a) and neglect under N.R.S. § 41.1395(4)(c).

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

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

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

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

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

#### FOURTH CAUSE OF ACTION

**(Bad Faith Tort by the Estate of Mary Curtis against all Defendants)**

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



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**

# **EXHIBIT 2**

**Amended Complaint for Damages filed on 05/01/2018**

# **EXHIBIT 2**



1 **ACOM**  
MICHAEL D. DAVIDSON, ESQ.  
2 Nevada Bar No. 000878  
**KOLESAR & LEATHAM**  
3 400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
4 Telephone: (702) 362-7800  
Facsimile: (702) 362-9472  
5 E-Mail: [mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)  
-and-  
6 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
**WILKES & MCHUGH, P.A.**  
7 15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260  
8 Telephone: (602) 553-4552  
Facsimile: (602) 553-4557  
9 E-Mail: [Melanie@wilkesmchugh.com](mailto:Melanie@wilkesmchugh.com)

10 Attorneys for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\*\*\*

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

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

25 Plaintiffs,

26 vs.

27 SAMIR SAXENA, M.D.; ANNABELLE  
SOCAOCO, N.P.; IPC HEALTHCARE, INC.  
aka THE HOSPITALIST COMPANY, INC.;  
28 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

1 Care Center of Paradise Valley.

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

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

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

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

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

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

27 12. Each Defendant, whether named or designated as Doe, was the agent, servant, or  
28 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

1 under N.R.S. § 41.1395(4)(c).

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

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

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

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

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

## 18 SECOND CAUSE OF ACTION

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

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

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

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

27 36. As a direct and proximate result of IPC Defendants' breaches Ms. Curtis died on  
28 11 March 2016 in Las Vegas, Nevada.



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.

21 44. Before her death, Ms. Curtis was a faithful, loving, and dutiful mother to her  
22 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.

**FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

55. As a direct and proximate result of IPC Defendants' malpractice and Ms. Curtis's resulting death, Laura Latrenta incurred damages of grief, sorrow, companionship, society, 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 1<sup>st</sup> 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*

24 WILKES & MCHUGH, P.A.

25 15333 N. Pima Rd., Ste. 300

26 Scottsdale, Arizona 85260

27 Attorneys for Plaintiffs

28

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 1<sup>st</sup> day of May, 2018, I caused to be served a true and correct copy of foregoing **AMENDED COMPLAINT FOR DAMAGES** in the following manner:

(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.

/s/ Kristina R. Cole

An Employee of KOLESAR & LEATHAM

# **EXHIBIT 3**

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

# **EXHIBIT 3**



1 **SODWOP**

2 MICHAEL D. DAVIDSON, ESQ.  
3 Nevada Bar No. 000878

4 **KOLESAR & LEATHAM**

5 400 South Rampart Boulevard, Suite 400  
6 Las Vegas, Nevada 89145  
7 Telephone: (702) 362-7800  
8 Facsimile: (702) 362-9472  
9 E-Mail: [mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)

10 -and-

11 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
12 **WILKES & MCHUGH, P.A.**

13 15333 N. Pima Rd., Ste. 300  
14 Scottsdale, Arizona 85260  
15 Telephone: (602) 553-4552  
16 Facsimile: (602) 553-4557  
17 E-Mail: [Melanie@wilkesmchugh.com](mailto:Melanie@wilkesmchugh.com)

18 Attorneys for Plaintiffs

19 **DISTRICT COURT**  
20 **CLARK COUNTY, NEVADA**

21 \* \* \*

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

26 Plaintiffs,

27 vs.

28 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 PORETELLO  
WITHOUT PREJUDICE**

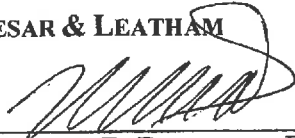
KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

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.  
Nevada Bar No. 000878  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145

-and-

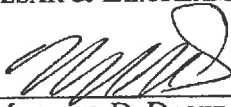
MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
Arizona Bar No. 022825  
WILKES & MCHUGH, P.A.  
15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260

*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  
Las Vegas, Nevada 89145  
-and-  
MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
WILKES & MCHUGH, P.A.  
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

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 \_\_\_ day of July, 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*  
Arizona Bar No. 022825  
WILKES & MCHUGH, P.A.  
15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260

*Attorneys for Plaintiff*

DATED this 12 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*

IT IS SO ORDERED.

DATED this 17 day of June, 2017.

Submitted by:  
KOLESAR & LEATHAM

DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

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



# **EXHIBIT 4**

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

# **EXHIBIT 4**

ORIGINAL

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



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
AMANDA J. BROOKHYSER  
3 Nevada Bar No. 11526  
Amanda.Brookhyser@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
9

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  
LATRENTA, as Personal Representative of the  
25 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

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

RECEIVED BY  
DEPT 17 ON  
DEC 03 2018

LEW  
IS

4820-2938-0481.1

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           4).     On March 11, 2016 Ms. Curtis passed away.

2           5).     On February 2, 2017, Plaintiffs filed their Complaint in CASE NO. A-17-750520-C  
3 against Defendants South Las Vegas Medical Investors LLC dba Life Care Center of South Las  
4 Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers  
5 of America, Inc., and Carl Wagner. The Complaint included causes of action for wrongful death,  
6 abuse/neglect of an older person, and bad faith tort. The Complaint did not include an affidavit of  
7 merit.  
8

9           6).     On April 14, 2017, Plaintiffs filed their Complaint in CASE NO. A-17-754013-C  
10 against Samir Saxena, MD. A Motion to Consolidate was filed on July 6, 2017 and was granted on  
11 August 24, 2017.  
12

### 13                                   CONCLUSIONS OF LAW

14           1).     Summary Judgment is appropriate when the pleadings and other evidence on file  
15 demonstrates no genuine issue as to any material fact remains and the moving party is entitled to  
16 judgment as a matter of law. Nev.R.Civ.Pro56(c); Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d  
17 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence  
18 and inferences in the light most favorable to the non-moving party. Torrealba v. Kesmetis, 124 Nev.  
19 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the non-moving party must  
20 present some specific facts to demonstrate that a genuine issue of material fact exists. Forouzan, Inc.  
21 v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012).  
22

23           2).     Defendants brought their Motion for Summary Judgment on the basis that although  
24 Plaintiffs' causes of action are titled abuse/neglect of an older person, wrongful death, and bad faith  
25 tort, the claims are actually professional negligence covered under NRS 41A.015. Further, since the  
26 claims involve professional negligence, there is an affidavit of merit requirement pursuant to NRS  
27 41A.071 and since an affidavit was not attached to the complaint, summary judgment should be  
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. Szymborski v. Spring Mountain Treatment Ctr., 403 P.3d 1280  
10 (Nev. 2017). Szymborski 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 Szymborski 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                   "Moreover, the Nevada Supreme Court has signaled a disapproval of artful  
17 pleading for the purposes of evading the medical malpractice limitations. For example, the Court concluded that medical malpractice claims extend  
18 to both intentional and negligence-based actions. Fierle, 219 P.2d at 913 n.  
19 8. This means that a plaintiff cannot escape the malpractice statutes damages  
20 or timeliness limitations by pleadings intentional tort battery, say instead of  
21 negligence. If the Nevada Supreme Court casts an jaundiced eye on the  
22 artful pleading of intentional torts, it is likely to view the artful pleading of  
23 elder abuse similarly. In the end, it seems, Nevada courts look to the nature  
24 of the grievance to determine the character of the action, not the form of the  
25 pleadings. Egan v. Chambers, 299 P.3d 364, 366 n.2 (Nev. 2013 (citing  
26 State Farm Mut. Auto. Ins. Co. v. Wharton, 88 Nev. 183, 495 P.2d 359, 361  
27 (1972))."

28           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

SM

15  
16 By:   
17 S. BRENT VOGEL, ESQ.  
18 Nevada Bar No. 006858  
19 AMANDA J. BROOKHYSER, ESQ.  
20 Nevada Bar No. 011526  
21 6385 S. Rainbow Boulevard, Suite 600  
22 Las Vegas, Nevada 89118

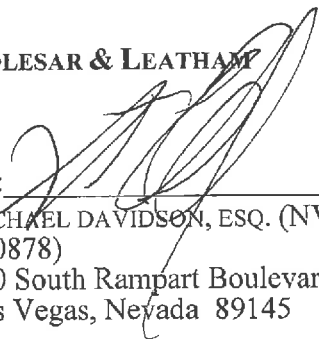
23 *Attorneys for Life Care Defendants*  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Approved as to form by:

**KOLESAR & LEATHAM**

By:   
MICHAEL DAVIDSON, ESQ. (NV Bar No.  
000878)  
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 Plaintiffs*


Approved as to form and content by:

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

By: \_\_\_\_\_  
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*

1 Approved as to form by:  
2  
3 **KOLESAR & LEATHAM**  
4  
5 By: \_\_\_\_\_  
6 MICHAEL DAVIDSON, ESQ. (NV Bar No.  
7 000878)  
8 400 South Rampart Boulevard, Suite 400  
9 Las Vegas, Nevada 89145  
10 -and-  
11 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
12 Arizona Bar No. 022825  
13 **WILKES & MCHUGH, P.A.**  
14 15333 N. Pima Rd., Ste. 300  
15 Scottsdale, Arizona 85260  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 *Attorneys for Plaintiffs*

Approved as to form and content by:  
  
**JOHN H. COTTON & ASSOCIATES, LTD.**  
  
By:   
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200  
  
*Attorneys for IPC Defendants*

# **EXHIBIT 5**

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

# **EXHIBIT 5**



1 S. BRENT VOGEL  
Nevada Bar No. 006858  
2 Brent.Vogel@lewisbrisbois.com  
AMANDA J. BROOKHYSER  
3 Nevada Bar No. 11526  
Amanda.Brookhyser@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
9

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 Defendant  
3  
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  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

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

By /s/ Johana Whitbeck  
an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

ORIGINAL

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



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
AMANDA J. BROOKHYSER  
3 Nevada Bar No. 11526  
Amanda.Brookhyser@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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  
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 Vs.  
28

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

4820-2938-0481.1

1 SAMIR SAXENA , M.D.,

2 Defendant

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

3  
4  
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

22 FINDINGS OF FACT

- 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



4). On March 11, 2016 Ms. Curtis passed away.

5). On February 2, 2017, Plaintiffs filed their Complaint in CASE NO. A-17-750520-C against Defendants South Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and Carl Wagner. The Complaint included causes of action for wrongful death, abuse/neglect of an older person, and bad faith tort. The Complaint did not include an affidavit of merit.

6). On April 14, 2017, Plaintiffs filed their Complaint in CASE NO. A-17-754013-C against Samir Saxena, MD. A Motion to Consolidate was filed on July 6, 2017 and was granted on August 24, 2017.

## CONCLUSIONS OF LAW

1). Summary Judgment is appropriate when the pleadings and other evidence on file demonstrates no genuine issue as to any material fact remains and the moving party is entitled to judgment as a matter of law. Nev.R.Civ.Pro56(c); Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the non-moving party must present some specific facts to demonstrate that a genuine issue of material fact exists. Forouzan, Inc. v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012).

2). Defendants brought their Motion for Summary Judgment on the basis that although Plaintiffs' causes of action are titled abuse/neglect of an older person, wrongful death, and bad faith tort, the claims are actually professional negligence covered under NRS 41A.015. Further, since the claims involve professional negligence, there is an affidavit of merit requirement pursuant to NRS 41A.071 and since an affidavit was not attached to the complaint, summary judgment should be

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. Szyborski 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.  
18 Nevada Bar No. 006858  
19 AMANDA J. BROOKHYSER, ESQ.  
20 Nevada Bar No. 011526  
21 6385 S. Rainbow Boulevard, Suite 600  
22 Las Vegas, Nevada 89118

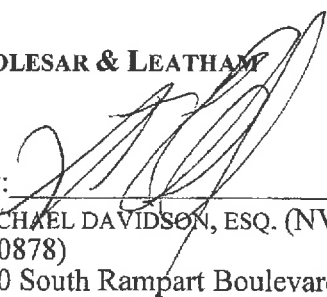
23 *Attorneys for Life Care Defendants*  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Approved as to form by:

**KOLESAR & LEATHAM**

By:

  
MICHAEL DAVIDSON, ESQ. (NV Bar No.  
000878)  
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 Plaintiffs*

Approved as to form and content by:

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

By:

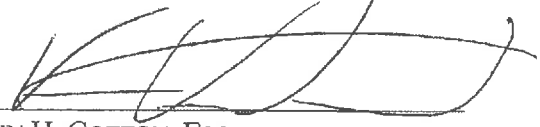
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*

1 Approved as to form by:  
2  
3 **KOLESAR & LEATHAM**  
4  
5 By: \_\_\_\_\_  
6 MICHAEL DAVIDSON, ESQ. (NV Bar No.  
7 000878)  
8 400 South Rampart Boulevard, Suite 400  
9 Las Vegas, Nevada 89145  
10 -and-  
11 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
12 Arizona Bar No. 022825  
13 **WILKES & MCHUGH, P.A.**  
14 15333 N. Pima Rd., Ste. 300  
15 Scottsdale, Arizona 85260  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 *Attorneys for Plaintiffs*

Approved as to form and content by:

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

By:   
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*

# **Exhibit 4**



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.

No. 77810

**FILED**

APR 04 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER REINSTATING BRIEFING**

Pursuant to NRAP 16, the settlement judge has filed a report with this court indicating that the parties were unable to agree to a settlement. Accordingly, we reinstate the deadlines for requesting transcripts and filing briefs. *See* NRAP 16.

Appellants shall have 14 days from the date of this order to file and serve a transcript request form. *See* NRAP 9(a).<sup>1</sup> Further, appellants shall have 90 days from the date of this order to file and serve the opening

---

<sup>1</sup>If no transcript is to be requested, appellants shall file and serve a certificate to that effect within the same time period. NRAP 9(a).

brief and appendix.<sup>2</sup> Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

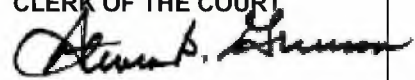
It is so ORDERED.

 C.J.

cc: Israel Kunin, Settlement Judge  
Wilkes & McHugh, P.A./Tampa  
Wilkes & McHugh, P.A./Scottsdale  
Kolesar & Leatham, Chtd.  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas

---

<sup>2</sup>In preparing and assembling the appendix, counsel shall strictly comply with the provisions of NRAP 30.



**OMD**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

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

**BOSSIE, REILLY & OH, P.C.**

15333 N. Pima Rd., Ste. 300

Scottsdale, Arizona 85260

Telephone: (602) 553-4552

Facsimile: (602) 553-4557

E-Mail: [Melanie@wilkesmchugh.com](mailto:Melanie@wilkesmchugh.com)

BENNIE LAZZARA JR., ESQ. - *Pro Hac Vice*

**WILKES & MCHUGH, P.A.**

1 N. Dale Mabry Hwy., Ste. 700

Tampa, Florida 33609

Telephone: (813) 873-0026

Facsimile: (813) 286-8820

Email: [bennie@wilkesmchugh.com](mailto:bennie@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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. VI

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS SOUTH LAS VEGAS  
MEDICAL INVESTORS, LLC DbA  
LIFE CARE CENTER OF SOUTH  
LAS VEGAS Fka LIFE CARE  
CENTER OF PARADISE  
VALLEY'S; SOUTH LAS VEGAS  
INVESTORS LIMITED  
PARTNERSHIP'S; LIFE CARE  
CENTERS OF AMERICA, INC.'S;  
AND CARL WAGNER'S MOTION  
TO DISMISS PLAINTIFFS'  
COMPLAINT PURSUANT TO NRCP  
12(b)(5)**

**Date: June 4, 2019**

**Time: 9:30 a.m.**

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

**PLAINTIFFS' OPPOSITION TO DEFENDANTS SOUTH LAS VEGAS MEDICAL INVESTORS, LLC DBA LIFE CARE CENTER OF SOUTH LAS VEGAS FKA LIFE CARE CENTER OF PARADISE VALLEY'S; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP'S; LIFE CARE CENTERS OF AMERICA, INC.'S; AND CARL WAGNER'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)**

Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, individually ("Plaintiffs"), by and through their attorneys at the law firms of Kolesar & Leatham, Bossie, Reilly & Oh, and Wilkes & McHugh, P.A., hereby respond in opposition to Defendants South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley's; South Las Vegas Investors Limited Partnership's; Life Care Centers of America, Inc.'s; and Carl Wagner's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5).

DATED this 13<sup>th</sup> day of May, 2019.

**KOLESAR & LEATHAM**

By /s/ Michael D. Davidson, Esq.

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

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
**BOSSIE, REILLY & OH, P.C.**  
15333 N. Pima Road, Suite 300  
Scottsdale, Arizona 85260

BENNIE LAZZARA, JR., ESQ.- *Pro Hac Vice*  
**WILKES & MCHUGH, P.A.**  
One North Dale Mabry Highway, Suite 700  
Tampa, Florida 33609

*Attorneys for Plaintiffs*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is Laura's second action against the Life Care Defendants based on their abuse and neglect of her mother Mary. Her first action was dismissed without prejudice and for lack of



jurisdiction. Neither dismissal without prejudice nor dismissal for lack of jurisdiction can cause claim preclusion. Claim preclusion therefore does not bar this action.

## II. FACTUAL AND PROCEDURAL BACKGROUND

The district court in Laura's first action against the Life Care Defendants filed an order in December 2018 denominated "Order Granting Defendants' Motion for Summary Judgment." Ex. 1, Order (Dec. 7, 2018). Therein the court made the following conclusions of law (among others):

- "Defendants brought their Motion for Summary Judgment on the basis that although Plaintiffs' causes of action are titled abuse/neglect of an older person, wrongful death, and bad faith tort, the claims are actually professional negligence covered under NRS 41A.015. Further, since the claims involve professional negligence, there is an affidavit of merit requirement pursuant to NRS 41A.071 . . . ." Ex. 1, Order, Conclusions of Law ¶ 2.
- "NRS 41A.071 provides that for any action sounding in professional negligence, there is a requirement of an affidavit of merit. Without such an affidavit, the case must be dismissed. If a complaint for professional negligence fails to have attached thereto an affidavit of merit, the complaint is void *ab initio*." *Id.* ¶ 3.
- "The Court does not find the claim that Defendants waived the affidavit requirement by filing their Motion after two years of litigation. If Plaintiffs' claims are based upon professional negligence, there is an affidavit requirement. Such a complaint without an affidavit must be dismissed since it is void *ab initio*." *Id.* ¶ 4.
- "Additionally, given that the expert affidavit requirement is jurisdictional, it cannot be waived. See, e.g., *Jasper v. Jewkes*, 50 Nev. 153, 254 P. 698 (1927); *Liberty Mut. v. Thomasson*, 317 P.3d 831 (2014); *Padilla Constr. Co. v. Burley*, 2016 Nev. App. Unpub. LEXIS 10 (May 10, 2016); *Finley v. Finley*, 65 Nev. 113 (1948)." *Id.*<sup>1</sup>
- "Although Plaintiffs use language from NRS 41.1395 in their complaint, the underlying basis of the complaint is for medical malpractice. See Complaint, ¶18. Plaintiffs allege that despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for proper medication administration, they, on March 7, 2016, administered to her a dose of morphine prescribed to another resident. Ms. Curtis was not prescribed morphine. See Complaint, ¶19." Ex. 1, Order, Conclusions of Law ¶ 9.
- "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." *Id.* ¶ 10.
- "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. . . . As the gravamen of Plaintiffs' allegations

---

<sup>1</sup> This conclusion and these citations the district court copied from Life Care's reply in support of its motion for summary judgment. Compare *id.*, with Ex. 2, Defs.' Reply to Pls.' Opp'n to Mot. Summ. J. 3.

sounds in professional negligence, NRS Chapter 41A applies to all of Plaintiffs' claims to the exclusion of NRS 41.1395." *Id.* ¶ 11.

- "Plaintiffs' Complaint is grounded in and involves medical treatment and the standard of care (administration of morphine and the failure to monitor). Thus, the gravamen of the Complaint, and all claims therein, sounds in professional negligence, which requires an affidavit." *Id.* ¶ 13.

Laura had not filed with her complaint an affidavit of merit. The district court therefore ordered granting Life Care's motion for summary judgment, adding that "pursuant to Nev. R. Civ. P. 54(b), this is a final judgment and there is no just reason for delay of entry of judgment in favor of Defendants." *Id.* at 7.

### III. LEGAL ARGUMENT

#### A. Claim preclusion does not bar Laura's present action because her first action was terminated by a dismissal without prejudice.

Claim preclusion arises only when "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054 (2008) (footnote omitted).<sup>2</sup> Now "the requirement of a valid final judgment does not necessarily require a determination on the merits, [but] it does not include a case that was dismissed without prejudice or for some reason (jurisdiction, venue, failure to join a party) that is not meant to have preclusive effect." *Five Star Capital Corp.*, 124 Nev. at 1054 n.27. For example, in *Trustees of Hotel & Restaurant Employees & Bartenders International v. Royco, Inc.*, the Nevada Supreme Court reversed summary judgment granted to defendant in a second action where the first action had ended by a dismissal without prejudice. 101 Nev. 96 (1985). Observing that "[a] dismissal without prejudice is not a final adjudication on the merits," the court concluded that "res judicata does not preclude [plaintiffs'] present action because a final judgment on the merits was never entered in the former action." *Id.* at 98.

---

<sup>2</sup> The court has since modified this test to embrace nonmutual claim preclusion, see *Weddell v. Sharp*, 350 P.3d 80, 85 (Nev. 2015), but nonmutuality is not at issue here.



1 Our legislature has mandated that if a plaintiff files a professional negligence action  
2 without an affidavit of merit then “the district court shall dismiss the action, without prejudice.”  
3 NRS 41A.071. The word *shall* “is mandatory and does not denote judicial discretion.” *Washoe*  
4 *Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1303 (2006). So “[t]he Legislature’s choice of  
5 the words ‘shall dismiss’ . . . indicates that the Legislature intended that the court have no discretion  
6 with respect to dismissal and that a complaint filed without an expert affidavit would be void and  
7 must be automatically dismissed.” *Id.* And so “when a plaintiff has failed to meet NRS 41A.071’s  
8 expert affidavit requirement, the complaint is void ab initio and must be dismissed, without  
9 prejudice.” *Id.* at 1306.

10 Here, Laura filed her complaint in her first action without an affidavit of merit. The district  
11 court, after scrutinizing the complaint, concluded that the gravamen of Laura’s allegations sounded  
12 in professional negligence and therefore required an affidavit. *See supra* Part II. It therefore had  
13 no discretion: it had to dismiss Laura’s action without prejudice. But a dismissal without prejudice  
14 is not a valid final judgment for claim preclusion purposes. So claim preclusion does not bar  
15 Laura’s present action.

16 The wrinkle here, to which Life Care may point in urging preclusive effect despite the  
17 legislature’s mandate, is that the district court styled its order dismissing Laura’s action as one  
18 granting Life Care’s motion for summary judgment. But an order’s name is irrelevant; what it does  
19 is what matters. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445 (1994) (“This court  
20 determines the finality of an order or judgment by looking to what the order or judgment actually  
21 *does*, not what it is called.”). The court had no discretion to grant summary judgment, so its  
22 order—regardless of its title—can only be a dismissal without prejudice. Indeed, the court  
23 acknowledged in its order the necessity of dismissal, concluding that “[w]ithout such an affidavit  
24 [of merit], the case must be dismissed” and that “[s]uch a complaint without an affidavit must be  
25 dismissed since it is void *ab initio*.” Ex. 1, Order, Conclusions of Law ¶¶ 3–4. So despite its title  
26 the order was a dismissal without prejudice.

27 But if insistence on the title of summary judgment be maintained, no different result arises,  
28 for summary judgment may be without prejudice. For example, in *International Longshoremen’s*

1 *Ass'n v. Virginia International Terminals, Inc.*, the federal district court recognized that when a  
2 plaintiff fails to exhaust required administrative remedies then “the dismissal, whether on summary  
3 judgment or motion to dismiss, may be without prejudice.” 932 F. Supp. 761, 764 (E.D. Va.  
4 1996).<sup>3</sup> So even if effect be given to the order’s title the summary judgment is still without  
5 prejudice, as (given Laura’s failure to supply an affidavit) under NRS 41A.071 it could not be with  
6 prejudice.

7 In any event, the court in a second action can regardless of the recitations in the order in  
8 the first action determine the order’s true effect on the second action. For example, in *Saylor v.*  
9 *Lindsley*, the district court dismissed “with prejudice” the first action, a stockholder’s derivative  
10 action, because of plaintiff’s failure to obey the court’s order that he post a security-for-costs bond.  
11 391 F.2d 965, 967 (2d Cir. 1968). The district court then dismissed a second derivative action  
12 (brought by another stockholder) on res judicata grounds. *Id.* The Second Circuit reversed,  
13 holding that, although the first court had made its dismissal “with prejudice,” that dismissal was  
14 in truth “not a disposition ‘on the merits’ for the purpose of res judicata, and is not a bar to the  
15 timely commencement of a new action by another stockholder.” *Id.* at 968. Even if, then, the  
16 district court in Laura’s first action had intended that its order purporting to grant summary  
17 judgment be with prejudice and thus on the merits, this Court may look behind the order’s words  
18 and recognize that the disposition was not in fact on the merits (because under NRS 41A.071 it  
19 could not be) for purposes of the second action and claim preclusion. Regardless, then, what the  
20 district court in the first action called its order or intended thereby, it in fact effected a dismissal  
21 without prejudice and so, since a dismissal without prejudice is not a valid final judgment for claim  
22 preclusion purposes, claim preclusion does not bar Laura’s present action.

23 **B. Claim preclusion does not bar Laura’s present action because her first action**  
24 **was terminated for lack of jurisdiction.**

25 “[A] medical malpractice complaint filed without a supporting medical expert affidavit is  
26 void ab initio, meaning it is of no force and effect.” *Washoe Med. Ctr.*, 122 Nev. at 1304. And  
27

---

28 <sup>3</sup> See also Defs.’ Mot. Dismiss 2 (stating that Laura’s first complaint was “dismissed via summary judgment”).



1 “[b]ecause a complaint that does not comply with NRS 41A.071 is void ab initio, it does not legally  
2 exist.” *Id.* The action seemingly initiated by such a complaint thus in fact never commences, as  
3 the Nevada Supreme Court has recognized: “because the plaintiffs’ complaint was dismissed for  
4 failure to comply with NRS 41A.071, the complaint never legally existed, and because the  
5 complaint never existed, the action was never ‘commenced’ as defined by NRCP 3.” *Wheble v.*  
6 *Eighth Jud. Dist. Ct.*, 128 Nev. 119, 123 (2012). It therefore follows that a court facing such a  
7 complaint lacks jurisdiction (except of course to determine that because of the lack of affidavit  
8 jurisdiction is lacking and so to dismiss for lack of jurisdiction). Indeed, Life Care itself argued  
9 that “given that the expert affidavit requirement is jurisdictional, it cannot be waived,” Ex. 2, Defs.’  
10 Reply to Pls.’ Opp’n to Mot. Summ. J. 3,<sup>4</sup> and the district court in the first action accepted that  
11 argument, reproducing it verbatim in its order. *See* Ex. 1, Order, Conclusions of Law ¶ 4.

12 In recognizing that dismissal for lack of affidavit is a dismissal on jurisdictional grounds,  
13 Life Care and the court have excellent company: the United States Supreme Court, which in  
14 *Costello v. United States* held likewise. 365 U.S. 265 (1961). In *Costello*, the district court  
15 dismissed the government’s first denaturalization complaint because the government had not filed  
16 with its complaint “the affidavit of good cause, which is a prerequisite to the initiation of  
17 denaturalization proceedings.” *Id.* at 268. In so doing, the court “declined to enter an order of  
18 dismissal ‘without prejudice’ and entered an order which did not specify whether the dismissal  
19 was with or without prejudice.” *Id.* The government then filed a new complaint (with an affidavit  
20 of good cause). *Id.* Petitioner argued that the second proceeding was barred. *Id.* at 284. The  
21 Supreme Court disagreed, holding that “a dismissal for failure to file the affidavit of good cause is  
22 a dismissal ‘for lack of jurisdiction,’ within the meaning of the exception under Rule 41(b).” *Id.*  
23 at 285. It was “too narrow a reading of the exception to relate the concept of jurisdiction embodied  
24 there to the fundamental jurisdictional defects which render a judgment void and subject to  
25

26  
27 <sup>4</sup> *See also id.* (“First, the affidavit requirement found in NRS 41A.071 is jurisdictional and cannot be waived.”); *id.*  
28 at 5 (“Defendants’ Motion concerns a jurisdictional requirement, borne from statute, that if a Plaintiff is going to make  
professional negligence arguments—be it from a vicarious standpoint or otherwise—they must include an expert  
affidavit, otherwise their Complaint is *void ab initio*. That is the case here.”).

1 collateral attack, such as lack of jurisdiction over the person or subject matter.” *Id.* Instead, the  
2 exception “encompass[ed] those dismissals which are based on a plaintiff’s failure to comply with  
3 a precondition requisite to the Court’s going forward to determine the merits of his substantive  
4 claim.” *Id.* And as “[f]ailure to file the affidavit of good cause in a denaturalization proceeding  
5 falls within this category,” *id.*, the government was not barred from instituting the second  
6 proceeding. *Id.* at 287.

7 Here, the district court held that Laura’s complaint sounded in professional negligence and  
8 that therefore she had to comply with NRS 41A.071. She had not done so, meaning that her  
9 complaint was void ab initio, that it never legally existed, and that her action under Rule 3 never  
10 commenced. The district court therefore lacked jurisdiction over the merits of the action, such that  
11 its dismissal was necessarily for lack of jurisdiction.<sup>5</sup> The Supreme Court’s holding in *Costello*  
12 supports this conclusion: just as in *Costello* the government’s failure to file an affidavit of good  
13 cause, which affidavit was a precondition requisite to the court’s determining the merits of its  
14 substantive claim, resulted in a dismissal for lack of jurisdiction, so too here Laura’s failure to file  
15 an affidavit of merit, which also was a precondition requisite to the court’s determining the merits  
16 of her substantive claim, resulted in a dismissal for lack of jurisdiction. But a jurisdiction-based  
17 dismissal is not a valid final judgment for claim preclusion purposes, as the Nevada Supreme Court  
18 taught in *Five Star Capital Corp.* See 124 Nev. at 1054 n.27 (explaining that a valid final judgment  
19 does not include a case dismissed “for some reason (jurisdiction, venue, failure to join a party) that  
20 is not meant to have preclusive effect”).<sup>6</sup> So claim preclusion is no bar to Laura’s present action.  
21  
22

23 <sup>5</sup> For this reason also summary judgment was not a proper means of disposing of the action. See, e.g., *Jones v. Brush*,  
24 143 F.2d 733 (9th Cir. 1944) (observing that a motion for summary judgment “obviously, was not a proper way to  
25 raise the question of the court’s jurisdiction” and concluding that instead of granting summary judgment the district  
26 court “should have dismissed . . . for want of jurisdiction”); see also 10A Charles Alan Wright et al., Fed. Prac. &  
27 Proc. Civ. § 2713 (4th ed.) (“[T]he general rule is that it is improper for a district court to enter a judgment under Rule  
28 56 for defendant because of a lack of jurisdiction.”).

<sup>6</sup> See also Restatement (Second) of Judgments § 20(1)(a) (1982) (providing that a personal judgment for defendant  
does not bar another action by plaintiff on the same claim “[w]hen the judgment is one of dismissal for lack of  
jurisdiction”); cf. Nev. R. Civ. P. 41(b) (“Unless the dismissal order or an applicable statute provides otherwise, a  
dismissal under Rule 41(b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue,  
or failure to join a party under Rule 19—operates as an adjudication on the merits.”).



1           **C.     Claim preclusion does not bar Laura’s present action because regardless**  
2           **whether it could apply judicial estoppel prevents Life Care from asserting it.**

3           A purpose of judicial estoppel “is to prevent parties from deliberately shifting their position  
4 to suit the requirements of another case concerning the same subject matter.” *In re Frei*  
5 *Irrevocable Tr.*, 390 P.3d 646, 652 (Nev. 2017) (citation omitted). A party is to be judicially  
6 estopped when

7           (1) the same party has taken two positions; (2) the positions were taken in judicial  
8 or quasi-judicial administrative proceedings; (3) the party was successful in  
9 asserting the first position (i.e., the tribunal adopted the position or accepted it as  
true); (4) the two positions are totally inconsistent; and (5) the first position was not  
taken as a result of ignorance, fraud, or mistake.

10 *Id.* (citation omitted).

11           Consider *Marcuse v. Del Webb Communities, Inc.*, in which the Nevada Supreme Court  
12 held defendant judicially estopped from asserting res judicata. 123 Nev. 278 (2007). In the first  
13 action (a class action), defendant opposed plaintiffs’ motion to consolidate (by which plaintiffs  
14 attempted to resolve their resultant damages claim within the class action), arguing that there were  
15 no common questions of law or fact between plaintiffs’ claims and the class’s as the class sought  
16 recovery for future damages, not resultant damages, and that plaintiffs would suffer no prejudice  
17 from denial of consolidation because they could pursue a second action against defendant for  
18 resultant damages. *Id.* at 281–82. The district court denied the motion to consolidate. *Id.* at 282.  
19 Later, plaintiffs brought a second action, which defendant moved to dismiss, arguing that plaintiffs  
20 were class members whose claims had already been litigated in the class action and that res judicata  
21 and collateral estoppel prevented their re-litigating their claims. *Id.* at 282–83. The district court  
22 dismissed the second action based on res judicata and collateral estoppel. *Id.* at 283.

23           The Nevada Supreme Court reversed. *Id.* at 289. Observing that defendant, in opposing  
24 the motion to consolidate on grounds that plaintiffs were not class members and in then moving to  
25 dismiss on the grounds that plaintiffs were members of the class and so had already litigated their  
26 issues in the class action suit, “took totally inconsistent positions in the separate judicial  
27 proceedings”; that because the district court denied the motion to consolidate defendant had been  
28 successful in asserting its first position; and that there was no evidence that its first position resulted

1 from ignorance, fraud, or mistake, the court considered it “clear that judicial estoppel was the  
2 appropriate basis upon which to deny the motion to dismiss.” *Id.* at 288. So “given [defendant’s]  
3 conduct, the district court erred by granting [defendant’s] motion to dismiss the second action  
4 based upon the doctrines of res judicata and collateral estoppel, because it should have denied the  
5 motion based upon the doctrine of judicial estoppel.” *Id.* at 289.

6 Here,

- 7 • (1) Life Care has taken two positions: then, that Laura’s action failed for lack of  
8 affidavit (such that dismissal without prejudice had to result) and that the affidavit  
9 requirement was jurisdictional (such that dismissal was for lack of jurisdiction);  
10 now, that claim preclusion applies (which it could not if dismissal was without  
11 prejudice or for lack of jurisdiction);
- 12 • (2) the positions were taken in judicial or quasi-judicial proceedings: both positions  
13 were taken before district courts;
- 14 • (3) Life Care was successful in asserting its first position: the district court in the  
15 first action terminated Laura’s action for failing to comply with the affidavit  
16 requirement, which requirement was jurisdictional;
- 17 • (4) the two positions are totally inconsistent: Life Care’s first position necessarily  
18 results in no claim preclusion; its second demands it; and
- 19 • (5) the first position was not taken as a result of ignorance, fraud, or mistake: far  
20 from tricking Life Care into taking its first position, Laura rather fought that  
21 position tooth and nail, and Life Care—hardly a stranger to litigation—is too  
22 sophisticated (and its attorneys far too skilled) for its first position to have resulted  
23 from ignorance, fraud, or mistake.

24 As, then, all five judicial estoppel elements are present here, Life Care should be estopped from  
25 now asserting claim preclusion. This conclusion *Marcuse* supports: First, it shows that judicial  
26 estoppel is a valid defense against claim preclusion in a proper case; second, it shows that Laura’s  
27 is a proper case, because here (as did the *Marcuse* defendant) Life Care took totally inconsistent  
28 positions in separate judicial proceedings, was successful in asserting its first position, and did not  
take its first position from ignorance, fraud, or mistake, making judicial estoppel an appropriate  
basis on which to deny Life Care’s motion to dismiss. So both because the judicial estoppel test  
is satisfied here and because Life Care’s actions accord with those that in *Marcuse* merited judicial  
estoppel, Life Care should be judicially estopped from asserting claim preclusion.<sup>7</sup>

---

<sup>7</sup> Laura also notes that even if her second action were vulnerable to claim preclusion and even if Life Care were able to assert it the dismissal that Life Care seeks still need not follow; rather, “the trial court in the second action has

In sum, claim preclusion does not bar Laura's present action because (1) her first action was dismissed without prejudice, and a dismissal without prejudice cannot cause claim preclusion; (2) her first action was dismissed for lack of jurisdiction, and a dismissal for lack of jurisdiction cannot cause claim preclusion; and (3) judicial estoppel prevents Life Care from successfully asserting claim preclusion in any event. The Court should therefore deny Life Care's motion to dismiss.

#### IV. CONCLUSION

Laura requests that the Court deny Life Care's motion to dismiss.

Dated this 13<sup>th</sup> day of May, 2019.

#### KOLESAR & LEATHAM

By /s/ Michael D. Davidson, Esq.

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*

**BOSSIE, REILLY & OH, P.C.**

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

Bennie Lazzara, Jr., Esq. - *Pro Hac Vice*

**WILKES & MCHUGH, P.A.**

One North Dale Mabry Highway, Suite 700  
Tampa, Florida 33609

*Attorneys for Plaintiffs*

discretion in proper circumstances to suspend proceedings and wait for the completion of the appeal in the first action." *Edwards v. Ghandour*, 123 Nev. 105, 117 (2007), *overruled on other grounds by Five Star Capital Corp. v. Ruby*, 124 Nev. 1048 (2008). *See also* Restatement (Second) of Judgments § 13 cmt. f ("The pendency of . . . an appeal from a judgment, is relevant in deciding whether the question of preclusion should be presently decided in the second action. It may be appropriate to postpone decision of that question until the proceedings addressed to the judgment are concluded.").



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 13<sup>th</sup> day of  
3 May, 2019, I caused to be served a true and correct copy of foregoing **PLAINTIFFS'**  
4 **OPPOSITION TO DEFENDANTS SOUTH LAS VEGAS MEDICAL INVESTORS, LLC**  
5 **DbA LIFE CARE CENTER OF SOUTH LAS VEGAS Fka LIFE CARE CENTER OF**  
6 **PARADISE VALLEY'S; SOUTH LAS VEGAS INVESTORS LIMITED**  
7 **PARTNERSHIP'S; LIFE CARE CENTERS OF AMERICA, INC.'S; AND CARL**  
8 **WAGNER'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO**  
9 **NRCP 12(b)(5)** in the following manner:

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

14 /s/ Kristina R. Cole

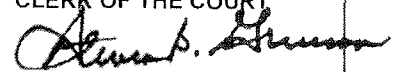
15 An Employee of KOLESAR & LEATHAM

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

# EXHIBIT 1

ORIGINAL

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



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
AMANDA J. BROOKHYSER  
3 Nevada Bar No. 11526  
Amanda.Brookhyser@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
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  
INVESTORS, LLC dba LIFE CARE  
17 CENTER OF SOUTH LAS VEGAS fka LIFE  
CARE CENTER OF PARADISE VALLEY;  
18 SOUTH LAS VEGAS INVESTORS  
LIMITED PARTNERSHIP; LIFE CARE  
19 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**

RECEIVED BY  
DEPT 17 ON  
DEC 03 2018

LEW  
IS



1 SAMIR SAXENA , M.D.,

2 Defendant

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

3  
4  
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

22 FINDINGS OF FACT

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

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

24 6). The Court finds that Defendants' liability is based on the acts (LPN Dawson's  
25  
26  
27  
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. Szymborski v. Spring Mountain Treatment Ctr., 403 P.3d 1280  
10 (Nev. 2017). Szymborski 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 Szymborski 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

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

18           "Moreover, the Nevada Supreme Court has signaled a disapproval of artful  
19 pleading for the purposes of evading the medical malpractice limitations.  
20 For example, the Court concluded that medical malpractice claims extend  
21 to both intentional and negligence-based actions. Fierle, 219 P.2d at 913 n.  
22 8. This means that a plaintiff cannot escape the malpractice statutes damages  
23 or timeliness limitations by pleadings intentional tort battery, say instead of  
24 negligence. If the Nevada Supreme Court casts an jaundiced eye on the  
25 artful pleading of intentional torts, it is likely to view the artful pleading of  
26 elder abuse similarly. In the end, it seems, Nevada courts look to the nature  
27 of the grievance to determine the character of the action, not the form of the  
28 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

15  
16 By:   
17 S. BRENT VOGEL, ESQ.  
18 Nevada Bar No. 006858  
19 AMANDA J. BROOKHYSER, ESQ.  
20 Nevada Bar No. 011526  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118

21 *Attorneys for Life Care Defendants*  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Approved as to form by:

KOLESAR & LEATHAM

By:

MICHAEL DAVIDSON, ESQ. (NV Bar No.  
000878)  
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 Plaintiffs*

Approved as to form and content by:

JOHN H. COTTON & ASSOCIATES, LTD.

By:

JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Approved as to form by:

**KOLESAR & LEATHAM**

By: \_\_\_\_\_  
MICHAEL DAVIDSON, ESQ. (NV Bar No.  
000878)  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145

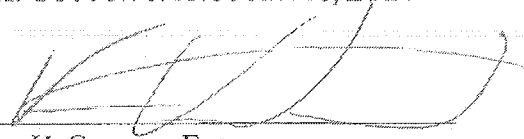
-and-

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 Plaintiffs*

Approved as to form and content by:

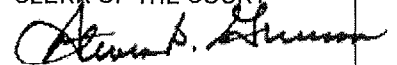
**JOHN H. COTTON & ASSOCIATES, LTD.**

By:  \_\_\_\_\_  
JOHN H. COTTON, ESQ.  
Nevada Bar No. 005262  
VINCENT J. VITATOE, ESQ.  
Nevada Bar No. 012888  
7900 West Sahara Avenue, Suite 200

*Attorneys for IPC Defendants*



# EXHIBIT 2



1 S. BRENT VOGEL  
Nevada Bar No. 6858  
2 [Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)  
AMANDA J. BROOKHYSER  
3 Nevada Bar No. 11526  
[Amanda.Brookhyser@lewisbrisbois.com](mailto:Amanda.Brookhyser@lewisbrisbois.com)  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Telephone: 702.893.3383  
6 Fax: 702.893.3789  
*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*  
9

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA  
12

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

15 Plaintiffs,  
16

17 vs.

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

23 Defendants.  
-----

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

26 Plaintiffs,  
27

28 Vs.

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

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

**DEFENDANTS' REPLY TO PLAINTIFFS'  
OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT**

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

**DEFENDANTS' REPLY TO PLAINTIFFS'  
OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT**

3 COMES NOW, Defendants SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba LIFE  
4 CARE CENTER OF SOUTH LAS VEGAS fka LIFE CARE CENTER OF PARADISE VALLEY;  
5 SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF  
6 AMERICA, INC., and CARL WAGNER, ("Defendants"), by and through their counsel of record S.  
7 Brent Vogel, Esq., and Amanda J. Brookhyser, Esq., of the Law Firm LEWIS BRISBOIS  
8 BISGAARD & SMITH, and hereby file this Reply to Plaintiffs' Opposition to Motion for Summary  
9 Judgment.  
10

11 This Reply is based upon the papers and pleadings on file in this case, the Memorandum of  
12 Points and Authorities submitted herewith and any argument adduced at the time of hearing on this  
13 matter.  
14

15 DATED this 17<sup>th</sup> day of October, 2018.

16 LEWIS BRISBOIS BISGAARD & SMITH LLP  
17

18 By /s/ Amanda J. Brookhyser

19 S. BRENT VOGEL  
20 Nevada Bar No. 6858  
Brent.Vogel@lewisbrisbois.com  
21 AMANDA J. BROOKHYSER  
22 Nevada Bar No. 11526  
Amanda.Brookhyser@lewisbrisbois.com  
23 LEWIS BRISBOIS BISGAARD & SMITH llp  
24 6385 S. Rainbow Boulevard, Suite 600  
25 Las Vegas, Nevada 89118  
26 Telephone: 702.893.3383  
27 Fax: 702.893.3789  
28 *Attorneys for Defendants South Las Vegas  
Medical Investors LLC dba Life Care Center of  
South Las Vegas fka Life Care Center of Paradise  
Valley, South Las Vegas Investors, LP, Life Care  
Centers of America, Inc., Carl Wagner*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

23

24

25

26

27

28

LEWIS  
BRISBOIS

1 **B. Defendants Are Considered Providers of Healthcare**

2 Plaintiffs do nothing to convince this court that the primary basis for liability on the part of  
3 Defendants is not vicarious and not centered upon Nurse Dawson's administration of Morphine to  
4 Ms. Curtis. Plaintiffs spend a great deal of time arguing about staffing levels and other collateral  
5 issues that are irrelevant. The primary basis of liability on the part of all these Defendants is the  
6 actions of Nurse Dawson and the subsequent monitoring nurses. Plaintiffs attempt to cloud the  
7 issues by offering histrionic arguments to adduce an emotional reaction from this court. The issue  
8 is really quite simple: Could Plaintiffs have sued Defendants for inadequate staffing levels if Ms.  
9 Curtis had not been given the dose of Morphine? The answer is a resounding No. Arguments  
10 regarding staffing levels and budgets may be relevant to punitive damages, but they are not a basis  
11 for liability. The basis for liability- and, indeed the entire reason that this case was even  
12 commenced- was the administration of Morphine. Plaintiffs do not even attempt to argue that such  
13 action does not fall under the definition of medical care and cannot reasonably argue that Nurse  
14 Dawson is not a provider of healthcare<sup>1</sup>.

17 Incredibly, Plaintiffs do nothing to address the prior order from Judge Tao on this very  
18 issue, likely because it is detrimental to their arguments. Plaintiffs do not argue that Judge Tao's  
19 Order can be factually distinguished or that his legal reasoning was in error. Rather, Plaintiffs  
20 ignore it completely. And while this court is not beholden to Judge Tao's analysis, it certainly is  
21 informative and likely sheds light on what the Nevada Supreme Court would do if presented with  
22 this issue. Plaintiffs do not dispute that had they named Nurse Dawson as a Defendant, they would  
23 have had to include an expert affidavit to support their arguments against her. Why, then, do  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Plaintiffs take a stab at implying that Nurse Dawson may not be a provider of healthcare because  
27 she is a CNA. They even go so far as to accuse Defendants of "rudely" diminishing the part that  
28 CNAs played in this case. All blustering aside, CNAs are covered under NRS 41A.017. They are  
"licensed nurses." There is no question that CNAs are providers of healthcare.

1 Plaintiffs get to make an end-run around that statutory requirement simply by naming her  
2 employer instead when her actions are what created the claim? Plaintiffs have no answer.

3       Additionally, Judge Tao addressed the very argument that Plaintiff makes in her  
4 Opposition concerning the lack of mention of skilled nursing facilities in the language of NRS  
5 41A.017. The Court recognized that while the definition of “providers of healthcare” did not  
6 include “facilities for skilled nursing,” there was no specific exclusion for claims brought against  
7 them. That is still the case. Moreover, NRS 41A.017 does not apply a definition to “hospitals.”  
8 Plaintiffs attempt to affix a statutory definition, but the Legislature did not assign a specific  
9 statutory section to define what is included in the term “hospital” for purposes of NRS 41A.017.  
10

11       What this issue comes down to is common sense. Does it make common sense that an  
12 entity, whose primary basis of liability stems from the medical actions and decision-making of an  
13 employee nurse, could be liable for more in damages than the nurse would be if she were named  
14 as a Defendant in the lawsuit? Of course not. Plaintiffs shy away from this argument and ignore it  
15 completely because common sense, in this respect, is their enemy. Plaintiffs want to rely upon  
16 emotion and to paint the Defendants as monsters who deserve to be punished. While that kind of  
17 affected language may play well in front of a Jury, in this context, those arguments are misplaced  
18 and add nothing. Defendants Motion concerns a jurisdictional requirement, borne from statute,  
19 that if a Plaintiff is going to make professional negligence arguments- be it from a vicarious  
20 standpoint or otherwise- they must include an expert affidavit, otherwise their Complaint is *void*  
21 *ab initio*. That is the case here.  
22

23  
24 **C. NRS 41A.100 does not Save Plaintiffs from the Expert Affidavit Requirement.**

25 NRS 41A. 100 provides, in pertinent part:

26       Liability for personal injury or death is not imposed upon any provider of  
27 health care based on alleged negligence in the performance of that care  
28 unless evidence consisting of expert medical testimony, material from

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to **demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death[.]**

Nev.Rev.Stat. §41A.100 (emphasis added).

Plaintiffs attempt to convince this court that LCCPV's policies and procedures are an appropriate substitute for expert medical testimony. However, in order to comply with the plain language of NRS 41A.100, if Plaintiff is going to use "the regulations of the licensed medical facility wherein the alleged negligence occurred," Plaintiffs must be able to point to those regulations to prove breach **and** causation. A policy concerning medication administration has nothing to do with causation in this case. The same standard would apply to any federal regulations to which Plaintiffs may refer. Plaintiffs cannot use LCCPV's policies or any regulations to prove causation; that is left to expert testimony. As such, NRS 41A.100 cannot save Plaintiffs failure to comply with NRS 41A.071.

////

////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

Based upon the foregoing, Defendants respectfully request this Honorable Court grant  
Defendants' Motion for Summary Judgment.

DATED this 17 day of October, 2018

LEWIS BRISBOIS BISGAARD & SMITH LLP

By           /s/ Amanda J. Brookhyser            
S. BRENT VOGEL  
Nevada Bar No. 006858  
AMANDA J. BROOKHYSER  
Nevada Bar No. 11526  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Tel. 702.893.3383

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

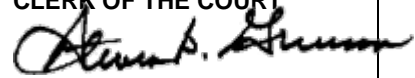


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of October, 2018, a true and correct copy of **DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

By /s/ Nicole Etienne  
an Employee of LEWIS BRISBOIS BISGAARD  
& SMITH LLP



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
ERIN E. JORDAN  
3 Nevada Bar No. 10018  
Erin.Jordan@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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 f/k/a  
18 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
19 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
20 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

21 Defendants.  
22

CASE NO. A-19-790152-C  
Dept. No.: VI

**DEFENDANTS' REPLY IN SUPPORT OF  
THEIR MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT**

**Hearing Date: June 4, 2019**  
**Hearing Time: 9:30 a.m.**

23 COME NOW Defendants, South Las Vegas Medical Investors LLC dba Life Care Center  
24 of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life  
25 Care Centers of America, Inc. and Carl Wagner ("Defendants"), by and through their counsel of  
26 record, the law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP, and hereby submit this  
27 Reply in Support of their Motion to Dismiss Plaintiffs' Complaint. Defendants moved for  
28 dismissal on May 3, 2019, and Plaintiffs filed their Opposition on May 13, 2019.

1 Defendants make and base this Reply on the Memorandum of Points and Authorities  
2 below, all papers and pleading on file in this matter, and any oral argument this Court may hear on  
3 June 4, 2019.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I.**

6 **LEGAL ARGUMENT**

7 The same set of facts, circumstances, parties, and claims are concurrently before the  
8 Nevada Supreme Court and before this Court, but Plaintiffs' Opposition is absolutely SILENT on  
9 the existence of the appeal. Instead, Plaintiffs' Opposition seeks to re-focus this Court's attention  
10 from this waste of judicial resources and away from this unassailable procedural fact in the  
11 apparent hopes that the Court will be just fine with allowing Plaintiffs to re-litigate the same facts  
12 and circumstances as those currently on appeal. Indeed, by not refuting Defendants' argument that  
13 Plaintiffs have based the Original Lawsuit and the New Lawsuit on the same facts, circumstances,  
14 occurrences, claims, and issues and involves the same parties, Plaintiffs' Opposition concedes the  
15 sameness. But despite the sameness, Plaintiffs surprisingly argue that preclusion cannot lie  
16 because the Original Complaint is void *ab initio*. That is, it never existed, and if it never existed,  
17 there is nothing from it that can be precluded.

18 This is absurd. If the original lawsuit never commenced or existed by operation of NRS  
19 41A.071, then how is there something to appeal? The answer to this question is simple: if there's  
20 something to be appealed (and Plaintiffs filed their appeal), then there's something to be  
21 precluded. As Defendants showed in their Motion to Dismiss the New Complaint, the Nevada  
22 Supreme Court accepted jurisdiction by allowing Plaintiffs' appeal to continue. And the appeal  
23 proceeds: on Wednesday July 3, 2019, absent an extension, Plaintiffs will file their Opening Brief  
24 in Nevada Supreme Court Case No. 77810. They will argue that their suit (A-17-750520-C, the  
25 Original Lawsuit) for elder abuse, wrongful death, and tortious bad faith against the Defendants in  
26 this New Lawsuit should be remanded to the original district court for further proceedings.

27 Why, then, has Plaintiff brought the instant action for the same elder abuse and tortious  
28 bad faith claims against South Las Vegas Medical Investors LLC dba Life Care Center of South

1 Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas Investors, LP, Life Care  
2 Centers of America, Inc., and Carl Wagner based upon the same occurrences, circumstances,  
3 allegations, and issues as in A-17-750520-C while their appeal is pending?

4 The answer to this question is also simple: they are now trying to cure what they made  
5 into an incurable defect in their lawsuits against these Defendants: they had to file an affidavit of  
6 merit pursuant to NRS 41A.071 and they had to do so within a year of the date of injury (the  
7 morphine injection, on March 7, 2016), which was March 7, 2017, pursuant to NRS 41A.097.  
8 They did not do so. Instead, Plaintiffs opted for other causes of action with longer statutes of  
9 limitations and which provide more opportunities for damages than NRS 41A.035 allows. The  
10 Court in the Original Lawsuit saw through this artful pleading and concluded that the gravamen of  
11 Plaintiffs' Original Complaint sounded in professional negligence pursuant to NRS 41A.015 and  
12 thus required the affidavit of merit pursuant to NRS 41A.071. (See Ex. 2 to Defs' Motion).  
13 Therefore, as the Order shows, the Court granted summary judgment. The Court's order was a  
14 final judgment. If it is not a final judgment (as posited by Plaintiffs' Opposition), then how is the  
15 Original Lawsuit up on appeal? *See* NRAP 3; *see also* Plaintiffs' Docketing Statement (Ex. 3 of  
16 Defendants' Motion to Dismiss), which states Plaintiffs are appealing a grant of summary  
17 judgment. As such, Plaintiffs' arguments in their Opposition that claim preclusion cannot operate  
18 in this instance are not well-taken because their arguments completely ignore the unassailable  
19 existence of the appeal they brought.

20 Plaintiffs' argument that NRS 41A.071 operates in such a way as to bar application of the  
21 doctrine of claim preclusion is nonsensical. They misconstrue the statute as barring entry of  
22 summary judgment because the statute mandates dismissal without prejudice. However, NRS  
23 41A.071 must be read in conjunction with NRS 41A.097, which mandates that "an action for  
24 injury or death against a provider of health care may not be commenced more than 3 years after  
25 the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence  
26 should have discovered the injury, whichever occurs first." NRS 41A.097. Based on the  
27 allegations in the New Complaint, there are no set of facts and there can be no dispute that  
28 Plaintiffs discovered the morphine injection on March 7, 2016, and thus had one year from then to

1 bring an action against these Defendants. And they did bring an action within a year—they filed  
2 the Original Complaint on February 2, 2017. Defendants timely answered and asserted the lack of  
3 an affidavit of merit as an affirmative defense on March 3, 2017. At that point, prior to the year  
4 having run, NRS 41A.097 enabled Plaintiffs to cure their defect by voluntarily refileing the action  
5 with an affidavit *before* March 7, 2017. They did not. Instead, they vigorously litigated their  
6 case. They could have moved for partial summary judgment early in the Original Lawsuit to  
7 argue that their claims did not sound in professional negligence. Similarly, they could have  
8 amended the New Complaint to include a cause of action for declaratory relief on this issue.  
9 Instead, they litigated their case and engaged in extensive discovery for over a year, and lost.  
10 Then, on February 27, 2019, they filed a new action (this action), and re-alleged the same elder  
11 abuse and tortious bad faith claims, but just in case these claims sound in professional negligence,  
12 they included an affidavit of merit pursuant to NRS 41A.071. (See New Complaint). Their choices  
13 about how to plead the Original Complaint and how to engage in motion practice, however, do not  
14 enable it to run an end-around the time limitations set forth in NRS 41A.097. As such, as a matter  
15 of law (NRS 41A.097), Plaintiffs set forth no set of facts that, even when construed in the light  
16 most favorable to Plaintiffs, enables this New Lawsuit to proceed. The time has long since passed.  
17 Moreover, this is precisely why the district court in the Original Action granted summary  
18 judgment—a final order—instead of merely dismissing the Original Complaint without prejudice.  
19 The statute of limitations has long since passed. And, again, despite the Opposition’s silence on  
20 the existence of their appeal, these same facts and circumstances between the same parties are on  
21 appeal to the Nevada Supreme Court. When Plaintiffs filed their appeal, the die was cast: they  
22 determined at that time to give jurisdiction over these facts and circumstances to the Nevada  
23 Supreme Court. This demands preclusion under *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048,  
24 1060, 194 P.3d 709, 716 (2008) (“This is the exact type of case for which claim preclusion is  
25 necessary--to prevent a party from continually filing additional lawsuits until it obtains the  
26 outcome it desires . . .”).

27 Finally, Plaintiffs’ argument that Defendants are judicially estopped from arguing claim  
28 preclusion is wholly without merit. Contrary to the Opposition’s analysis of the five-factor test for

1 whether judicial estoppel bars the instant motion to dismiss, application of these factors shows the  
2 hollowness of their estoppel argument. The real issue here is that Defendants consistently argued  
3 that Plaintiffs' claims for relief sound in professional negligence. They asserted it as an  
4 affirmative defense in their Answer to the Original Complaint. They asserted it as the basis for  
5 their motion for summary judgment. They have not asserted a contrary position to this in the  
6 instant motion to dismiss on the basis of claim preclusion. Instead, Defendants have asserted that  
7 because this matter is on appeal, Plaintiffs cannot bring a second action on the same facts and  
8 circumstances and claims. Plaintiffs' reliance on *Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev.  
9 278, 163 P.3d 462 (2007) shows why judicial estoppel does not preclude dismissal. The  
10 defendants in *Marcuse* actually were on the record that the plaintiff could bring a separate action,  
11 but when the plaintiff did just that, the defendants argued they couldn't. In light of what appeared  
12 to the Nevada Supreme Court as a flatly contrary position, and that it evidenced an effort by the  
13 defendants to trick the Court (and the plaintiffs), the Nevada Supreme Court concluded that  
14 defendants were judicially estopped from moving for dismissal of the second action. *See Marcuse*,  
15 123 Nev. at 288 ("Moreover, given the timing and the degree of inconsistency between the two  
16 positions, it is evident that Del Webb's second position was designed to obtain an unfair advantage  
17 and did not represent a mere change in position."). In short, Plaintiffs' Opposition fails to show  
18 even a "mere change in position," let alone an intentional dissonance designed to "obtain an unfair  
19 advantage." This is so because Defendants' position regarding the Original Complaint being void  
20 *ab initio* is not the issue regarding whether claim preclusion demands dismissal of this action.  
21 Rather, Plaintiffs have shown that the real issue before this Court is that the Original Complaint is  
22 now on appeal with the Nevada Supreme Court. Defendants maintain that because the Nevada  
23 Supreme Court has established its jurisdiction over the Original Lawsuit, Plaintiffs cannot bring a  
24 new lawsuit alleging the very same facts and circumstances and claims as in the Original Lawsuit.

## 25 II.

### 26 CONCLUSION

27 Plaintiffs' Opposition performs acrobatics to try to get around this simple truism: you  
28 can't have your cake (file an appeal) and eat it, too (file a new action based on the identical

1 matters currently on appeal). Defendants are not judicially estopped from arguing the New  
2 Complaint must be dismissed on the basis of Plaintiffs improperly maintaining a simultaneous  
3 appeal of the same facts, circumstances, occurrences, claims, and issues between the same parties.  
4 That Plaintiffs seek the same remedy in both (remand of the Original Complaint for further  
5 proceedings in the district court and further proceedings in this Court regarding a re-packaged  
6 version of the Original Complaint (with the addition of a time-barred affidavit) definitely shows  
7 why this action must be dismissed with prejudice.

8 DATED this 30th day of May, 2019.

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By /s/ S. Brent Vogel  
12 S. BRENT VOGEL  
13 Nevada Bar No. 06858  
14 ERIN E. JORDAN  
15 Nevada Bar No. 10018  
16 6385 S. Rainbow Boulevard, Suite 600  
17 Las Vegas, Nevada 89118  
18 Tel. 702.893.3383  
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  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of May, 2019, a true and correct copy of **DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

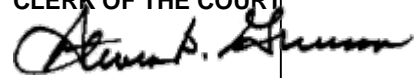
Michael D. Davidson, Esq.  
Matthew T. Dushoff, Esq.  
KOLESAR & LEATHAM  
400 S. Rampart Blvd., Suite 400  
Las Vegas, NV 89145  
Tel: 702.362.7800  
Fax: 702.362.9472  
[mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)  
[mdushoff@klnevada.com](mailto:mdushoff@klnevada.com)  
*Attorneys for Plaintiffs*

Melanie L. Bossie, Esq. (*Pro Hac Vice*)  
BOSSIE, REILLY & OH, PC  
1533 N. Pima Rd., Suite 300  
Scottsdale, AZ 85260  
*Attorneys for Plaintiffs*

Bennie Lazzara, Jr., Esq. (*Pro Hac Vice*)  
WILKES & MCHUGH, PA  
One North Dale Mabry Hwy, Suite 700  
Tampa, FL 33609  
*Attorneys for Plaintiffs*

By /s/ Johana Whitbeck  
an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP





TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

ESTATE OF MARY CURTIS,

Plaintiff(s),

vs.

SOUTH LAS VEGAS MEDICAL  
INVESTORS LLC,

Defendant(s).

Case No. A-19-790152-C

Department VI

BEFORE THE HONORABLE JACQUELINE BLUTH,  
DISTRICT COURT JUDGE

TUESDAY, JUNE 4, 2019

***TRANSCRIPT OF PROCEEDINGS RE:***  
**MOTION TO DISMISS**

APPEARANCES:

For the Plaintiff(s): MELANIE L. BOSSIE, ESQ.  
MICHAEL D. DAVIDSON, ESQ.

For the Defendant(s): S. BRENT VOGEL, ESQ.

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

1 **LAS VEGAS, NEVADA, TUESDAY, JUNE 4, 2019**

2 [Proceedings commenced at 9:44 a.m.]

3  
4 THE COURT: A-19-790152, Estate of Mary Curtis versus  
5 South Las Vegas Medical Investors, please.

6 MR. DAVIDSON: Good morning, Your Honor. Mike  
7 Davidson and Melanie Bossie for Plaintiff.

8 THE COURT: Good morning.

9 MS. BOSSIE: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. VOGEL: Good morning, Your Honor. Brent Vogel for  
12 the defendants.

13 THE COURT: All right. So this took quite a bit of going in  
14 and looking at other minutes and then the other case and the  
15 Motion to Consolidate. But I think I'm on the same page with you  
16 guys. But, obviously, feel free to correct me if I'm not.

17 But -- so Mr. Davidson, if we could -- I could just ask him a  
18 few questions first.

19 MR. VOGEL: Sure.

20 THE COURT: So it seems to me that the crux of your  
21 argument is that this wasn't a final judgment, and so therefore  
22 claim preclusion does not apply. Or am I on the same page?

23 MR. DAVIDSON: You are, Your Honor.

24 THE COURT: Okay. So I need you to help me understand,  
25 then. Because when I went and looked at the order signed by

1 Judge Villani on December 3rd, on page 7 it reads:

2 It is further determined and ordered, pursuant to  
3 NRCp 54(b), this is a final judgment and there is no just reason  
4 for delay of entry of judgment in favor of Defendants.

5 So I feel like that's pretty clear. So I need you to help me  
6 figure out why that that's not clear.

7 MR. DAVIDSON: I'd be happy to do so, Your Honor.

8 As the Court sees from reviewing the previous minutes,  
9 Ms. Bossie is lead counsel in this case. And I'm happy to respond  
10 to the Court if that's --

11 THE COURT: Oh, I'm sorry. I just thought, since you were  
12 sitting in the first-chair chair, that you were going to be talking.

13 But Ms. Bossie, if you would like to -- whoever wants to  
14 speak, go for it.

15 MR. VOGEL: Absolutely not, Your Honor. Ms. Bossie is  
16 not admitted pro hac on this case.

17 THE COURT: Oh, oh, oh, oh.

18 MR. DAVIDSON: Your Honor, I find that objection to be  
19 nothing short of gamesmanship. The reason for that is that  
20 Ms. Bossie is pro hac'd in on the first complaint. Defense spends  
21 an inordinate amount of time claiming that this is exactly the same  
22 case, and, in fact, it's the same plaintiffs, the same defendants,  
23 arising from the same incident. Ms. Bossie was lead counsel and  
24 conducted all of the discovery in this case, the preceding case, up  
25 till now.

1           And I'll tell you that I contacted bar counsel, because I had  
2 a question about that sometime ago, whether she needed to pro  
3 hac in on this case. And I will report to the Court, as an officer of  
4 the Court, that bar counsel has no problem with her continuing on  
5 subject to the ultimate authority of this Court always to determine  
6 who gets to appear before you and who doesn't.

7           THE COURT: Sure.

8           MR. DAVIDSON: The purpose of the pro hac rules are  
9 simple: It's to allow a plaintiff to choose an attorney to represent  
10 her subject to that attorney demonstrating that she is qualified in  
11 the jurisdiction where she practices and to participate here.  
12 Ms. Bossie has amply demonstrated that up till now.

13           Defense has absolutely no legitimate interest in trying to  
14 exclude her now other than petty gamesmanship, which, frankly, is,  
15 I feel, below what would be appropriate for a firm standing, like  
16 Lewis Brisbois. There's really no benefit to be advanced here by  
17 requiring her to file the same paperwork again, pay an additional  
18 fee to represent the client who she has diligently represented in the  
19 underlying litigation for the last two years.

20           Now, if the Court insists that she does that, we will, of  
21 course, comply.

22           THE COURT: Sure.

23           MR. DAVIDSON: But there's no necessity for it. The state  
24 bar's position is there's nothing compelling you to do that. So it's  
25 completely up to you.

1 But in the absence of any interest that Defendant has,  
2 other than to try to gain some kind of a tactical advantage here,  
3 which is just not appropriate, I would submit to the Court that it  
4 would be completely appropriate for this Court to say that the pro  
5 hac, which she has been performing under for the last two years for  
6 the same plaintiffs, against the same defendants, in the same  
7 course of conduct should be allowed to continue.

8 She's also lead counsel, by the way, on the Supreme  
9 Court matter.

10 THE COURT: Okay. Mr. Vogel on that specific part.

11 MR. VOGEL: And, Your Honor, if they want to stipulate  
12 that these are in the same actions, fine. That's great. They're trying  
13 to argue that this is a separate action, that's why you should not  
14 dismiss it. If this is a separate action, Supreme Court Rule 42 says  
15 you've got to file a separate pro hac. They are the ones who are  
16 being inconsistent here.

17 Otherwise, I would agree. I'd say, Yep, this is -- it's all the  
18 same parties, it's all the same everything. She should be able to do  
19 it. But they've gone out of their way, say this is a completely  
20 separate action. If that's the case, they need to follow the rules.  
21 That's all I'm saying.

22 MR. DAVIDSON: It's the triumph of form over substance.

23 MS. BOSSIE: Well, that's --

24 MR. DAVIDSON: What they want to --

25 Please.

1           What they want to do is try to paint this into a box in the  
2 corner for purposes of their future arguments about whether this is  
3 the same complaint or it's not. It's clear to the Court this not the  
4 same complaint. Doesn't contain exactly the same words.

5           But for purposes of the intent and the written intent of the  
6 rule, there's nothing here that changes. There's nothing here that  
7 changes. The only interest to be vindicated here is the interest of  
8 the plaintiff. Defense has no interest here other than  
9 gamesmanship.

10           But again, whatever the Court thinks is appropriate, state  
11 bar doesn't take a position on this, they said they don't think it's  
12 necessary. I checked with them, because it occurred to me too.

13           THE COURT: Sure.

14           MR. DAVIDSON: If you want her to jump through hoops,  
15 she'll jump through hoops and I'll argue today.

16           THE COURT: So for the purposes of today -- and do I  
17 pronounce it Bossie with a B or with a V?

18           MS. BOSSIE: With a B, Your Honor.

19           THE COURT: Okay. So for the purposes of today --  
20 obviously, I didn't know this issue was going to come up, so I didn't  
21 have the opportunity to read any of that paperwork. For the  
22 purposes of today, I am going to allow Ms. Bossie to speak. But if,  
23 going forward, I will need to go look through that paperwork just to  
24 make sure I'm doing my due diligence. Okay.

25           But for today's -- for the purposes of today's hearing,

1 Ms. Bossie, if you could answer my question that you heard me ask  
2 Mr. Davidson prior to, in regards to Judge Villani's order that was  
3 issued on December 3rd, where he specifically discusses it being a  
4 final judgment, please.

5 MS. BOSSIE: Yes, Your Honor.

6 What he's indicting is final is the dismissal of that  
7 complaint based on jurisdictional issues, not on any type of claim  
8 preclusion. And when we go through all the case law to -- that  
9 analyzes claim preclusion, which is the only issue the defense is  
10 arguing to the Court here today, it's apples and oranges.

11 So what's final was he dismissed it. And, of course -- my  
12 Latin's not going to be good -- basically, that the complaint was  
13 void, and had no full effect, because there was not an Affidavit of  
14 Merit. Which means that complaint did not exist and that is a  
15 jurisdictional issue, even according to the Defense position, at the  
16 underlying litigation.

17 THE COURT: Didn't he also find the statute had run?

18 MS. BOSSIE: No, he did not. Because there's two  
19 different statutes that we're addressing. And there's,  
20 obviously, 41(a) --

21 THE COURT: Right.

22 MS. BOSSIE: -- on certain aspects that Judge Villani  
23 believed fell under 41(a). Then there's other aspects of our cause of  
24 action that falls under the older abuse and neglect for older adults  
25 statute, which is a three-year statute of limitations.

1 THE COURT: Okay.

2 MS. BOSSIE: Which is why an order to comply with the  
3 statute of limitations and, hypothetically, if the Court says, Okay,  
4 that complaint never existed, and I didn't file my complaint within  
5 the three years of the statute of limitations for the older adult abuse  
6 and neglect statute, then I would have missed a statute of  
7 limitations. And they're apples and oranges.

8 And when you look at this complaint, the complaint  
9 alleges multiple theories of liability of Life Care Centers of America.  
10 Not just vicarious liability for one nurse. And I can go through all  
11 the different paragraphs in the complaint where, I mean,  
12 management were purposely for -- profit motive, understaffing,  
13 underfunding this facility, causing injuries not only to my client, but  
14 to other residents. So there's other theories of liability than just the  
15 professional negligence of one nurse or subsequent nurses.

16 There's direct liability of all the management for running  
17 the facility this way and knowing about it. And I won't go through  
18 the plethora of evidence. One thing I think Judge Villani did not  
19 have the benefit of was the extensive pleadings on the punitive  
20 damage claim, which went through all the evidence for the different  
21 theories of liability.

22 And also, Your Honor, a final authority or final judgment  
23 for purposes of appeal is different than a final judgment on the  
24 merits. And I'll give you a for instance.

25 I tried a case where the Court held that my -- I had to show



1 a reckless or criminal standard for my abuse and neglect claims  
2 against the nursing home. Obviously, a week before jury, I found  
3 that not to be the correct standard. He finalized that ruling and I  
4 appealed it, and he got reversed, that in a civil context, I didn't have  
5 to prove the criminal. But it was final for purposes of appeal for the  
6 Supreme Court to look at the issues that are in the order. And  
7 that's where the defense now is trying to stretch that -- what did  
8 Judge Villani rule on? All he ruled on for -- that the complaint  
9 didn't exist, because of the Latin phrase that it was void, and that  
10 the -- this even put in the order that this is a jurisdictional matter,  
11 and that's why it couldn't be waived.

12 So those are the two issues that were finalized, and that's  
13 what that language is referring to in order to appeal that ruling.

14 And in addition, to take that argument just a step further,  
15 for purposes of claim preclusion, which is what we're -- the only  
16 issue we're here today, final judgment does not include dismissals  
17 for no jurisdiction. And I cited multiple cases to that effect. And  
18 there again, trying to confuse apples and oranges. If I -- I hope I  
19 answered the Court's question.

20 THE COURT: Yeah, I'm just -- I -- when I -- in my reading  
21 of it, I saw in regards to the void *ab initio*, in regards to the affidavit,  
22 but I also thought that I saw -- because there was a minute order  
23 and then that minute order was stricken and there was another  
24 minute order. And I thought one of those specifically discussed  
25 that the statute of -- by Judge Villani, that the statute of limitations

1 had ran. Which then, I think, kind of takes away your jurisdictional  
2 argument.

3 MS. BOSSIE: He did not make a ruling that the statute of  
4 limitations had ran for the older abuse and neglect statute, which  
5 is 41.1395.

6 THE COURT: I'm with you on that. But my understanding  
7 of how he was reading it and not -- I think Judge Holthus, as well, is  
8 that they ultimately did not agree with you that this was abuse of an  
9 elder person, that they felt that this should have been, you know, a  
10 med mal professional negligence, and then thus the affidavit should  
11 have been attached, and therefore, that's why it got dismissed,  
12 because this wasn't an elder abuse case, this is a med mal case,  
13 and there was no affidavit.

14 Since there was no affidavit, the statute had ran, so -- are  
15 we -- am I there? Right? I mean --

16 MS. BOSSIE: Correct. But in the new complaint, there's  
17 multiple different paragraphs going not to the liability of an  
18 individual nurse, but going to the management aspect of Life Care  
19 Centers of America, specifically paragraphs 41, 42, and 43  
20 establishes the duties and responsibilities for this nursing home  
21 chain to appropriately manage its facilities and its conduct. So  
22 added -- those paragraphs, added -- under the older abuse statutes,  
23 paragraph 72, 73, 74, 75, 76, all outlining different aspects of liability  
24 that would not be professional vicarious liability of a nurse. So 72  
25 goes -- strike that.

1           73: Defendants may be held liable on various theories of  
2 liability, including direct liability, based on their conduct in  
3 creating, promoting, and maintaining a toxic and unsafe  
4 environment for residents.

5           THE COURT: Okay.

6           MS. BOSSIE: Different theory of liability.

7           Joint venture, paragraph 74:

8           Defendants may also be held liable as participants in a  
9 joint venture or enterprise, and that they operated pursuant to  
10 an agreement for the common purpose and community of  
11 interest with equal right of control and the profit and losses  
12 subjecting them to alter ego liability.

13           Defendants may also be held liable on an agency theory,  
14 that they were agents. They also may be liable on an alter ego  
15 theory.

16           So, in essence, all Judge Villani focused on was the  
17 vicarious liability of the nurse --

18           THE COURT: Okay.

19           MS. BOSSIE: -- and holding that that was professional  
20 negligence. So hence, the new complaint under -- as a plaintiff, you  
21 can bring -- even when I was a prosecutor, you can bring any  
22 counts that you deem fit or claims in this matter that you deem fit  
23 based on the law.

24           So there's aspects of this complaint that does not go in  
25 the box that the defense wants to put in the box of the ruling on the

1 Affidavit of Merit.

2 THE COURT: So, sorry, point me again to the specific  
3 paragraph.

4 MS. BOSSIE: Sure, Judge.

5 THE COURT: I needed to do it electronically so it's easier  
6 for me.

7 MS. BOSSIE: Oh, no problem.

8 What I ended with is paragraph 72 going through 77. And  
9 then the earlier ones I referenced was 41 to 43. I also think 46 to 49  
10 supports it, and 52 to 54.

11 THE COURT: And those are your delineating as different  
12 than the complaint in the other case.

13 MS. BOSSIE: Correct.

14 THE COURT: Okay. Anything else before I hear from  
15 Mr. Vogel?

16 MS. BOSSIE: No, on the -- the answer to the question that  
17 you posed.

18 THE COURT: Okay. Mr. Vogel?

19 MR. VOGEL: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 MS. BOSSIE: I think you're reading everything that  
22 happened before correctly, because what Judge Villani ruled was  
23 the gravamen of their complaint before was medical malpractice.  
24 That's why he discussed the statute of limitations issue is  
25 everything arises out of one action, which was the medication error.

1 That's what all of this -- that's what the first complaint arises out of,  
2 that's what this complaint arises out of. There's nothing new about  
3 this complaint.

4 And Judge Villani correctly ruled that the -- all the causes  
5 of action in the old complaint sounded medical malpractice. That's  
6 why he granted the Motion for -- you know, for Summary  
7 Judgment. That's why he discussed that the statute of limitations  
8 had expired in the case.

9 And I find it interesting in their opposition in this case,  
10 they cited the *Wheble vs. District Court* case as one of the cases that  
11 they felt somehow, you know, saved them in this case. I'm  
12 intimately familiar with that case, because it's my case, and it  
13 actually goes -- it cuts against them 100 percent.

14 Because in that case, what the case was discussing was  
15 the savings statute at NRS 11.500.

16 THE COURT: Okay.

17 MR. VOGEL: And if your case is dismissed, can you refile  
18 it. And one of the things that the Court pointed out there is you  
19 have to have commenced the case, and they said, Well, it doesn't  
20 commence if it's void *ab initio*. But pointed out, and the Court  
21 dismissed that case because the statute of limitation had run. And  
22 that is what Judge Villani is pointing out in this case, and in the  
23 other case. The statute of limitations had run.

24 It's a one-year statute of limitations in these cases. And  
25 that's why it's a final judgment, you can only appeal a final

1 judgment, and when you look at the case law in Nevada, on claim  
2 preclusion, you know, what is a valid final judgment? It's one that  
3 disposes of all the issues presented in the case and leaves nothing  
4 for future consideration.

5 That's what we have in this case.

6 THE COURT: So what is your argument in regards to the  
7 position that these new paragraphs --

8 MR. VOGEL: Sure, sure.

9 THE COURT: -- are not in regards to any type of medical  
10 malpractice claim, but that they're in regards to, actually, abuse and  
11 neglect of an older person?

12 MR. VOGEL: Well, they have the abuse/neglect claim in  
13 the other one, and Judge Villani said, Look, the gravamen of all of  
14 this is malpractice, you still need the affidavit for it.

15 But the key factor here is the underlying facts are still  
16 exactly the same. It's a medication error. You can call the claims  
17 whatever you want, but if the gravamen, the heart of the claim is  
18 malpractice, which is what Judge Villani found, it's malpractice.

19 So it doesn't matter. They can call it joint venture, they  
20 can call it alter ego, they can call it whatever they want. But the  
21 gravamen is we're still talking about a nurse who gave the wrong  
22 medication. So it's still malpractice. It doesn't matter what you call  
23 it. And that's what Judge Villani decided in the prior case.

24 So this -- boy, this is a clear-cut case of claim preclusion  
25 when you look at the elements. Because there's no getting around

1 it, no matter what they say, it's still a medication error. That's it.

2 THE COURT: Last word.

3 MS. BOSSIE: Yes. And this is not just a medication error  
4 case. My client suffered two falls, causing injury, at that nursing  
5 home. And with a plethora of case law on nursing home abuse and  
6 neglect cases, management companies can be held liable for their  
7 direct involvement in managing a nursing home. So this cause of  
8 action is much broader than one medication error that killed my  
9 client.

10 So we're still at -- this is a Motion to Dismiss stage, and,  
11 obviously, the plaintiff or the nonmoving party gets the benefit of  
12 the doubt on a Motion to Dismiss claim. All Judge Villani focused  
13 on was the medication error and the lack of monitoring after that.  
14 He makes no mention of all the other custodial aspects of what  
15 happened to my client, nor does he make any mention of the  
16 overall cause of action for this nursing home chain inappropriately  
17 managing this facility, causing injuries. So they're different causes  
18 of action.

19 What we've got to focus on is the elements of claim  
20 preclusion. There's been no judgment on the merits. What Judge  
21 Villani specifically cites, relying on what was in the brief of the  
22 defense, is that this complaint never existed, therefore, I have no  
23 jurisdiction.

24 Lack of jurisdiction cannot -- rulings on lack of jurisdiction  
25 cannot form the basis of claims preclusion. Same with the statute

1 that the defense asked Judge Villani to rely on, gave him no choice  
2 to dismiss without prejudice. A dismissal without prejudice cannot  
3 be the basis for claim preclusion.

4 So in going through the cases, obviously, in citing the  
5 *Wheble* case that Mr. Vogel was on, in essence, said that the  
6 complaint never commenced and that there was medical  
7 malpractice action that was filed without a supporting medical  
8 expert affidavit was never commenced within limitation periods,  
9 was void *ab initio*, therefore, it never even exists, therefore the  
10 Court dismissed that case.

11 One case that I think is almost identical on point is the  
12 U.S. Supreme Court case, which is *Costello vs. The United States*.  
13 And it was a denaturalization of a person. And the government did  
14 not file an affidavit of good cause when they filed the complaint.  
15 The court -- the U.S. Supreme Court went on that:

16 Although order dismissing the denaturalization  
17 proceeding for failure of government to file affidavit of good  
18 cause did not specify that the dismissal was without prejudice.  
19 Dismissal was for lack of jurisdiction.

20 In Villani's order was a lack of jurisdiction. The U.S.  
21 Supreme Court then held:

22 We hold that a dismissal for failure to file the affidavit of  
23 good cause is a dismissal for lack of jurisdiction within the  
24 meaning of the exception under Rule 41(b). We regard the  
25 exception as encompassing those dismissals which are based



1 on a plaintiffs' failure to comply with a preconditioned requisite  
2 to the Courts going forward to determine the merits of its  
3 substantive claim.

4 Finally, therefore holding:

5 We do not discern in Rule 41(b) a purpose to change this  
6 common law principle with respect to dismissals in which the  
7 merits could not be reached for failure of the plaintiff to satisfy a  
8 precondition.

9 The merits of this case was never reached. And that's  
10 exactly what *Five Star* said in Footnote 27. Let me pull that -- which  
11 is the only case that the defense is relying on. One moment to find  
12 that case.

13 THE COURT: That's okay.

14 MS. BOSSIE: It cites Footnote 27. I've just misplaced this  
15 one case for the moment, Your Honor.

16 THE COURT: That's okay.

17 MS. BOSSIE: So there's three separate issues for the  
18 Court to look at. Obviously, if the complaint never existed, there's  
19 no decision on the merits of the case. The second -- so therefore  
20 claim preclusion cannot apply.

21 The second is where the Court specifically said there's a  
22 lack of jurisdiction, and that's why he had to dismiss it. Lack of  
23 jurisdiction cannot be the basis of claims preclusion.

24 And then the third is judicial estoppel. And in essence,  
25 and I outlined in the pleadings, at the first hearing, the defense is

1 taking a position that they wanted the action dismissed for lack of  
2 the affidavit such that dismissal without prejudice had to result and  
3 the -- that the affidavit requirement was jurisdictional. Those were  
4 their words in the pleadings, which was incorporated into the order.

5 Now they want to say that the claim preclusion applies,  
6 which it could not if it's dismissed without prejudice or lack of  
7 jurisdiction. Those cannot be a basis for claims preclusion. And,  
8 obviously, the other elements of judicial estoppel all apply in the  
9 five elements of the *Marcuse* case.

10 The bottom line, what the defense -- which is my favorite  
11 word -- what the defense is asking this Court to do is apply the  
12 claims preclusion when what they ask for to Judge Villani didn't  
13 apply. And their Motion to Dismiss should not be granted. We  
14 have a cause of action under the older abuse statute, not just under  
15 the med mal statute. And we can -- we should be taking it from  
16 there.

17 THE COURT: Are you going to be -- I mean, how does that  
18 argument -- that's one of the bases of your arguments, though, in  
19 front of the Supreme Court -- right? -- that Judge Villani was wrong,  
20 because that several of these causes of action aren't about med  
21 mal, but they are about abuse and neglect.

22 MS. BOSSIE: I do agree with you, that is part of the  
23 argument. But that's what he didn't -- he did not address all those  
24 arguments. So therefore, to preserve the statute under the older  
25 adult -- because hypothetically, what if the Supreme Court said that,

1 you know, they agree with Judge Villani on those -- only those  
2 specific issues, vicarious liability, nowhere in his order does he  
3 address the direct agency alter ego. So, say the Supreme Court  
4 says, you know what, this one event with the nurse giving the  
5 medication, hypothetically, is professional negligence, and that  
6 portion of that claim should be under the med mal.

7 If I did not file my complaint on all the other different  
8 theories of liability, then I would have, obviously, not complied with  
9 the three-year statute of limitations. So you can have both cases  
10 going, you know, simultaneously and the judge -- I'm sorry.

11 Mr. Davidson is also pointing out that the *Ghandour* and  
12 the restatement, that a court can wait on appeal before deciding  
13 preclusion, because both cases can be going on at the same time,  
14 you know. And, obviously, if we're successful, I mean, we'd be  
15 back down, these two complaints would be combined and we'd  
16 have, you know, one trial.

17 But to dismiss it on claim preclusion, and that's where  
18 you -- he has to meet the elements of claim preclusion, and he has  
19 not, because of the reasons that Judge Villani dismissed the  
20 complaint. The statute and the case law.

21 Thank you, Your Honor. Unless you have any --

22 THE COURT: No.

23 MS. BOSSIE: -- specific questions.

24 THE COURT: I don't. I think that you've answered all my  
25 questions.

1 Here's the thing. I -- I mean, I've gone over and over, I've  
2 gone over all of the minute orders, I've gone over the minute orders  
3 that were stricken and the new minute orders. And here, I'm just --  
4 when I look at everything, I disagree, quite frankly. I think that the --  
5 I think Judge Villani did take all of those into consideration. I think  
6 that he did find that these were issues of medical malpractice or  
7 professional negligence and that not only was there no affidavit,  
8 but that the statute had run.

9 I do think that it was a final judgment. I think that's why  
10 you're able to appeal. I think that's why this is up at the Supreme  
11 Court. So I am granting the defendant's Motion to Dismiss.

12 And I'd ask that you prepare the order, Mr. Vogel.

13 MR. VOGEL: Thank you, Your Honor.

14 MR. DAVIDSON: Thank you, Your Honor.


15 MS. BOSSIE: Thank you, Your Honor.

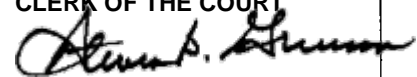
16 THE COURT: Thank you.

17 [Proceeding concluded at 10:14 a.m.]

18 ///

19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly  
22 transcribed the audio/video proceedings in the above-entitled case  
23 to the best of my ability.

24   
Shawna Ortega, CET\*562



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
ERIN E. JORDAN  
3 Nevada Bar No. 10018  
Erin.Jordan@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
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 f/k/a  
18 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
19 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
20 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

21 Defendants.  
22

CASE NO. A-19-790152-C  
Dept. No.: VI

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

**Hearing Date: June 4, 2019**  
**Hearing Time: 9:30 a.m.**

23 THIS MATTER, having come on for hearing the 4<sup>th</sup> day of June, 2019 on Defendants  
24 South Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care  
25 Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and  
26 Carl Wagner's Motion to Dismiss, S. Brent Vogel, Esq., of the Law Firm Lewis Brisbois Bisgaard  
27 & Smith, LLP appearing on behalf of Defendants South Las Vegas Medical Investors LLC dba  
28

1 Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas  
2 Investors, LP, Life Care Centers of America, Inc., and Carl Wagner ("Defendants"); and Melanie  
3 Bossie, Esq., of the Law Firm Bossie, Reilly & Oh, PC, and Michael Davidson, Esq., of the Law  
4 Firm Kolesar and Leatham, appearing on behalf of Plaintiffs Estate of Mary Curtis and Laura  
5 Latrenta, the Court, having considered the papers and pleadings in this matter and after hearing  
6 oral argument, and good cause appearing therefore, rules as follows:  
7

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Defendants South Las  
9 Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care Center of  
10 Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and Carl  
11 Wagner's Motion to Dismiss is hereby GRANTED.

12 IT IS SO ORDERED.

13 DATED this 5<sup>th</sup> day of July, 2019.

14   
15 DISTRICT COURT JUDGE 

16 Submitted by:

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18  
19  
20 By: 

21 S. BRENT VOGEL, ESQ.  
22 Nevada Bar No. 006858  
23 ERIN JORDAN, ESQ.  
24 Nevada Bar No. 010018  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118

27 *Attorneys for Defendants*

28 ///

///

///

///

1 Approved as to form and content by:

2

3 **KOLESAR & LEATHAM**

4

5 By: Refuse to sign

6 MICHAEL DAVIDSON, ESQ. (NV Bar No. 000878)

7 400 South Rampart Boulevard, Suite 400

8 Las Vegas, Nevada 89145

9 -and-

10 MELANIE L. BOSSIE, ESQ.

11 Arizona Bar No. 022825

12 Bossie, Reilly & Oh, PC

13 15333 N. Pima Rd., Ste. 300

14 Scottsdale, Arizona 85260

15 *Attorneys for Plaintiffs*

16

17

18

19

20

21

22

23

24

25

26

27

28

DATED this 20<sup>th</sup> day of June, 2019.

mu

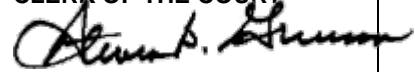
LINDA MARQUIS

GHANDI DEETER BLACKHAM

Amad Ketter

Clark County Public Guardian





1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
ERIN E. JORDAN  
3 Nevada Bar No. 10018  
Erin.Jordan@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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 f/k/a  
18 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
19 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
20 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

21 Defendants.  
22

CASE NO. A-19-790152-C  
Dept. No.: VI

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANTS' MOTION  
TO DISMISS**

23  
24 ///

25 ///

26 ///

27 ///

28 ///

1 PLEASE TAKE NOTICE that the ORDER GRANTING DEFENDANTS' MOTION TO  
2 DISMISS was entered with the Court in the above-captioned matter on the 15<sup>th</sup> day of July 2019, a  
3 copy of which is attached hereto.

4 DATED this 15th day of July, 2019

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By /s/ S. Brent Vogel  
8 S. BRENT VOGEL  
9 Nevada Bar No. 006858  
10 ERIN E. JORDAN  
11 Nevada Bar No. 10018  
12 6385 S. Rainbow Boulevard, Suite 600  
13 Las Vegas, Nevada 89118  
14 Tel. 702.893.3383  
15 *Attorneys for Defendants South Las Vegas*  
16 *Medical Investors LLC dba Life Care Center of*  
17 *South Las Vegas fka Life Care Center of Paradise*  
18 *Valley, South Las Vegas Investors, LP, Life Care*  
19 *Centers of America, Inc., Carl Wagner*  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

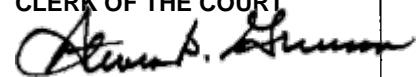
I hereby certify that on this 15th day of July, 2019, a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Michael D. Davidson, Esq.  
Matthew T. Dushoff, Esq.  
KOLESAR & LEATHAM  
400 S. Rampart Blvd., Suite 400  
Las Vegas, NV 89145  
Tel: 702.362.7800  
Fax: 702.362.9472  
[mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)  
[mdushoff@klnevada.com](mailto:mdushoff@klnevada.com)  
*Attorneys for Plaintiffs*

Melanie L. Bossie, Esq. (*Pro Hac Vice*)  
BOSSIE, REILLY & OH, PC  
1533 N. Pima Rd., Suite 300  
Scottsdale, AZ 85260  
*Attorneys for Plaintiffs*

Bennie Lazzara, Jr., Esq. (*Pro Hac Vice*)  
WILKES & MCHUGH, PA  
One North Dale Mabry Hwy, Suite 700  
Tampa, FL 33609  
*Attorneys for Plaintiffs*

By /s/ Johana Whitbeck  
an Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP



1 S. BRENT VOGEL  
Nevada Bar No. 06858  
2 Brent.Vogel@lewisbrisbois.com  
ERIN E. JORDAN  
3 Nevada Bar No. 10018  
Erin.Jordan@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
702.893.3383  
6 FAX: 702.893.3789  
*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,*  
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 f/k/a  
18 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
19 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
20 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

21 Defendants.  
22

CASE NO. A-19-790152-C  
Dept. No.: VI

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

**Hearing Date: June 4, 2019**  
**Hearing Time: 9:30 a.m.**

23 THIS MATTER, having come on for hearing the 4<sup>th</sup> day of June, 2019 on Defendants  
24 South Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care  
25 Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and  
26 Carl Wagner's Motion to Dismiss, S. Brent Vogel, Esq., of the Law Firm Lewis Brisbois Bisgaard  
27 & Smith, LLP appearing on behalf of Defendants South Las Vegas Medical Investors LLC dba  
28

1 Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas  
2 Investors, LP, Life Care Centers of America, Inc., and Carl Wagner ("Defendants"); and Melanie  
3 Bossie, Esq., of the Law Firm Bossie, Reilly & Oh, PC, and Michael Davidson, Esq., of the Law  
4 Firm Kolesar and Leatham, appearing on behalf of Plaintiffs Estate of Mary Curtis and Laura  
5 Latrenta, the Court, having considered the papers and pleadings in this matter and after hearing  
6 oral argument, and good cause appearing therefore, rules as follows:  
7

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Defendants South Las  
9 Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care Center of  
10 Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and Carl  
11 Wagner's Motion to Dismiss is hereby GRANTED.

12 IT IS SO ORDERED.

13 DATED this 5<sup>th</sup> day of July, 2019.

14   
15 DISTRICT COURT JUDGE 

16 Submitted by:

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18  
19  
20 By: 

21 S. BRENT VOGEL, ESQ.  
22 Nevada Bar No. 006858  
23 ERIN JORDAN, ESQ.  
24 Nevada Bar No. 010018  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118

27 *Attorneys for Defendants*

28 ///

///

///

///

1 Approved as to form and content by:

2

3 **KOLESAR & LEATHAM**

4

5 By: Refuse to sign

6 MICHAEL DAVIDSON, ESQ. (NV Bar No. 000878)

400 South Rampart Boulevard, Suite 400

7 Las Vegas, Nevada 89145

8 -and-

9 MELANIE L. BOSSIE, ESQ.

Arizona Bar No. 022825

10 Bossie, Reilly & Oh, PC

15333 N. Pima Rd., Ste. 300

11 Scottsdale, Arizona 85260

12 *Attorneys for Plaintiffs*

13

14

15

16

17

18

19

20

21

22

23

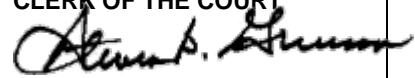
24

25

26

27

28



**NOAS**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

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

**BOSSIE, REILLY & OH, P.C.**

1430 E. Missouri Avenue, Suite B225

Phoenix, Arizona 85014

Telephone: (602) 553-4552

Facsimile: (602) 553-4557

E-Mail: [mbossie@brolawfirm.com](mailto:mbossie@brolawfirm.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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. VI

**PLAINTIFFS' NOTICE OF APPEAL OF THE ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

Notice is hereby given that 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 at the law firms of Kolesar & Leatham and Bossie, Reilly & Oh, hereby

1 appeal to the Supreme Court of Nevada the Order Granting Defendants' Motion to Dismiss entered  
2 in this action on the 15<sup>th</sup> day of July, 2019.

3 DATED this 8<sup>th</sup> day of August, 2019.

4 **KOLESAR & LEATHAM**

5  
6 By /s/ Michael D. Davidson, Esq.

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

8  
9 -and-

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

**BOSSIE, REILLY & OH, P.C.**

1430 E. Missouri Avenue, Suite B225

Phoenix, Arizona 85014

12 *Attorneys for Plaintiffs*



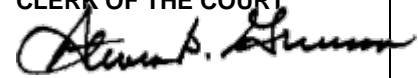
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 8<sup>th</sup> day of August, 2019, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' NOTICE OF APPEAL OF THE ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** in the following manner:

(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.

/s/ Kristina R. Cole

An Employee of KOLESAR & LEATHAM



**ASTA**

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

**KOLESAR & LEATHAM**

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

E-Mail: [mdavidson@knevada.com](mailto:mdavidson@knevada.com)

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

**BOSSIE, REILLY & OH, P.C.**

1430 E. Missouri Avenue, Suite B225

Phoenix, Arizona 85014

Telephone: (602) 553-4552

Facsimile: (602) 553-4557

E-Mail: [mbossie@brolawfirm.com](mailto:mbossie@brolawfirm.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.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-19-790152-C

DEPT NO. VI

**PLAINTIFFS' CASE APPEAL  
STATEMENT**

1. Name of appellant filing this case appeal statement:

The Estate of Mary Curtis, deceased, Laura Latrenta, as Personal  
Representative of the Estate of Mary Curtis, and Laura Latrenta,  
individually

2. Identify the judge issuing the decision, judgment, or order appealed from:

Judge Jacqueline M. Bluth

3. Identify each appellant and the name and address of counsel for each appellant:

Appellants are:

The Estate of Mary Curtis

Laura Latrenta, as Personal Representative of the Estate

Laura Latrenta, individually

Appellants share the same counsel:

Michael Davidson, Esq.  
**KOLESAR & LEATHAM**  
400 S. Rampart Blvd, Suite 400  
Las Vegas, NV 89145

Melanie L. Bossie, Esq. - *Pro Hac Vice*  
**BOSSIE, REILLY & OH, P.C.**  
1430 E. Missouri Ave. Suite B225  
Phoenix, AZ 85014

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondents are:

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.

Carl Wagner

The name of respondents' appellate counsel is unknown.

Respondents shared the same trial counsel:

S. Brent Vogel, Esq.  
Erin E. Jordan, Esq.  
**LEWIS BRISBOIS BISGAARD & SMITH**  
6835 S. Rainbow Blvd, Suite 600  
Las Vegas, Nevada 89118

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Melanie L. Bossie is not licensed to practice law in Nevada. On April 26, 2017, in Case No. A-17-750520-C, the Eighth Judicial District Court granted Melanie L. Bossie, Esq. permission to appear under SCR 42. See **Exhibit A** attached hereto.

At the time of the hearing in this case, Judge Bluth reserved ruling on whether another *pro hac vice* application and admission would be necessary going forward; a point made moot by the dismissal. However, Judge Bluth, by oral order, permitted Ms. Bossie to argue at the hearing based upon the *pro hac vice* admission in Case No. A-17-750520-C involving the same parties and the same (but enhanced) causes of action resulting from the same conduct.

Ms. Bossie requests the same permission that was granted by the Eighth Judicial District Court. However, Ms. Bossie, if necessary, will file a *pro hac vice* application with the Supreme Court.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellants were represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellants are represented by retained counsel on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Appellant was not granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

The proceedings commenced in the district court on February 27, 2019.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

On February 2, 2017, in Case No. A-17-750520-C, Plaintiffs filed a 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., and Carl Wagner ("Life Care Defendants" 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.

On September 10, 2018, almost two years after Plaintiffs filed the Complaint against the Life Care Defendants, Life Care Defendants filed their Motion for Summary Judgment arguing that Plaintiffs' allegations were essentially allegations of professional negligence under 41A.015 and, so, Plaintiffs were required to file an expert affidavit when Plaintiffs filed their Complaint. Life Care Defendants 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 Defendants argued that if the district court did not want to apply the entirety of Chapter 41A to Plaintiffs' claims, then the district court should still apply 41A.035 to limit Plaintiffs' pain and suffering damages to \$350,000.

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

On October 31, 2018, the district court held a hearing on Defendants' Motion for Summary Judgment.

On December 7, 2018, the district court entered its Order Granting Defendants' Motion for Summary Judgment.

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

On December 27, 2018, Plaintiffs filed a Notice of Appeal of the Order Granting Defendants' Motion for Summary Judgment. The case is currently the subject of appeal before the Supreme Court of Nevada as Supreme Court Case No. 77810.

On February 27, 2019, in this case, Case No. A-19-790152-C, Plaintiffs filed a 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., and Carl Wagner ("Life Care Defendants") alleging direct and vicarious causes of action for (1) abuse/neglect of an older person pursuant to N.R.S. § 41.1395, and (2) bad faith tort.

In short, Plaintiffs' claims against Life Care Defendants are based upon the injuries Ms. Curtis sustained during her residency at Life Care Defendants' nursing home facility called Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley ("the facility"). Ms. Curtis entered the facility 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, Ms. Curtis was twice permitted to fall. Additionally, Mrs. Curtis was administered morphine that had not been prescribed for her. As found by the trial court, Ms. Curtis was

administered “a dose of morphine prescribed to another resident.” Although aware that Ms. Curtis had been wrongly administered morphine, Ms. Curtis was retained as a resident until March 8, 2016. During that time she was not properly monitored. After Ms. Curtis’ daughter discovered Ms. Curtis in distress on March 8, 2016, 911 was called and emergency personnel transported Ms. Curtis to the hospital where she was diagnosed with anoxic brain encephalopathy. Ms. Curtis died three days later of morphine intoxication.

On May 3, 2019, the Life Care Defendants filed their Motion to Dismiss Plaintiffs’ Complaint Pursuant to NRCP 12(b)(5) arguing that claim preclusion base upon District Court Case No. A-17-750520-C barred the action.

On May 13, 2019, Plaintiffs filed their Opposition to Life Care Defendants’ Motion to Dismiss explaining that the first action, Case No. A-17-750520-C, was dismissed without prejudice for lack of jurisdiction and therefore, claim preclusion was inapplicable to this case.

On June 4, 2019, the Eighth Judicial District Court held a hearing on Defendants’ Motion to Dismiss.

On July 5, 2019, the Eighth Judicial District Court entered its Order Granting Defendants’ Motion to Dismiss.

On July 15, 2019, the Life Care Defendants filed the Notice of Entry of Order Granting Defendants’ Motion to Dismiss.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

As outlined above, another case against the Life Care Defendants is currently the subject of an appeal. Appellant believes it is appropriate and judicially efficient to consolidate the appeals. The Supreme Court docket number of the proceeding is No. 77810. The caption is:

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.

Further, Supreme Court Case No. 79116 involving other Defendants from District Court Case No. A-17-750520-C is currently the subject of an appeal. Appellant believes it is appropriate and judicially efficient to consolidate the three appeals. The caption for Supreme Court Case No. 79116 is:

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

vs.

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., Respondents.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

These parties have previously participated in settlement discussions and mediation. Given the present posture of the cases, Plaintiffs believe it is unlikely that settlement is possible.

DATED this 8<sup>th</sup> day of August, 2019.

**KOLESAR & LEATHAM**

By /s/ Michael D. Davidson, Esq.

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*

**BOSSIE, REILLY & OH, P.C.**

1430 E. Missouri Avenue, Suite B225

Phoenix, Arizona 85014

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 8<sup>th</sup> day of August, 2019, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' CASE APPEAL STATEMENT** in the following manner:

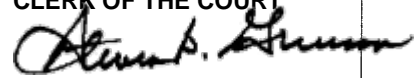
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

/s/ Kristina R. Cole

An Employee of KOLESAR & LEATHAM



# EXHIBIT A



1 **ORD**

2 MICHAEL D. DAVIDSON, ESQ.  
3 Nevada Bar No. 000878

4 **KOLESAR & LEATHAM**

5 400 South Rampart Boulevard, Suite 400

6 Las Vegas, Nevada 89145

7 Telephone: (702) 362-7800

8 Facsimile: (702) 362-9472

9 E-Mail: [mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)

10 -and-

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

12 **WILKES & MCHUGH, P.A.**

13 15333 N. Pima Rd., Ste. 300

14 Scottsdale, Arizona 85260

15 Telephone: (602) 553-4552

16 Facsimile: (602) 553-4557

17 E-Mail: [Melanie@wilkesmchugh.com](mailto:Melanie@wilkesmchugh.com)

18 Attorneys for Plaintiffs

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 \* \* \*

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

26 Plaintiffs,

27 vs.

28 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

**ORDER ADMITTING TO  
PRACTICE PURSUANT TO SCR 42**

Melanie Lynn Bossie, Esq., having filed her Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing from the Supreme Court of Arizona, the Supreme Court of New

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

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

Mexico and the State Bar of Florida, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

**ORDERED**, that said application is hereby granted, and **MELANIE LYNN BOSSIE, ESQ.** is hereby admitted to practice in the above-entitled Court for the purposes of the above entitled matter only.

Dated this <sup>April</sup> 26 day of March, 2017.

  
DISTRICT COURT JUDGE  
at

JUL 27 2017 A. MILEY

Submitted by:

**KOLESAR & LEATHAM**

By: 

MICHAEL D. DAVIDSON, ESQ.  
Nevada Bar No. 000878

**KOLESAR & LEATHAM**  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Telephone: (702) 362-7800  
Facsimile: (702) 362-9472  
E-Mail: [mdavidson@klnevada.com](mailto:mdavidson@klnevada.com)

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice Pending*  
**WILKES & MCHUGH, P.A.**  
15333 N. Pima Rd., Ste. 300  
Scottsdale, Arizona 85260  
Telephone: (602) 553-4552  
Facsimile: (602) 553-4557  
E-Mail: [Melanie@wilkesmchugh.com](mailto:Melanie@wilkesmchugh.com)

*Attorneys for Plaintiffs*