Case No.

IN THE
SUPREME COURT OF NEVADA

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RYAN KIRBY HUPPERT, BY AND THROUGH KRISTI L. WOTTON AND KAY A. HILL, SPECIAL ADMINISTRATORS OF THE ESTATE OF RYAN KIRBY HUPPERT,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE,

Respondents,

-and-

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive,

Real Parties in Interest

District Court Case No.: A-12-666641-C

PETITIONERS' APPENDIX

VOLUME 2

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IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN KIRBY HUPPERT, by and through KRISTI L. WOTTON and KAY A. HILL, Special Administrators of the Estate of Ryan Kirby Huppert,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CLARK COUNTY, AND THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE,

Respondents,

and

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Real Parties in Interest.

District Court
Case No.: A-12-666641-C

Dept. No.: XXXI

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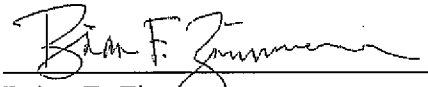
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Dated December 23, 2013.

Respectfully submitted,

By 

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CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of December, 2013, a true and correct copy of the foregoing **APPENDIX TO PETITION FOR WRIT OF MANDATE** was filed by the Nevada Supreme Court e-file system and served via United States Postal Service, pre-paid to the following persons:

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I also hereby certify that on the 23 day of December, 2013, a copy of the foregoing **APPENDIX TO PETITION FOR WRIT OF MANDATE** was served via hand delivery, as follows:

Honorable Joanna S. Kishner
Department XXXI
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101
Respondent

An employee of
ZIMMERMAN LAW FIRM P.C.

West's Annotated California Codes
Welfare and Institutions Code (Refs & Annos)
Division 9. Public Social Services (Refs & Annos)
Part 3. Aid and Medical Assistance (Refs & Annos)
Chapter 11. Elder Abuse and Dependent Adult Civil Protection Act (Refs & Annos)
Article 1. Legislative Findings and Intent (Refs & Annos)

West's Ann.Cal.Welf. & Inst.Code § 15600

§ 15600. Elders and dependent adults subjected to abuse, neglect or abandonment; legislative declarations and intent

Currentness

(a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section.

(g) The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

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(i) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

(j) It is the further intent of the Legislature in adding Article 8.5 (commencing with Section 15657) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.

Credits

(Added by Stats.1982, c. 1184, p. 4223, § 3. Amended by Stats.1985, c. 1120, § 4; Stats.1985, c. 1164, § 1, eff. Sept. 28, 1985; Stats.1986, c. 769, § 3, eff. Sept. 15, 1986; Stats.1991, c. 774 (S.B.679), § 2; Stats.1994, c. 594 (S.B.1681), § 1.)

Notes of Decisions (44)

West's Ann. Cal. Welf. & Inst. Code § 15600, CA WEL & INST § 15600
Current with urgency legislation through Ch. 107 of 2013 Reg.Sess,

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TAB 13

TAB 13

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C
DEPT. NO.: XXXI

DEFENDANT ALEKSANDR KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS §41.1395

Defendant Alexander Krivonovskiy, M.D., by and through his attorneys of record, LEWIS, BRISBOIS BISGAARD & SMITH LLP files his Supplemental Briefing regarding the Legislative History of Nevada's Abuse of a Vulnerable Person Statute codified in Nev. Rev. Stat. §41.1395.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

Plaintiff has turned this into a case of how far he can stretch the bounds of Nevada's Abuse of Vulnerable Person statute in order to avoid Nevada's medical malpractice law. Defendant Alexander Krivonovskiy, M.D.'s Motion to Dismiss Plaintiff's Abuse of a Vulnerable Person Claim ("Motion") must be decided correctly to prevent an onslaught of medical malpractice cases being brought as Abuse of Vulnerable Person claims under Nev. Rev. Stat. §41.1395 ("NRS 41.1395") throughout this state. Unless Mr. Huppert's ("Huppert") attempt to widen the scope of his medical malpractice claim is stopped, plaintiffs' attorneys will begin alleging Abuse of a Vulnerable Person in virtually every medical malpractice case where the plaintiff is over sixty years old or seriously injured. The end result will be a complete derogation of the statutory damages limitations in Nevada on medical malpractice cases.

It is an absolute certainty that every medical malpractice case involving a person over the age of 60 will be brought as an Abuse of a Vulnerable Person claim if Huppert has his way. Similarly, every medical malpractice case involving a paraplegic (or other seriously injured person) will be brought as an Abuse of Vulnerable Person claim. Indeed, how could plaintiffs' counsel be faulted for doing so when a claim under NRS 41.1395 gives them double recovery? In fact, this is the exact reason Huppert is trying so desperately to hold onto this claim.

Huppert is paralyzed from the waist down after experiencing an alcohol-related ATV accident. That is undisputed. During the course of his treatment for his paralysis and other accident-related medical conditions, he developed a pressure ulcer. That is undisputed. Huppert was and is a mentally competent and cognitively aware adult who was not, and is not, vulnerable to abuse. That is undisputed. Therefore, neither the plain language of NRS 41.1395, nor its legislative intent, allows Huppert to recover under the statute.

Moreover, a decision allowing Huppert to bring an Abuse of a Vulnerable person claim where Huppert alleges only that Dr. Krivonovskiy provided him *inadequate* care as opposed to *depriving* him of care, would put Nevada at odds with California case law and the legislative intent of the Abuse of a Vulnerable Person statutes in both Nevada and California. Further,

Huppert cannot side-step the applicable statutory damages limitations in Nevada. The livelihoods of medical providers hang in the balance if they are subjected to the liability for Abuse of a Vulnerable Person—most importantly punitive damages claims that are not covered by professional liability insurance—each time medical malpractice is alleged by a plaintiff over age 60, or a plaintiff who is seriously injured.

This supplemental briefing will cover four grounds: First, Huppert is not automatically a "vulnerable person" under NRS 41.1395 solely because he is paralyzed. Even a cursory reading of the statute confirms this. Second, according to the legislative history of NRS 41.1395 and California's parallel statute, Huppert is not the type of "vulnerable person" those statutes were designed to protect. Huppert is mentally competent and thus is not "vulnerable" in the sense the statute intends. Third, anything other than a dismissal of Huppert's Abuse of Vulnerable Person claim will allow Huppert to escape Nevada's statutory limits on damages in medical malpractice cases. Fourth, this Motion is not a theoretical debate over what could be alleged. Huppert's Second Amended Complaint alleges a failure to render *adequate* care; Huppert does not allege Dr. Krivonovskiy *deprived* him of care. Dr. Krivonovskiy respectfully requests that the Court grant his Motion.

II. The Plain Language of the Abuse of a Vulnerable Person Statute Does Not Cover Huppert, A Mentally Competent Adult.

Huppert contends that being a paraplegic *automatically* brings him within the Abuse of a Vulnerable Person statute, NRS 41.1395. However, paraplegia is not an automatic qualifier under the language of NRS 41.1395.

"[O]ur first task in construing a statute is to ascertain the intent of the legislature so as to effectuate the purpose of the law." In doing so, "a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import [...] The words of the statute must be construed in context, keeping in mind the statutory purpose [...] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation." *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 186-187.

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NRS 41.1395 provides the following definitions:

(d) "Older person" means a person who is 60 years of age or older.

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

The term includes, without limitation, a person who is mentally retarded,[1] a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury. (Emph. added).

The words "vulnerable" and "impairment that substantially limits one or more of the major life activities" must be interpreted in their usual and ordinary meaning. *Central Pathology Service Medical Clinic, Inc.*, 3 Cal.4th at 186-187. A purported victim's impairment must "substantially limit" their "major life activities." In other words, what makes a person "vulnerable" is an impairment that prevents the person from being able to protect themselves from abuse. The term "vulnerable" is defined by Merriam Webster's Dictionary as "capable of being physically or emotionally wounded." *See* "vulnerable," Def. 1(a), *Merriam Webster*'s *Dictionary*, 11th Ed. (2013). Huppert is paralyzed from the waist down. But he is able to prevent being physically or emotionally injured. Huppert is capable of complaining when he perceives he is receiving inadequate care or being "neglected." Indeed, Huppert did complain to his providers when he thought he was receiving less than perfect care.[2] A "vulnerable" person does not have that capacity. Any other interpretation of the words "vulnerable" and "substantially limits" would create the bizarre result that every paralyzed or severely injured person would qualify as a "vulnerable" person under NRS 41.1395.

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[1] "Mentally retarded" was amended on May 27, 2013 to "has an intellectual disability." *See* 2013 Nev. ALS 186, 71.

[2] If ever there was a patient who demonstrated an ability to complain when he thought he was receiving less than perfect care, by his own admission it was Mr. Huppert. He testified that during the relevant time period which is the subject of this lawsuit, he yelled at his healthcare providers about 10 times. He yelled at his insurance company's case manager 5-10 times. (He was critical of the care he received at all of the medical facilities he was in, including ones he did not sue.) Mr. Huppert is not someone who is unaware of, or unable to respond to, the treatment he receives.

Further, what is not in the statute is just as important as what is. The word "paralysis" is nowhere in the statute. So "paralysis" cannot work as an automatic qualifier. *See Aragon v. Missouri Dept. of Health and Senior Services*, 340 S. W. 3d 681, 687 (2011) (holding that paraplegia alone was not substantial evidence of "vulnerability," especially in light of the patient's "sharp mental state and…relative physical independence"). In fact, the remaining words in NRS 41.1395 confirm that a restriction solely physical in nature was not the focus of the statute. NRS 41.1395(e) defines a vulnerable person as "a person who is mentally retarded, a person who has a severe learning disability, a person who suffers from mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury." NRS 41.1395(e)(emph. added). This definition speaks primarily to a mental incompetence. This list may not be exhaustive, but it clearly illustrates what the Legislature intended. Huppert is not mentally incompetent, and he does not allege that he is. Huppert's mind is captive, he is cognitively aware, and he suffers only a physical restriction of paralysis in his legs. While certainly less able-bodied than he used to be, by his own admission he speaks up when he does not think he is received adequate medical care. Thus, Huppert is not a "vulnerable" person under NRS 41.1395.

Moreover, a decision involving Nevada's Vulnerable Person/Elder Abuse criminal counterpart (NRS 200.5092), [3] demonstrates that a plaintiff may not simply "tack on" an Abuse of a Vulnerable Person claim solely because the plaintiff is older than 60 or disabled. In *Benko v. Quality Loan Serv. Corp.*, 2012 U.S. Dist. LEXIS 183161 (D. Nev. Dec. 28, 2012), an elderly plaintiff contended foreclosure was also elder abuse. The *Benko* court held that "[f]oreclosing upon the home of an elderly person, without more, is plainly not elder abuse. [Plaintiffs] cannot tack on an elder abuse cause of action to their FAC, which wholly regards the foreclosures of their homes, merely because they are over 60 years old. With age certainly comes many benefits — in

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[3] Much like NRS 41.1395, the criminal statute NRS 200.5092 defines a "Vulnerable person" as one who: "(a) Suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or (b) Has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living."

fact many legal benefits accrue with age — but the right to frivolous causes of action is not one of them." *Id.* The same is true here. Huppert's Second Amended Complaint "wholly regards" medical malpractice and without more, is plainly not elder abuse. Huppert may not simply tack on a claim for Abuse of a Vulnerable Person because he is a paraplegic.

III. The Legislative Intent of The Vulnerable Person Statutes in Nevada And California Was To Encourage Attorneys To Pursue Cases For Elderly And Mentally Incompetent Adults. Huppert Is Neither Of These.

A. The Legislative Intent Of NRS 41.1395 Was To Protect Elderly And Mentally Incompetent Adults.

Where a statute has any ambiguity, "the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative-intent." *Central Pathology Service Medical Clinic, Inc.*, 3 Cal.4th at186-187. Understandably, Plaintiff has gone to extraordinary lengths to try to distance this case from the legislative intent of NRS 41.1395. This is because Huppert's Abuse of a Vulnerable Person allegations against Dr. Krivonovskiy are wholly inconsistent with the statute's legislative purpose.

The legislative history of NRS 41.1395 indicates that "the purpose of the bills is to encourage private attorneys to take up the fight on behalf of elder victims." In support of the bill, Pamela Roberts, Deputy Attorney General of the Medicaid Fraud Control Unit explained "how difficult it was to prove criminal abuse because of the victim's inability to testify." Unfortunately, it was often difficult for law enforcement and the prosecution to prove a criminal case beyond a reasonable doubt, and the elderly person was frequently left without any money or severely injured. *See* History of S.B. 80: Comm. On the Judiciary, 69th Regular Sess., p. 5 (N.V. 1997), http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1997/SB080,1997.pdf. The committee noted enhanced remedies of 41.1395 are justified "[s]ince elderly victims may be retired and have inherently shorter life expectancies, actual damage awards may be less for an elderly person even though the collateral consequences may be greater." History of S.B. 80: Comm. On the Judiciary, 69th Regular Sess., p.49 (N.V.1997), http://www.leg.state.nv.us/ Division/ Research/Library/LegHistory/LHs/1997/SB080,1997.pdf. Thus, because of their age and their frailty, elderly victims were not ideal plaintiffs in terms of attorneys taking their cases.

Obviously, Huppert is not elderly and does not suffer from the same age, life expectancy, and frailty issues mentioned above. Accordingly, Huppert is not the type of person Nevada's Legislature intended to protect under NRS 41.1395.

Though the words "vulnerable person" were included in NRS 41.1395, it is clear the Legislature was nevertheless aiming at protecting individuals who suffered from dementia or other significant mental limitations rendering them vulnerable to abuse. For example, while showing support for the revision of the definition of "exploitation," a lobbyist representing the National Alzheimer's Association stated that "[W]hen you lose cognizance and are unaware of what is going on, it makes you much more vulnerable." Nevada Senate Committee Minutes, (April 28, 2003)(emph. added). Similarly, comments regarding the "knowledge" requirement of NRS 41.1395 were that while it is a given that a wrongdoer would know a person is elderly, it was also important that a wrongdoer know a person was "mentally impaired" before holding them liable for double damages. History of S.B. 80: Comm. On the Judiciary, 69th Regular Sess., p. 44-45 (N.V. 1997), http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1997/SB080, 1997.pdf. Comments such as these make clear that it was a mental vulnerability that was the sole focus of NRS 41.1395.

The bottom line is that nothing in the legislative history of NRS 41.1395 indicates an intent to include paralyzed but otherwise mentally competent individuals like Huppert. To include Huppert in NRS 41.1395 would be tantamount to adding a new class of people within the ambit of the statute. To echo the sentiment of a comment made during the legislative hearings, "it was one thing to create an incentive for a plaintiff's lawyer to take these cases but another thing to create a plaintiff's lawyers paradise." History of S.B. 80: Comm. On the Judiciary, 69th Regular Sess., p.46 (N.V.1997), http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1997/SB080, 1997.pdf. Every single person who is paralyzed (or otherwise seriously injured) is not necessarily "vulnerable" under NRS 41.1395; otherwise, a "plaintiff's lawyers paradise" will indeed be created.

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B. The Legislative Intent Of California's Abuse Of A Vulnerable Person Statute Was To Protect Elderly Persons And Adults Who Cannot Ask For Help And Protection. Huppert Is Not Elderly, And He Can Ask For Help And Protection.

As a corollary, there can be no dispute that the legislative history of the Elder Abuse Statute in California (Cal. Welf. & Inst. Code §15600, *et seq.*) supports the same conclusion. California's statute is instructive because it is similar to NRS 41.1395.[4] California's statute states: "[t]he Legislature desires to direct special attention to the needs and problems of the elderly, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect and abandonment." Cal. Wel. & Inst. Code 15600(a). "The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection." Cal. Wel. & Inst. Code 15600(c)(emph. added). Like Nevada, the California Legislature sought to provide an incentive for lawyers to take up the cause of abused elderly persons and dependent adults since these plaintiffs do not have significant damages and criminal prosecution of these acts has been difficult. *See* Cal. Welf. & Inst. Code §15600(h)-(j).

California, therefore, like Nevada, aimed to protect mentally incompetent adults from abuse. Those who "are incapable of asking for help and protection" were the focus of California's statute. Cal. Wel. & Inst. Code 15600(c). The same must be true for Nevada. Huppert is not incapable of asking for help and protection; he is not a "vulnerable" person under Nevada or California law.

IV. Nevada's Statutory Limits On Medical Malpractice Damages Would Be Abrogated Were Huppert Allowed To Proceed With His Abuse Of A Vulnerable Person Claim Premised Only On Allegations Of Sub-Standard Care.

NRS 41.1395 provides for double damages. NRS 41A.035 sets a $350,000 cap on non-

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[4] Huppert agrees "it is appropriate to turn to California authority for guidance." *See* Plaintiff's Opposition to Motion to Dismiss First Amended Complaint at 8:20-22. Indeed, because California and Nevada have parallel medical malpractice damage caps, and parallel elder abuse/vulnerable person abuse statutes, Nevada should consider California law as persuasive authority here. *See* NRS 41.1395 and Cal. Welf. Inst. Code §15600, *et seq.*

economic damages on actions arising out of medical malpractice. Allowing Huppert to slide into the "vulnerable person" definition of NRS 41.1395 will create a loophole in Nevada's statutory damages legislation for medical malpractice cases where the gravamen of Huppert's Second Amended Complaint is medical malpractice. Huppert's allegations that the medical care rendered to him by Dr. Krivonovskiy *fell below the standard of care* cannot be transformed into a claim that Huppert *deprived him of care* in order to subvert statutory damages limitations in Nevada.[5]

Where "statutory language may reasonably be given more than one interpretation, courts may employ various extrinsic aids, including a consideration of the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute." *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 211. Further, provisions of related statutes must be read in harmony. *See Fierle v. Perez*, 125 Nev. 728, 734 (2009). Thus, if this Court finds any ambiguity in the language of NRS 41.1395, turning to the policy ramifications and the impact that a claim under 41.1395 will have on NRS 41A compels a finding that Huppert may not bring both claims here.

There is a strong policy in Nevada of keeping actions sounding in medical malpractice subject to the requirements of NRS 41A. If NRS 41A could be side-stepped by Plaintiffs alleging inventive new torts, NRS 41A would be rendered meaningless. Indeed, Nevada has repeatedly held that causes of action which arise out of medical malpractice, regardless of how they are pled, must nevertheless be subject to the provisions of NRS 41A. In *Fierle*, 125 Nev. at 739, fn. 8, the court held that "intentional and negligent-based medical malpractice claims [...] fall within the medical malpractice affidavit requirement" of NRS 41A.071. In *Johnson v. Incline Village General Improvement District*, 5 F. Supp.2d 1113 (D. Nev. 1998), the court concluded that a claim

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[5] At the hearings on the Motion to Dismiss the First Amended Complaint and the Second Amended Complaint, Plaintiff's counsel repeatedly knowingly falsely claimed (but only to the Court, not in the allegations in the Complaints) that Huppert Dr. Krivonovskiy allowed Huppert to lie in his own feces with a hole in his back. That is a smarmy lie. The truth (as testified to by Huppert), is that on the first day he evaluated him, Dr. Krivonovskiy went over with Huppert his treatment plan for the pressure ulcer. Dr. Krivonovskiy then evaluated Huppert every day that he was on duty, creating a full-page, or nearly full-page long progress note each time, while also writing orders and calling in an infectious disease consultant. So much for depriving Huppert of care altogether.

against a doctor for negligent misrepresentation was really a claim for medical malpractice under NRS 41A.009. In *Banks ex rel Banks v. Sunrise*, 101 Nev. 705 (1985), the court held NRS 41A.100 "replaced the doctrine of res ipsa loquitur in medical malpractice cases." Thus, while Plaintiffs may attempt to plead out of 41A due to some of its restrictions, Nevada courts routinely reject these efforts. Huppert's attempt to plead a claim under NRS 41.1395 should also be rejected here.

Much like Nevada, California has placed a $250,000 statutory cap on the recovery of non-economic damages in medical malpractice actions under "MICRA," the Medical Injury Compensation Reform Act (Cal. Civ. Code §3333.2). The California court explained in *Unruh-Haxton v. Regents*, 162 Cal. App. 4th 343 (2008), "when a cause of action is asserted against a health care provider on a legal theory other than malpractice, the courts must determine whether it is nevertheless based on" medical malpractice. *Id.* at 353. Accordingly, California acknowledges the anomalous result that would occur if plaintiffs were permitted to plead both medical malpractice and elder abuse on the same facts: "a problem that sometimes arises is when a plaintiff hoping to evade the restrictions of MICRA, will choose to assert intentional torts, seemingly non-MICRA causes of action." *Unruh-Haxton*, 162 Cal. App. 4th at 353 (2008).

Doing exactly what the court in *Unruh Haxton* was afraid of, here, Huppert is trying to evade the restrictions of NRS 41A. Because both California and Nevada courts have repeatedly held medical malpractice plaintiffs to malpractice legislation in their state, Huppert's medical malpractice claim disguised as an Abuse of a Vulnerable Person claim against Dr. Krivonovskiy must be governed by the statutory restrictions of NRS 41A.035.

V. Even If This Court Overlooks the Language Of NRS 41.1395, The Legislative History, And The Policy Implications of Allowing Huppert To Subvert Statutory Damages, This Court Should Still Dismiss Huppert's Abuse Of A Vulnerable Person Claim Because He Has Not *Alleged* Anything Other Than Medical Malpractice.

Putting aside all legislative and policy concerns, Huppert's allegations in his Second Amended Complaint against Dr. Krivonovskiy are not qualitatively different than medical malpractice. Dr. Krivonovskiy and this Court cannot be duped by Huppert's attempt to blur the division between the two claims. Huppert alleges that Dr. Krivonovskiy fell below the standard of

care "in his care and treatment of Plaintiff." SAC, ¶28 (emph. added). When Dr. Krivonovskiy allegedly "documented in his history" that Huppert had a pressure ulcer and "mentioned the use of an electrical bed" but later "did not document any specific orders...,"[6] these allegations speak to Dr. Krivonovskiy's affirmative treatment of Huppert. SAC, ¶¶27-28. Huppert is arguing for this to be a *failure to provide care* case (i.e., neglect under NRS 41.1395) despite his own allegations to the contrary.

In Huppert's effort to turn this medical malpractice case into an Abuse of a Vulnerable person claim, he has left almost no hair unsplit. The true nature of Huppert's claim is that Dr. Krivonovskiy's care and treatment of Huppert's pressure ulcer fell below the standard of care. This, at best, constitutes a claim for medical malpractice.

VI. Conclusion.

Based on the foregoing, defendant Dr. Krivonovskiy respectfully requests this Court grant his Motion to Dismiss The Abuse Of A Vulnerable Person and Punitive Damages Claims in Huppert's Second Amended Complaint.

DATED this 20th day of August, 2013.

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By /s/ Nausheen Kazalbasch

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[6] This is demonstrably false. As Plaintiff knows, Dr. Krivonovskiy ordered, and Plaintiff received, a bariatric bed with a specialty mattress for his pressure ulcer.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 20th day of August, 2013, I did cause a true and correct copy of **DEFENDANT ALEKSANDR KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS §41.1395** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC d.b.a. HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC d.b.a. HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC d.b.a. HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20, inclusive Defendants.	CASE NO.: A-12-666641-C DEPT NO.: XVII DEFENDANT HENDERSON HEALTHCARE CENTER'S JOINDER IN DEFENDANT KRIVONOVSKIY'S SUPPLEMENTAL BRIEFING ON PLAINTIFF'S ABUSE OF A VUNERABLE PERSON CLAIM UNDER NRS 41.1395 AND HARMON MEDICAL AND REHABILITATION HOSPITAL'S JOINDER

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COMES NOW Defendant THI of Nevada at Henderson Convalescent, LLC, d.b.a. Henderson Healthcare Center by and through its counsel of record, Robert D. Rourke, Esq. of the ROURKE LAW FIRM and Dale A. Hayes, Esq. of MARQUIS AURBACH COFFING and joins in Defendant Aleksandr Krivonoskiy's supplemental briefing on Plaintiff's abuse of a vunerable person claim under NRS 41.1395 and in Harmon Medical and Rehabilitation's Joinder therein.

DATED this 21st day of August, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 2013 a true and correct copy of the foregoing **JOINDER** was served via First-Class U.S. Mail, postage prepaid, addressed as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT; Plaintiff, v. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC d/b/a HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC d/b/a HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC d/b/a HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D.; ROLAND HAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive; Defendants.	Case No.: A12-666641-C Dept. No.: XXIII **Date of Hearing: In Chambers** **Time of Hearing: In Chambers**

DEFENDANT DR. ANDREA PERNELL'S JOINDER TO DEFENDANT AKEKSANDER KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395

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Defendant ANDREA PERNELL, M.D., by and through her counsel of record, John H. Cotton, Esq. and Katherine L. Turpen, Esq., of the law firm of COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, hereby joins **DEFENDANT ALEKSANDR KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEIFNG REGARDING PLAINTIFF'S ABUSE OF VULNERABLE PERSON CLAIM UNDER NRS § 41.1395** and adopts those arguments as if fully set forth herein.

The arguments set forth in Defendant Krivonovsky, M.D.'s Supplemental Memorandum of Points and Authorities in Support of his Motion apply to Defendant Dr. Pernell in full and equal force; Defendant Dr. Pernell hereby adopts said Motion.

Accordingly, Defendant Dr. Pernell respectfully renews her request that said Motion, along with this Joinder, be GRANTED.

Dated this 21 day of August 2013.

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of August, 2013 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing DEFENDANT DR. ANDREA PERNELL'S JOINDER TO DEFENDANT AKEKSANDER KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395, postage prepaid and addressed to:

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive,

Defendants.

CASE NO.: A-12-666641-C
DEPT. NO.: 31

ROLAND JAYSON F. PUA, M.D.'S JOINDER TO DEFENDANT ALEKSANDR KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395

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COMES NOW, Defendant Roland Jayson F. Pua, M.D. through his attorneys of record, Alverson, Taylor, Mortensen & Sanders, and hereby joins in Defendant Aleksandr Krivonovskiy, M.D.'s Supplemental Briefing Regarding Plaintiff's Abuse of a Vulnerable Person Claim Under NRS §41.1395. By this Joinder, Defendant Roland Jayson F. Pua, M.D. adopts all the arguments made therein as his own.

The arguments set forth in Defendant Krivonovsky, M.D.'s Supplemental Memorandum of Points and Authorities in Support of his Motion apply to Defendant Dr. Pua in full and equal force; Defendant Dr. Pua hereby adopts said Motion.

DATED this 23 day of August, 2013.

ALVERSON, TAYLOR,
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CERTIFICATE OF MAILING

I hereby certify that on this 29th day of August, 2013, I did deposit in the United States Post Office, with postage fully prepaid thereon, a copy of the above and foregoing ROLAND JAYSON F. PUA, M.D.'S JOINDER TO DEFENDANT ALEKSANDR KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395 addressed to:

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AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding ROLAND JAYSON F. PUA, M.D.'S JOINDER TO DEFENDANT ALEKSANDR KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395 filed in District Court Case No. A-12-666641-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 23 day of August, 2013.

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MORTENSEN & SANDERS

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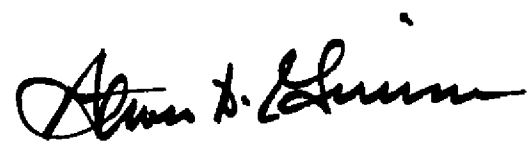
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TAB 17

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILIATION HOPSITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC, dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D., ROLAND JAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 though 20 inclusive. Defendants.	**CASE NO.: A-12-666641-C** **DEPT NO.: XXIII**

DEFENDANT HEALTHSOUTH REHABILIATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPTIAL'S JOINDER TO DEFENDANT AKEKSANDER KRIVONOVSKIY, M.D.'S

JIMMERSON HANSEN, P.C.
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282

SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395

Defendant HEALTHSOUTH REHABILIATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPTIAL by and through their counsel of record, Lynn M. Hansen, Esq. of the law firm of JIMMERSON HANSEN, P.C., hereby join DEFENDANT AKEKSANDER KRIVONOVSKIY, M.D.'S SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF'S ABUSE OF A VULNERABLE PERSON CLAIM UNDER NRS § 41.1395 and adopts those arguments as if fully set forth herein.

The arguments set forth in Defendant Krivonovskiy, M.D.'s Supplemental Memorandum of Points and Authorities in Support of his Motion apply to Defendant Healthsouth Rehabiliation Hospital of Desert Canyon, LLC dba Healthsouth Desert Canyon Rehabilitation Hospital hereby joins said Motion.

Accordingly, Defendant respectfully request that said Motion, along with this Joinder, be GRANTED.

Dated this 26 of August, 2013.

JIMMERSON HANSEN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of **DEFENDANT HEALTHSOUTH REHABILIATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPTIAL'S INTITIAL APPEARANCE FEE DISCLOSURE** was made on the 26th day of August, 2013, as indicated below:

__X__ **By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below**

____ By facsimile, pursuant to EDCR 7.26 (as amended)

_____ By receipt of copy as indicated below

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON LLC, Defendant.	CASE #A666641 DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

TUESDAY, AUGUST 6, 2013

***TRANSCRIPT OF PROCEEDINGS*:**
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff:	BRIAN F. ZIMMERMAN, ESQ. MARK J. BOURASSA, ESQ. RENEE MAXFIELD, ESQ.
For the Defendants:	KEITH A. WEAVER, ESQ. DAVID M. BRAY, ESQ. KATHERINE TURPEN, ESQ. JASON M. GERBER, ESQ. CARRIE J. PRIMAS, ESQ.

RECORDED BY: RACHELLE HAMILTON, Court Recorder

TUESDAY, AUGUST 6, 2013, AT 10:05 A.M.

THE COURT: Page 3, 4, Huppert vs. Healthsouth.

Does that take care of the rest of everybody who's here?

MR. ZIMMERMAN: Good morning, Your Honor, Brian Zimmerman for the Plaintiff.

MR. BOURASSA: Good morning, Your Honor, Mark Bourassa for Plaintiff as well.

MS. MAXFIELD: Good morning, Your Honor, Renee Maxfield for Plaintiff.

MR. WEAVER: Good morning, Your Honor, Keith Weaver for moving party Dr. Krivonovskiy.

THE COURT: Does it matter whatever order?

MR. GERBER: Good morning, Your Honor, Jason Gerber for Defendants Harmon Medical and Rehabilitation Hospital and Henderson Healthcare Center.

MS. PRIMAS: Good morning, Your Honor, Carrie Primas for Defendant Healthsouth Rehabilitation Hospital Desert Canyon.

MS. TURPEN: Katherine Turpen for Defendant Dr. Andrea Pernell.

MR. BRAY: David Bray for Defendant Dr. Roland Pua.

THE COURT: Okay, so I think we've gone through everyone, at least on my caption. Wait we have – that's on my other matter. Okay.

[Colloquy]

THE COURT: Okay, it's your motion to dismiss with joinders thereto so.

MR. WEAVER: Thank you, Your Honor. In a nutshell the Court may recall that this is round two on the vulnerable person claim. We would just reiterate as we did last time that there – by way of the factual allegations are identical this time

around as they were last time, but there are no allegations that Mr. Huppert was abandoned, that he was denied food or shelter, that he was a victim of theft or embezzlement, or that he was a victim of any type of physical abuse or anything else. So we're back to this yet again being a straight forward medical malpractice action where the only foot in the door for Plaintiff is because he meets the criteria of being a vulnerable person under the statute because of his paralysis. But the elements of the abuse of a vulnerable person are not met in this round two, just like they weren't met in the first time where they claim that there was an abuse and then abandoned it, and now are claiming there's neglect. There is no neglect.

The factual allegations are the exact same for the vulnerable person cause of action as they are for the med mal cause of action, and those allegations are not that Mr. Huppert did not receive any care, the claim simply is that he did not receive adequate care. In other words it's a classic med mal cause of action where Plaintiff claims that he should have gotten different care, not that he didn't get any care at all.

THE COURT: Thank you. I'm going to let them do the joinders first so that you can respond in toto. Anybody else wish to speak on this?

MS. TURPEN: Just briefly, Your Honor. We've joined in the motion. I represent Dr. Pernell. We would also take this one step further and that it's our position that this Plaintiff doesn't meet the criteria of being a vulnerable person. He is not an elderly person nor is he a dependent adult. This is an individual who was still able to make decisions about his medical care including decisions about whether or not he was – what type of care he was going to receive. So he's not truly what is contemplated under the vulnerable person and elder abuse statute as somebody who qualifies for those protections, so this vulnerable abuse statute

which is intended for elderly persons and dependent adults doesn't apply to Mr. Huppert.

THE COURT: I did have a quick question on that one, because I didn't see a cite. I mean I see the statutory citation –

MS. TURPEN: The statute.

THE COURT: I didn't see a case and –

MS. TURPEN: I can't direct you to a case that specifically says that, Your Honor. You're right, I can't. But the fact of the matter is what is contemplated by the elder abuse statute is to protect elderly persons or dependent adults, for example somebody who is – carries a diagnosis of a mental impairment or a mental delay, or a serious mental illness or mental retardation. None of those things apply to Mr. Huppert. He wasn't a ward. He wasn't anybody's ward. He wasn't a ward of the state. He wasn't – he had not relinquished his medical decision making to anybody else. He doesn't – so he doesn't fall under those parameters of what's contemplated of who's supposed to be protected.

Just the mere fact that he has paralysis does not make him a vulnerable person. Under that definition of what makes him vulnerable, every person who is in a hospital then would qualify for the protections of this statute. Every person who has surgery, every person who has a gait problem or has a problem mobilizing would then become a vulnerable person, and that's not what's contemplated by the statute.

THE COURT: Okay. Counsel.

MR. ZIMMERMAN: Yes, Your Honor. I find it somewhat incredible the representations made to the Court by defense counsel. They're totally inaccurate.

First of all, clearly there's no authority for revising what the statute says

about who a vulnerable person is. A vulnerable person is one who can't care for his – can't attend to his own daily needs and we've adequately pleaded that Mr. Huppert, who was involved in an ATV accident, who became a paraplegic, was unable to care for himself and he was unable to see the backside of his body, or do anything with respect to that. And what we have shown, Your Honor, is that Mr. Huppert had mild redness on his back of his buttocks.

I actually provided Your Honor with colored copies twice to make sure that you did have colored copies of the photographs. One is an attachment to the complaint as Exhibits 3 and 4 of the condition of Mr. Huppert's buttocks and his back. I also provided it – a colored copy in our courtesy copy to the Court in the opposition so that – because when you file things electronically everything gets turned into black and white on Wiznet so I wanted to make sure that the Court could see what we're talking about.

Mr. Huppert, contrary to Dr. Krivonosvkiy's lawyer's blatant attempt to misstate the facts of the case, has alleged directly within the statute that there was a failure, an undertaking to provide care for a vulnerable person and a failure to provide that care. They don't get to classify who a vulnerable person is by saying they are all these other things that apply to elders, that are all these other things that apply to people who have had financial abuse or physical abuse. 41.1395 is very clear that one who undertakes to provide for the medical needs of a vulnerable person, if they fail to do so that is neglect. We have alleged neglect.

If you recall, Your Honor, there was some discussion during the first motions to dismiss and I simply said to you I could plead that better, and Your Honor gave me the opportunity to do so.

I have pleaded the vulnerable abuse statute clearly separately and

distinct from the medial malpractice cause of action. What counsel has done in their arguments is they are referring to sections of the second amended complaint that are not incorporated by reference in the vulnerable person abuse cause of action. And they're saying well see they've alleged medical malpractice. There is nothing in either the medical malpractice statute or the vulnerable person abuse statute that says that they're mutually exclusive. In fact in this case we have someone who unfortunately was laying on his back because he was a paraplegic and he had some mild redness when he got at one of the hospitals. He wound up with a big hole in his back because they failed to treat him.

Now the fact that they may have provided some treatment is irrelevant to whether or not their conduct was the egregious type of conduct that essentially amounts to neglect under the vulnerable person abuse statute. The fact is though is all I have to do to get by a pleading stage is show that there's some chance to recover. They have to show that it's beyond doubt that we could recover under no theory. This is not the trial of the case. We get to try the case with the trier of fact and they get to decide based upon jury instructions based upon 41.1395, whether there was or was not negligent by failing to provide care that the Defendants undertook to provide to this vulnerable person.

It's incredible that counsel might argue that someone who cannot care for himself is the same as somebody who's just in the hospital. Mr. Huppert wasn't just some person in the hospital, he was a paraplegic who had been involved in a serious accident who couldn't move on his own. We've alleged that in the complaint. He couldn't take care of his basic needs. That is a very important fact because they undertook to provide for those basic needs including his medical care but failed to do so.

They cite California law and I find that somewhat incredible because California law supports our position that you can allege both an elder abuse and a professional negligence claim given the right facts. And if these aren't the right facts there never will be the right facts in Nevada. There's nothing that the legislature did in enacting both these statutes to say well gee you know if you're in the hospital you can't qualify for vulnerable person abuse. There's nothing that the legislature did to say well gee, if your in the hospital and they fail to treat you and you get a big hole in your back, you're limited to your recovery on medical malpractice theory. You can't recover as a vulnerable person based upon the statute that's intended to protect these vulnerable people.

THE COURT: Going to the point raised, under your analysis wouldn't anybody who comes to a hospital whether they're coming in an ambulance or not be viewed as a vulnerable person?

MR. ZIMMERMAN: No. If someone's unconscious, they're unable to take care of themselves, they would be a vulnerable person. Someone who –

THE COURT: That means every single surgery which uses anesthesia is going to fall into that definition, wouldn't it?

MR. ZIMMERMAN: Well if there's ongoing care – an obligation to provide ongoing care and they don't provide it during while this person's anesthetized. But that would be a rare circumstance. That might be somebody in a coma who's continually anesthetized.

But we're not dealing with somebody who went in for, you know, foot surgery, they put him out.

THE COURT: I'm not minimizing the surgery, what I'm taking is the – I'm asking a question just like I asked defense counsel.

MR. ZIMMERMAN: I understand.

THE COURT: A question about whether there was case on point because – that was a question that I'm asking you because they raised the issue that under the definition that you propose wouldn't that take into account most anybody who goes to the hospital? I mean obviously we're not talking out –

MR. ZIMMERMAN: I don't – I don't think so. But you know the interesting case is there's the *Sababin* case that they try to distinguish on its facts where somebody developed pressure ulcers under very similar circumstances to my client.

My client was not aware that he had a pressure ulcer that had been diagnosed when he first got to Healthsouth Henderson. It's alleged in the complaint that different things happened to him at different times and it's kind of somewhat disingenuous for the Defendants all to join in to Dr. Krivonovskiy's motion to dismiss. There are different allegations factually as to each defendant as to what they did to negligent my client. They don't really address what they did to negligent my client, they just say oh well this is alleged as to what was done wrong to constitute malpractice.

Nevada requires a specific pleading of malpractice, requires a specific affidavit from a medical person for the malpractice part of the case. It doesn't require such an affidavit for the vulnerable person abuse. And in fact what they're trying to do – in fact it was Dr. Pernell who tried to do that – they're trying to refer to the affidavit of Dr. Wang who had simply provided his affidavit for the medical malpractice part. They refer to in all of their pleadings the allegations of the cause of action for professional negligence and medical malpractice saying see he's alleging the same thing. We have not alleged the same thing in both causes of

action. We are entitled to plead even if these counts were inconsistent – inconsistent counts. This isn't the time if – even if there was an election of remedies that we would be forced to elect. Even if we were forced to elect at trial which theory we'd go to before the jury, it's not at the initial pleading stage.

THE COURT: But what they're asking me to rule on is it a matter of law. At least raised by Dr. Prell [phonetic]. A little different argument raised initially, but also more so in – sorry, Pernell, I mispronounced it – is as a matter of law this statute doesn't apply to your plaintiff. So I asked them if they were aware of a case. Are you aware of a case where the Supreme Court has allowed this to happen? Because my independent looking at this, because I didn't see a case on it, everyone I found was people who were viewed either mentally incompetent or elderly. I don't see a single case where it's allowed an extension of this statute to these type of circumstances.

MR. ZIMMERMAN: Well you know the mere fact –

THE COURT: And I presume you all did more time in research then I probably did, but.

MR. ZIMMERMAN: Yes. The mere fact that the Nevada Supreme Court hasn't addressed some issues has never stopped us, you know, before in any of these cases over the years that I've practiced here so.

THE COURT: No but –

MR. ZIMMERMAN: The fact is that this issue has been addressed by the California Supreme Court and, you know, essentially the Court under those circumstances held that somebody who was, you know, a person who couldn't care for themselves, who developed pressure ulcers because they couldn't care for themselves qualified as a vulnerable person for – held for abuse or a vulnerable

person abuse under the California statute.

There's a definition that's a statutory definition though that makes it very clear that Mr. Huppert falls right in there. He can't tend to his own daily needs. And I don't really know that we need to address what about all the thousands of patients who can attend to their daily needs. This is one person's case, not the whole issue of can everybody in the hospital sue for vulnerable person abuse. This is the floodgates argument. It doesn't make any sense in this case.

THE COURT: Okay. Thank you. You get last word. It's your motion.

MR. WEAVER: Your Honor, it does make sense because under Mr. Huppert's theory anybody in the hospital, as he says, who's over 60 could with nothing more than a claim of medical malpractice. So –

THE COURT: But he's not over 60 –

MR. WEAVER: No I'm –

THE COURT: – he's 45 isn't he?

MR. WEAVER: Yes, but –

MR. ZIMMERMAN: Yeah he – we're not saying anything about anybody over 60.

THE COURT: Okay, sorry. Thank you. Please continue.

MR. WEAVER: My only point was that Your Honor is if all you look at are the words of the statute with nothing else having anything else to matter, any person who is over 60 per the statute who has a med mal claim can sue for vulnerable person abuse in order to get around the statutory caps that the people of Nevada wanted in med mal causes of action.

So I think you do need to look further than just at the words of the statute and that's why in looking as well at the words of the statute that talk about

their needing to be a depravation of food or shelter or victim of theft or embezzlement, this is not the type of case that the legislature intended for there to be an abuse of the vulnerable person under any circumstances where the allegations and the facts are identical for this cause of action as it is for the vulnerable person.

Now counsel for Mr. Huppert says there's no California case that says a professional negligence action is mutually exclusive to the vulnerable person if we're looking to California, which he says we need to. Well there is. That's exactly what the *Delaney* case says, the California Supreme Court, is that where you plead the same facts for medical malpractice as for in California elder abuse or here vulnerable person. They are mutually exclusive. There are not different facts pled here so it's the same as in California under the *Delaney* case.

THE COURT: Okay.

MR. ZIMMERMAN: Your Honor, if I might just respond. There are different facts pled here. That is a very slanted version of what's pleaded. The pleading speaks for itself and –

THE COURT: And that's what the Court's looking at. I'm looking at the pleading. You're done, you had a last joinder and then we'll –

MR. WEAVER: Thank you, Your Honor.

MR. GERBER: You could go first if you want, that's no problem.

MS. TURPEN: I was just going to reiterate, Your Honor. It's very simple, he's neither mentally incompetent nor elderly, and he's not entitled to the protection under that – our stat – under the Nevada statute as it's written. It doesn't apply. As a matter of law that claim should be dismissed.

MR. GERBER: Your Honor, Jason Gerber for Harmon Medical Rehabilitation

and Henderson Healthcare, and I only got up Judge because Mr. Zimmerman was really fast the first time around and I didn't get a chance to make an initial argument. But he did bring up an issue that the – the joinders might in some way be improper because the factual allegations against Dr. Krivonovskiy and some of the other joining defendants weren't the same.

Your Honor, first of all mister – Dr. Krivonovskiy was an independent contractor at one of our facilities so allegations that he didn't provide proper care or allegations that if he didn't provide – the instructions that he provided to our staff to follow weren't proper.

Additionally Your Honor, I would say that the character of the entire complaint, as Dr. Krivonovskiy's attorney has already argued, is one of alleged negligent care not one of no care provided. And that's why the basis under which we filed our joinders to the motion, Your Honor.

MR. ZIMMERMAN: Your Honor, if I may respond.

THE COURT: Yes.

MR. ZIMMERMAN: The Henderson Healthcare does not, under the recent interpretation of the medical malpractice statute, fall within healthcare provider. They're being sued for professional negligence because they are a skilled nursing facility. So the whole medical malpractice issue doesn't even apply to Henderson Healthcare. And so that's one of the issues.

The other issue is there's a difference between negligence due to nonfeasance and neglect. But nonfeasance, a failure to act, is one of the bases for a negligence claim. They failed to provide care to my client. They failed to do anything as I pointed out for seven days while he laid in his own excrement and his hole in his back developed and got bigger and got infected. That is neglect.

We've alleged a classic case of neglect and the mere fact that emotional arguments are being made that oh save the doctors, save the hospitals because that was the will of the people, that is not really what the will of the legislature was, which is the will of the people. They enacted two statutes and both those statutes apply to my client. He has various rights under both those statutes.

THE COURT: Here's what I'm going to ask you all. Is anyone interested in providing me some legislative history in a supplemental briefing?

MR. WEAVER: Sure. We provided some but we will be happy to provide more.

MR. ZIMMERMAN: We'd be happy to do that, Your Honor, if you like.

THE COURT: Okay, because honestly I'm not saying that I will view the statute as ambiguous, but I always like to have the review a little bit on the legislative history in case that would be appropriate. So I'm not requiring any supplemental briefings but since I've already had a couple of offers here's what we're going to do. And then you're going to move on to your punitive damages because I need to get my ten o'clock too.

How much time do you all want because I'm going to defer it to a chambers calendar again for oral argument. I'm going to defer to chambers calendar but I can defer it to a time that's convenient to you all with where you're at in this case. So I can defer it either to the 16th or the 23rd, whichever date makes sense for you all and the only thing I'd ask is any supplements to the extent anybody wishes to provide a supplement. No supplements are required but the Court will take into consideration what other supplements I get – by the Wednesday before. So you can either give it to me the 14th or the 21st, depends on if you want the 16th or the 23rd; what works?

MR. ZIMMERMAN: The 23rd?

MS. TURPEN: I would request the 23rd as well, Your Honor.

MR. ZIMMERMAN: Your Honor, we're going to sweeps this afternoon. This is the case that we did have a trial date, it was reassigned to Your Honor and we don't know when the trial date's going to be. It was going to be in April.

THE COURT: 2014. Is there a problem with that date?

MR. ZIMMERMAN: No, there's no problem.

THE COURT: Oh.

MR. ZIMMERMAN: What we had – we had a trial date assigned to Judge Villani.

THE COURT: Trial dates stay – departments may move but trial dates stay. So you are firm set –

MR. ZIMMERMAN: Okay, that was unclear to me –

THE COURT: Oh sure.

MR. ZIMMERMAN: – because of a comment you made to use the last time we were here, but I now understand.

THE COURT: I think somebody was making a – well, somebody making a request with regards to where the posture was. The only time it would be different is – let's see what you guys – actually – very interesting. For sweeps, I guess, we showed it – whatever date you had we were set, we had it as firm. There sometimes is changes at sweeps. My comment was sometimes changes at sweeps because if moving it to – it's not a department, you guys are blocked out for my department, but if – do I have – wait a second. I just want to make sure this was not the one case that they had double-assigned me. Thank you for the reminder. This was the one.

The way that – you all had a 15 to 20-days estimate and this was April 21st. They had already – I had already been assigned a different firm med mal to start May 5, 2014, okay? And that was 10 to 13 days. So that one is left, thanks for the reminder – is left up to sweeps because if your estimate is accurate as to the amount of time you all need then it looks like they did assign me two cases with a little overlap and my assumption is they will take care of that at sweeps. But once again I don't even know if – the other case could have resolved because nobody's given us notification. So that will be taken care of.

We've got time. Even if they had to move you back a week or two we've got time for the case so. I'm going into that assumption meaning you all have time for me to rule on this on the 23rd. It doesn't impact anything does it?

MR. ZIMMERMAN: We do, Your Honor. It doesn't impact anything.

MS. TURPEN: No, we're fine.

THE COURT: The sweeps, does the 23rd – do you have the – any supplements anybody chooses to do by the 21st does that give everybody enough time to the extent anybody's taking me up on the offer?

MR. ZIMMERMAN: Yes, that's fine for us.

THE COURT: Whoever – I'm not – okay.

MS. TURPEN: Just to clarify, so then out briefing is due to you by the 21st?

THE COURT: By the 21st, yes. And it will be on chambers calendar, no appearance is necessary on the 23rd. Has everyone had an opportunity fully to argue to the extent they wish to argue on this issue?

MR. ZIMMERMAN: Yes, Your Honor.

MR. WEAVER: Yes, Your Honor.

MR. GERBER: Yes, Your Honor.

THE COURT: The one's I haven't heard from?

MR. BRAY: I just wanted to – I don't want to repeat the motion but just wanted to highlight the – that there is –

THE COURT: Although I know who you are you do need to state who you are –

MR. BRAY: Oh sorry.

THE COURT: – and on behalf of which client so that are recording is clear.

MR. BRAY: David Bray for Defendant Roland Pua.

COURT CLERK: Bar number please.

THE COURT: Thank you.

MR. BRAY: 12706.

I just wanted to highlight the three instances in which Plaintiff concedes that Dr. Pua provided care and treatment. He actively monitored Plaintiff's condition. He had ordered three different antibiotics to be administered as well as transferred him to an emergency room department at St. Rose Hospital. So the claim that there was no care and treatment provided whatsoever is clearly incorrect. Thank you Your Honor.

THE COURT: Thanks, but you can appreciate for a motion to dismiss I have to assume everything's true.

MR. ZIMMERMAN: And also –

THE COURT: I look at a 12(b)(5) standard.

MR. ZIMMERMAN: Right, and also Your Honor, we don't have to allege that there was no treatment, it was just a failure to provide treatment.

THE COURT: I appreciate. I take everybody's argument. I want to make sure everyone has an opportunity to have an argument. I have the pleadings. I will

get supplemental to the extent that anybody chooses to do so by the 21st.

We need to give you a few moments on punitive damages because we need to deal with that rather than continuing it a second time because I know your argument it is rises or falls with the other one but your argument is it doesn't, they're two separate bases so let's – to the extent anybody wishes to say anything on punitive damages I'll give you a few moments then I'll go to my ten o'clock.

MR. WEAVER: Thank you, Your Honor.

With regard to the punitive damages there are absolutely no specific factual allegations other than that there wasn't adequate treatment, it's just simply as to what my client Dr. Krivonovskiy lumped with everybody is that he knew that there was a pressure ulcer that was getting worse and that he documented it, and that it developed to be a stage four and that it was documented and photographed as such.

There are no specific factual allegations of what Dr. Krivonovskiy did according to what they call a cause of action for punitive damages, which obviously punitive damages aren't a cause of action. But to the extent they want to set it out the bottom line is there – is a requirement of factual specificity, not just conclusory allegations that Dr. Krivonovskiy was despicable.

So again when you're putting at risk someone's livelihood, their home, their personal assets, the law requires specificity of what those facts are that give rise to the punitive damages claim, not just conclusory allegations of which there are that he was despicable.

THE COURT: Okay. Thank you. Anybody else before we go over to Plaintiffs?

MS. TURPEN: That same applied to Dr. Pernell, Your Honor, that Plaintiff

hasn't pled that she acted maliciously, fraudulently, oppressively when she treated this patient. And again I think that it follows if the Court were to dispose of the elder abuse claim, the elder vulnerable abuse claim, there's really nothing for what should be a prayer for punitive damages versus a cause of action for punitive damages to attach to.

THE COURT: Okay. Anybody else? No, okay. Thank you so much.

MR. ZIMMERMAN: Punitive damages, Your Honor, essentially arise from someone's conduct and conscious disregard of the rights and safety of the Plaintiff. They want to address different standards for punitive damages, despicable conduct. A doctor who undertakes to treat a patient, who lets him lie there in his own excrement, doesn't to anything to treat him, makes the conscious decision despite the fact that he has a hole or redness in his back, and a hole in his back. That is the type of conduct that we've alleged was done with knowledge of the Plaintiff's condition in conscious disregard of his rights and safety. That's what we have to allege. That's implied malice under Nevada law, under punitive damages, and we don't have to allege more than that.

We've alleged a lot of facts in this complaint, much more than usual I think if Your Honor does – I'm sure she's read this complaint, and we have alleged –

THE COURT: Since I just cited to certain paragraphs a few moments ago you might have that idea.

MR. ZIMMERMAN: I had that idea because I was sure you had read this complaint. And so this is a very fact-oriented complaint and – you know I didn't mean any disrespect to the Court, I was just noting –

THE COURT: No worries.

MR. ZIMMERMAN: – that you had read it.

In any event, I think that we have met the standard to allege conscious disregard of the rights and safety of the Plaintiff. There's a difference of opinion as to whether punitive damages should be alleged separately or just part of a cause of action. I defend cases. Lots of times I try to knock out the punitive damages. I think this is a case at the pleading stage, we've met the burden for punitive damages. Whether we go to the jury on punitive damages depends upon, you know, obviously what proof is educed at trial. But this is just the pleading stage and I think we've pleading it adequately.

THE COURT: I presume since you haven't popped up you haven't had anything additional, is that correct?

MR. BOURASSA: Your Honor, Mark Bourassa. I'm just enjoying the show, thank you.

THE COURT: No worries, I just wanted to make sure I'm giving everybody a full opportunity. Okay, last.

MR. WEAVER: Your Honor, with all due respect it's time to stop claiming that the complaint says things it doesn't say. That counsel for Mr. Huppert keeps saying that it's alleged that Mr. Huppert was lying in his own excrement for days with a hole in his back. Nowhere with regard to my client does it say anything even remotely similar. The allegations as to my client are that he treated him daily, he gave him Sentinol [phonetic] and he ordered an air mattress.

So it needs to, with all due respect, not keep coming up that there are these allegations of egregious neglect and all these other facts that aren't alleged with regard to either the vulnerable person claim or the punitive damages claim.

Finally the law is that it does need to be pled with specificity. Looking

at California law, since there's no Nevada law on point, the *Brousseau* case that we cited says that mere conclusory allegations of malice, fraud and oppression are not enough. There needs to be specific facts, and there aren't specific facts let alone the ones that he keeps saying.

THE COURT: Okay, everybody's given a full chance? Okay.

Just for efficiency purposes, I'm just going to include my ruling on the punitive damages at the same time on the 23rd that I do as to the vulnerable person statute, so that way we don't have two orders triggering with two different time periods, okay?

So that's also going to be no further briefing please on this topic.

MR. WEAVER: Did you say no further briefing?

THE COURT: No. Why is somebody making a request?

MR. ZIMMERMAN: No, Your Honor.

THE COURT: I'm glad you all showed up, you saw the way my day's going, you know. I'm going to have someone claiming there's no notice or, you know, not showing up so.

The 23rd you'll get my ruling. Whatever I have on the 21st will be considered for the 23rd in addition to the record we currently have, and all oral arguments contained therein.

MR. WEAVER: Thank you, Your Honor.

THE COURT: Thank you so very much, and however you all need timing we'll get this tried where we need it tried, okay?

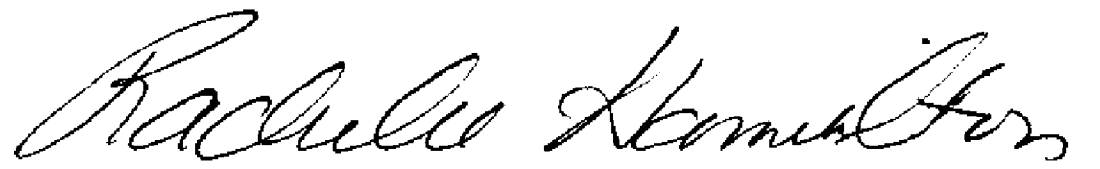
MR. ZIMMERMAN: Thank you, Judge.

THE COURT: Thank you.

///

[Proceeding concluded at 10:39 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.



RACHELLE HAMILTON
Recorder/Transcriber

TAB 19

TAB 19

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CLERK OF THE COURT

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Roland Jayson F. Pua, MD

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive,

Defendants.

CASE NO.: A-12-666641-C
DEPT. NO.: 31

SUGGESTION OF DEATH UPON THE RECORD

Defendant, Roland Jayson F. Pua, M.D., hereby suggests, upon the record, the death of

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Plaintiff, Ryan Kirby Huppert herein, pursuant to Nev. R. Civ. P. 25(a), during the pendency of this matter.

DATED this 25 day of September, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



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Roland Jayson F. Pua, MD

310

CERTIFICATE OF MAILING

I hereby certify that on this 25 day of September, 2013, I did deposit in the United States Post Office, with postage fully prepaid thereon, a copy of the above and foregoing **SUGGESTION OF DEATH UPON THE RECORD** addressed to:

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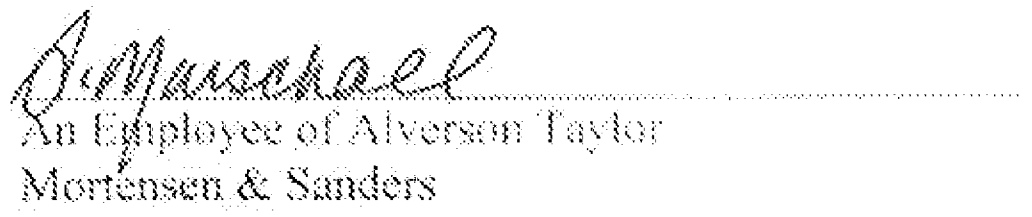
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An Employee of Alverson Taylor Mortensen & Sanders

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312

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding SUGGESTION OF DEATH **UPON THE RECORD** filed in District Court Case No. A-12-666641-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 25 day of September, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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313

TAB 20

TAB 20

314

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILIATION HOPSITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC, dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D., ROLAND JAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 though 20 inclusive. Defendants.	**CASE NO.: A-12-666641-C** **DEPT NO.: XXXI**

SUGGESTION OF DEATH ON THE RECORD

COMES NOW Defendant, Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC, by and through his

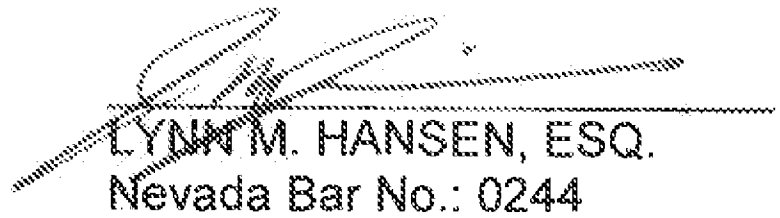
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315

counsel of record, Lynn M. Hansen, Esq. of the Law Firm of JIMMERSON HANSEN, P.C., and suggest upon the record, pursuant to NRCP 25(a)(1), the death of Ryan Kirby Huppert, Plaintiff, during the pendency of this action.

Dated this 27th of September, 2013.

JIMMERSON HANSEN, P.C.



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316

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of **SUGGESTION OF DEATH ON THE RECORD** was made on the 27th day of September, 2013, as indicated below:

X **By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below**

____ By facsimile, pursuant to EDCR 7.26 (as amended)

____ By receipt of copy as indicated below

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TAB 21

TAB 21

319

ORDR

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive. Defendants.	CASE NO.: A-12-666641-C DEPT. NO.: XXXI **ORDER GRANTING IN PART AND DENYING IN PART ALEKSANDR KRIVONOVSKIY, M.D.'S MOTION TO DISMISS THE VULNERABLE PERSON ABUSE CLAIM AND PUNITIVE DAMAGES CLAIM IN PLAINTIFF'S SECOND AMENDED COMPLAINT**

This matter came on for hearing August 6, 2013 at 9:30 a.m. Present at the hearing were Mark J. Bourassa, Esq., Brian F. Zimmerman, Esq., and Renee Maxfield, Esq., counsel for Plaintiff Ryan K. Huppert; Keith A. Weaver, Esq., counsel for Defendant Aleksandr Krivonovskiy, M.D.; Carrie J. Primas, Esq., counsel for Defendant Healthsouth; Katherine Turpen, Esq., counsel for Defendant Andrea Parnell, M.D.; David M. Bray, Esq., counsel for Defendant Roland Pua, M.D.; and Jason M. Gerber, Esq., counsel for Defendant THI. The matter was continued to Department XXXI's Chambers

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Calendar to allow the parties supplemental briefing on the legislative history of NRS 41.1395 and the intended definition of a vulnerable person. The Court allowed supplemental briefing by the parties, with all supplements to be submitted to the Court by August 21, 2013. Plaintiff filed a Supplemental Brief on August 20, 2013. Defendant Krivonovskiy filed his Supplemental Briefing on August 20, 2013. Defendants THI of Nevada and Andrea Pernell, M.D. filed Joinders to Defendant Krivonovskiy's Supplemental Briefing on August 21, 2013 and August 22, 2013, respectively. Defendant Roland Pua, M.D. likewise filed a Joinder on August 23, 2013.

After reviewing the pleadings, supplemental briefing, applicable case law, and the argument of parties, the Court finds as follows:

FINDINGS OF FACT

Defendant Krivonovskiy argued that Plaintiffs Second Amended Complaint must be dismissed for failure to state a claim under NRCP 12(b)(5) because: 1) the allegations sound solely in medical malpractice, not a distinct vulnerable person abuse claim; 2) there are insufficient facts alleged to establish a vulnerable person abuse claim, separate and apart from the medical malpractice claim; 3) any additional facts pled to establish an alleged separate instance of vulnerable person abuse would be sham allegations solely to maintain the cause of action; and 4) Plaintiff was not within the class of persons intended for protection under the statute.

Defendant further argued that the punitive damages claim fails because the underlying vulnerable person abuse claim fails and because there are insufficient factual allegations in the Second Amended Complaint to find that Defendant acted with oppression, fraud, or malice, express or implied.

Plaintiffs Opposition argued that the vulnerable person abuse claims are pled adequately; that as a paraplegic, Plaintiff is a vulnerable person under NRS 41.1395(4)(c). In so doing, Plaintiff relied in part on Its interpretation of California's statutory scheme, citing to *Estate of Shinkle*, 97 Cal. App. 4th 990, 993 (2002). They also contended that the Supreme Court of Nevada's holding in *Egan v.Chambers*, 299 P3d 364 (Nev. 2013), that found claims for professional negligence by non-medical providers to be outside of the NRS 41A.071 affidavit requirement, should sway the Court and allow the vulnerable person abuse claims to go forward against the non-medical provider Defendants.

In their supplemental briefing both parties assert that the legislative history as well, as their interpretation of the statute supports that particular party's position.

CONCLUSIONS OF LAW

The record in this matter was well briefed and fully argued and the Court rules as follows:

NRCP 12(b)(5) provides, in pertinent part, that a party may move the Court for a dismissal for "failure to state a claim upon which relief can be granted .. ." NRCP 12(b)(5). In reviewing a motion to dismiss under NRCP 12(b)(5), a court must recognize all factual allegations in the complaint as true and draw all inferences in, the plaintiff a favor. A complaint "should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28 (2009).

In this case the issue is not whether NRS 41.1395(4) could apply to a Plaintiff who is a paraplegic but is whether the Complaint in this case is pled such that Plaintiff Huppert could recover under NRS 41.1395. Looking to the Complaint's allegations they do not meet the language or purpose of NRS 41.1395. The plain language of the statute as confirmed by the Legislative History shows that Plaintiff Huppert factual circumstances as alleged in his Complaint do not fall within, the ambit of NRS 41.1395's protections. As such, the Court must dismiss the Fourth Cause of Action and the attendant claim for punitive damages within that cause of action.

With respect to the portion of the punitive damages request set forth in the Third Cause of Action that is not based on NRS 41.1395 that request/claim meets the threshold of a motion to dismiss.

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ORDER

Accordingly, the Court GRANTS in part and DENIES in part Defendant Aleksandr Krivonovskiy, M.D.'s Motion to Dismiss the Vulnerable Person Abuse Claim and Punitive Damages Claim in the Plaintiff's Second Amended Complaint and the Joinders thereto. The Court GRANTS Defendant Aleksandr Krivonovskiy, M.D.'s Motion to Dismiss the Vulnerable Person Abuse Claim and the Joinders thereto and DENIES the Motion and Joinders without prejudice as to the punitive damage claim to the extent that it is not based on the Vulnerable Person Abuse Claim. This decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

DATED: October 2, 2013

JOANNA S. KISHNER

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By
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Nevada Bar No. 12984
Attorneys for Defendant Aleksandr Krivonovskiy, M.D.

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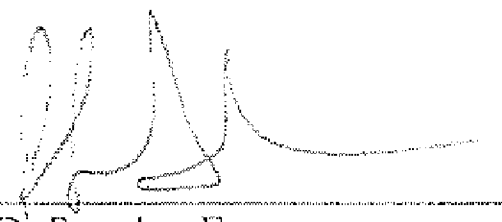
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326

TAB 22

TAB 22

327

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CLERK OF THE COURT

NEOJ
V. ANDREW CASS
Nevada Bar No. 5246
KEITH A. WEAVER
Nevada Bar No. 10271
NAUSHEEN KAZABASCH, ESQ.
Nevada Bar No. 12984
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Attorneys for Defendant
Aleksandr Krivonovskiy, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL.

YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that the ORDER GRANTING

IN PART AND DENYING IN PART ALEKSANDR KRIVONOVSKIY, M.D'S MOTION TO DISMISS THE VULNERABLE PERSON ABUSE CLAIM AND PUNITIVE DAMAGES CLAIM IN PLAINTIFF'S SECOND AMENDED COMPLAINT was entered with the Clerk of the Court in the above-captioned matter on the 8th day of October, 2013. A copy of which is attached hereto and made a part hereof.

Dated this 9th day of October, 2013.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____

V. ANDREW CASS
Nevada Bar No. 5246
KEITH A. WEAVER
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702.893.3383
Attorneys for Defendant
Aleksandr Krivonovskiy, M.D.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 1st day of October, 2013, I did cause a true and correct copy of NOTICE OF ENTRY OF ORDER, to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

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Attorneys for Plaintiff Ryan Kirby Huppert

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By _____
An Employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

ORDR

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive. Defendants.	CASE NO.: A-12-666641-C DEPT. NO.: XXXI **ORDER GRANTING IN PART AND DENYING IN PART ALEKSANDR KRIVONOVSKIY, M.D.'S MOTION TO DISMISS THE VULNERABLE PERSON ABUSE CLAIM AND PUNITIVE DAMAGES CLAIM IN PLAINTIFF'S SECOND AMENDED COMPLAINT**

This matter came on for hearing August 6, 2013 at 9:30 a.m. Present at the hearing were Mark J. Bourassa, Esq., Brian F. Zimmerman, Esq., and Renee Maxfield, Esq., counsel for Plaintiff Ryan K. Huppert; Keith A. Weaver, Esq., counsel for Defendant Aleksandr Krivonovskiy, M.D.; Carrie J. Primas, Esq., counsel for Defendant Healthsouth; Katherine Turpen, Esq., counsel for Defendant Andrea Parnell, M.D.; David M. Bray, Esq., counsel for Defendant Roland Pua, M.D.; and Jason M. Gerber, Esq., counsel for Defendant THI. The matter was continued to Department XXXI's Chambers

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

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Calendar to allow the parties supplemental briefing on the legislative history of NRS 41.1395 and the intended definition of a vulnerable person. The Court allowed supplemental briefing by the parties, with all supplements to be submitted to the Court by August 21, 2013. Plaintiff filed a Supplemental Brief on August 20, 2013. Defendant Krivonovskiy filed his Supplemental Briefing on August 20, 2013. Defendants THI of Nevada and Andrea Pernell, M.D. filed Joinders to Defendant Krivonovskiy's Supplemental Briefing on August 21, 2013 and August 22, 2013, respectively. Defendant Roland Pua, M.D. likewise filed a Joinder on August 23, 2013.

After reviewing the pleadings, supplemental briefing, applicable case law, and the argument of parties, the Court finds as follows:

FINDINGS OF FACT

Defendant Krivonovskiy argued that Plaintiffs Second Amended Complaint must be dismissed for failure to state a claim under NRCP 12(b)(5) because: 1) the allegations sound solely in medical malpractice, not a distinct vulnerable person abuse claim; 2) there are insufficient facts alleged to establish a vulnerable person abuse claim, separate and apart from the medical malpractice claim; 3) any additional facts pled to establish an alleged separate instance of vulnerable person abuse would be sham allegations solely to maintain the cause of action; and 4) Plaintiff was not within the class of persons intended for protection under the statute.

Defendant further argued that the punitive damages claim fails because the underlying vulnerable person abuse claim fails and because there are insufficient factual allegations in the Second Amended Complaint to find that Defendant acted with oppression, fraud, or malice, express or implied.

Plaintiffs Opposition argued that the vulnerable person abuse claims are pled adequately; that as a paraplegic, Plaintiff is a vulnerable person under NRS 41.1395(4)(c). In so doing, Plaintiff relied in part on its interpretation of California's statutory scheme, citing to *Estate of Shinkle*, 97 Cal. App. 4th 990, 993 (2002). They also contended that the Supreme Court of Nevada's holding in *Egan v. Chambers*, 299 P3d 364 (Nev. 2013), that found claims for professional negligence by non-medical providers to be outside of the NRS 41A.071 affidavit requirement, should sway the Court and allow the vulnerable person abuse claims to go forward against the non-medical provider Defendants.

In their supplemental briefing both parties assert that the legislative history as well, as their interpretation of the statute supports that particular party's position.

CONCLUSIONS OF LAW

The record in this matter was well briefed and fully argued and the Court rules as follows:

NRCP 12(b)(5) provides, in pertinent part, that a party may move the Court for a dismissal for "failure to state a claim upon which relief can be granted . . ." NRCP 12(b)(5). In reviewing a motion to dismiss under NRCP 12(b)(5), a court must recognize all factual allegations in the complaint as true and draw all inferences in, the plaintiff a favor. A complaint "should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28 (2009).

In this case the issue is not whether NRS 41.1395(4) could apply to a Plaintiff who is a paraplegic but is whether the Complaint in this case is pled such that Plaintiff Huppert could recover under NRS 41.1395. Looking to the Complaint's allegations they do not meet the language or purpose of NRS 41.1395. The plain language of the statute as confirmed by the Legislative History shows that Plaintiff Huppert factual circumstances as alleged in his Complaint do not fall within, the ambit of NRS 41.1395's protections. As such, the Court must dismiss the Fourth Cause of Action and the attendant claim for punitive damages within that cause of action.

With respect to the portion of the punitive damages request set forth in the Third Cause of Action that is not based on NRS 41.1395 that request/claim meets the threshold of a motion to dismiss.

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ORDER

Accordingly, the Court GRANTS in part and DENIES in part Defendant Aleksandr Krivonovskiy, M.D.'s Motion to Dismiss the Vulnerable Person Abuse Claim and Punitive Damages Claim in the Plaintiff's Second Amended Complaint and the Joinders thereto. The Court GRANTS Defendant Aleksandr Krivonovskiy, M.D.'s Motion to Dismiss the Vulnerable Person Abuse Claim and the Joinders thereto and DENIES the Motion and Joinders without prejudice as to the punitive damage claim to the extent that it is not based on the Vulnerable Person Abuse Claim. This decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

DATED: October 2, 2013

JOANNA S. KISHNER

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By
NAUSHEEN KAZALBASCH, ESQ.
Nevada Bar No. 12984
Attorneys for Defendant Aleksandr Krivonovskiy, M.D.

Approved as to Form and Content:

By Rene Mansfield for #2814
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Attorneys for Plaintiff
Ryan Kirby Huppert

Approved as to Form and Content:

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Attorneys for Plaintiff
Ryan Kirby Huppert

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Attorneys for Healthsouth Rehabilitation Hospital Of Desert Canyon

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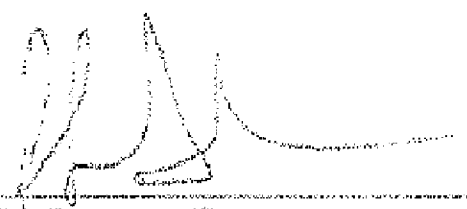
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Attorneys for Healthsouth Rehabilitation Hospital Of Desert Canyon

Approved as to Form and Content:



By _____

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Attorneys for Henderson Healthcare Center and
Harmon Medical and Rehabilitation Hospital

338

TAB 23

TAB 23

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CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

MOTION FOR SUBSTITUTION OF PARTY

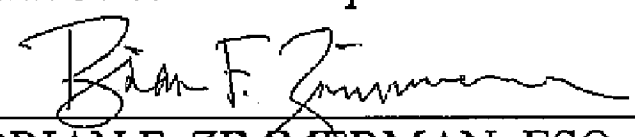
MOTION FOR SUBSTITUTION OF PARTY

COMES NOW, Plaintiff RYAN KIRBY HUPPERT, by and through his counsel of record, ZIMMERMAN LAW FIRM, P.C. and BOURASSA LAW GROUP, LLC, hereby files this Motion to Substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert.

This Motion is made and based upon the following memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument this Court deems necessary.

Dated November 12, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation



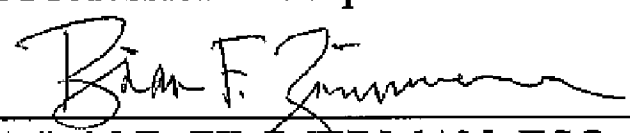
BRIAN F. ZIMMERMAN, ESQ. #7570
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7670 West Lake Mead Blvd., Suite 140
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Attorneys for Plaintiff

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 17 day of December, 2013, at the hour of 9:00am on said date, or as soon thereafter as counsel can be heard, the undersigned attorneys for PLAINTIFF RYAN KIRBY HUPPERT will bring the foregoing Motion on for hearing before the above-entitled Court, Department XXXI at the Clark County Courthouse, Las Vegas, Nevada.

DATED November 12, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation



BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
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Attorneys for Plaintiff

POINTS AND AUTHORITIES

I. FACTS

On August 10, 2012, Plaintiff Ryan Kirby Huppert filed a Complaint against HealthSouth Rehabilitation Hospital of Desert Canyon d/b/a HealthSouth Desert Canyon Rehabilitation Hospital (hereinafter "HealthSouth"), Andrea Elizabeth Pernell, M.D. (hereinafter "Dr. Pernell"), THI of Nevada at Las Vegas, I, LLC d/b/a/ Harmon Medical and Rehabilitation Hospital (hereinafter "Harmon"), Aleksandr Krivonovskiy, M.D. (hereinafter "Dr. Krivonovskiy"), THI of Nevada at Henderson Convalescent, LLC d/b/a Henderson Healthcare Center (hereinafter "Henderson"), and Roland Jayson F. Pua, M.D. (hereinafter "Dr. Pua") for medical malpractice and professional negligence. Plaintiff alleged that the Defendants' care fell below the standard of care resulting in the development of a large sacral pressure ulcer and infections.

On or about September 17, 2013 Plaintiff Ryan Kirby Huppert passed away. Defendant Dr. Pua filed a Suggestion of Death on September 25, 2013. *See* Exhibit "1" attached hereto. On or about September 27, 2013, Defendant HealthSouth filed a Suggestion of Death. *See* Exhibit "2" attached hereto.

On or about October 30, 2013, Kristi L. Wotton and Kay A. Hill filed, as petitioners, for appointment of Special Co-Administrators and issuance of letter of special co-administration for the Estate of Ryan Kirby Huppert. The Petition was granted and the letters were issued on November 7, 2013. *See* Order on Ex-Parte Petition for Appointment of Special Co-Administrators for Issuance of Letters of Special Co-Administration and Letters of Special Co-Administration, attached hereto as Exhibits "3" and "4," respectively. Kristi L. Wotton and Kay A. Hill were properly appointed as Special Co-Administrators of the Estate of Ryan Kirby Huppert on or about November 7, 2013.

The Plaintiff now moves to substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert as a party in place of Ryan Kirby Huppert in this case.

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II. ARGUMENT

Nevada Rule of Civil Procedure Rule 25(a) states the following,

> (a) Death.
>
> (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representative of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Pursuant to NRCP 25, Plaintiff files this Motion to Substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert to preserve the claims he had against the Defendants before he died. Kristi L. Wotton and Kay A. Hill were properly appointed by the Probate Court as Special Co-Administrators of Ryan Kirby Huppert's Estate. *See* Exhibits "3" and "4." This Estate includes any and all claims held by Mr. Huppert personally before he died. Substituting Kristi A. Wotton and Kay A. Hill as a party does not prejudice Defendants in any way.

Based upon the foregoing, Plaintiff requests this Court grant his Motion and substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert as a party in the above-mentioned case, in place of Ryan Kirby Huppert, individually.

Dated November 12, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

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7670 West Lake Mead Blvd., Suite 140
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of November, 2013, I served a true and correct copy of the foregoing document entitled **MOTION FOR SUBSTITUTION OF PARTY** via U.S. Mail, prepaid to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
John H. Cotton , Esq. Katherine L. Turpen, Esq. Cotton, Driggs, Walch, Holley, Woloson & Thompson 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101 702-791-0308; Facsimile 702-791-1912 Attorneys for Andrea Pernell, M.D.	Lynn M. Hansen, Esq. James M. Jimmerson, Esq. Jimmerson Hansen, P.C. 415 South 6th Street, Suite 100 Las Vegas, NV 89101 702-388-7171; Facsimile 702-380-6406 Attorneys for HealthSouth Rehabilitation Hospital of Desert Canyon, LLC dba HealthSouth Desert Canyon Rehabilitation Hospital
Robert D. Rourke, Esq. Rourke Law Firm 10161 Park Run Drive, Suite 150 Las Vegas, NV 89135 702-515-7440; Facsimile 702-515-7441 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center	Dale A. Hayes, Esq. Jason M. Gerber, Esq. Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 702-207-6097; Facsimile 702-856-8923 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center
Mark J. Bourassa, Esq. Marilyn A. Caston, Esq. The Bourassa Law Group 8668 Spring Mountain Road, Suite 101 Las Vegas, NV 89117 702-851-2180; Facsimile 702-851-2189 Co-Counsel for Ryan Huppert	

An employee of
ZIMMERMAN LAW FIRM P.C.

EXHIBIT 1

EXHIBIT 1

346

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CLERK OF THE COURT

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Attorneys for DEFENDANT
Roland Jayson F. Pua, MD

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive,

Defendants.

CASE NO.: A-12-666641-C
DEPT. NO.: 31

SUGGESTION OF DEATH UPON THE RECORD

Defendant, Roland Jayson F. Pua, M.D., hereby suggests, upon the record, the death of

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

347

Plaintiff, Ryan Kirby Huppert herein, pursuant to Nev. R. Civ. P. 25(a), during the pendency of this matter.

DATED this 25 day of September, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
Nevada Bar No. 010904
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Attorneys for DEFENDANT
Roland Jayson F. Pua, MD

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LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

348

CERTIFICATE OF MAILING

I hereby certify that on this 25 day of September, 2013, I did deposit in the United States Post Office, with postage fully prepaid thereon, a copy of the above and foregoing **SUGGESTION OF DEATH UPON THE RECORD** addressed to:

Brian F. Zimmerman, Esq.
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Mark J. Bourassa, Esq.
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Attorneys for Andrea Elizabeth Pernell, MD

Keith A. Weaver, Esq.
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Attorneys for Aleksandr Krivonovskiy, MD

Lynn M. Hansen, Esq.
James M. Jimmerson, Esq.
JIMMERSON HANSEN, P.C.
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Las Vegas, NV 89101
Attorneys for Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Desert Canyon Rehabilitation Hospital

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Attorneys for Thi of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital and Thi of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center

An Employee of Alverson Taylor Mortensen & Sanders

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

350

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding SUGGESTION OF DEATH **UPON THE RECORD** filed in District Court Case No. A-12-666641-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant:

DATED this 25 day of September, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
Nevada Bar No. 010904
7401 West Charleston Boulevard
Las Vegas, NV 89117-1401
702-384-7000
702-385-7000 (fax)
E-File: efile@alversontaylor.com
Attorneys for DEFENDANT
Roland Jayson F. Pua, MD

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
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LAS VEGAS, NEVADA 89117-1401
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351

EXHIBIT 2

EXHIBIT 2

352

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CLERK OF THE COURT

SUG
LYNN M. HANSEN, ESQ.
Nevada Bar No.: 244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No.: 12599
JIMMERSON HANSEN, P.C.
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Tel No.: (702) 388-7171; Fax No.: (702) 380-6406
lmh@jimmersonhansen.com
jmj@jimemrsonhansen.com
Attorneys for Defendant
Healthsouth Rehabilitation Hospital of Desert Canyon, LLC
dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILIATION HOPSITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC, dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D., ROLAND JAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 though 20 inclusive. Defendants.	**CASE NO.: A-12-666641-C** **DEPT NO.: XXXI**

SUGGESTION OF DEATH ON THE RECORD

COMES NOW Defendant, Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC, by and through his

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

353

counsel of record, Lynn M. Hansen, Esq. of the Law Firm of JIMMERSON HANSEN, P.C., and suggest upon the record, pursuant to NRCP 25(a)(1), the death of Ryan Kirby Huppert, Plaintiff, during the pendency of this action.

Dated this 27th of September, 2013.

JIMMERSON HANSEN, P.C.

LYNN M. HANSEN, ESQ.
Nevada Bar No.: 0244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendant
Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of **SUGGESTION OF DEATH ON THE RECORD** was made on the 17th day of September, 2013, as indicated below:

X **By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below**

____ By facsimile, pursuant to EDCR 7.26 (as amended)

____ By receipt of copy as indicated below

Brian F. Zimmerman, Esq.
ZIMMERMAN LAW FIRM
7670 W. Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff
Fax No.: 702-228-8917

Mark. J. Bourassa, Esq.
BOURASSA LAW GROUP, LLC
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Las Vegas, Nevada 89117
Attorneys for Plaintiff
Fax No.: 702-851-2189

John H. Cotton, Esq.
Katherine L. Turpen, Esq.
COTTON DRIGGS WALCH HOLLEY WOLSON & THOMPSON
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Andrea Pernell, M.D.
Fax No.: 702-791-1912

V. Andrew Cass, Esq.
Keith A. Weaver, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Blvd., Suite 600
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Aleksandr Krivonovskiy, M.D.
Fax No.: 702-893-3789

David J. Mortensen, Esq.
Chelsea R. Hueth, Esq.
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Roland Jayson F. Pua, M.D.
Fax No.: 702-385-7000

Dale A. Hayes, Esq.
Jason M. Gerber, Esq.
MARQUIS AURBACH COFFING
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Fax No.: 702-856-8923

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355

Robert D. Rourke, Esq.
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Attorney for Defendants
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EXHIBIT 3

EXHIBIT 3

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CLERK OF THE COURT

ORDR
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of RYAN KIRBY HUPPERT, Deceased.	Case No. P-13-078874-E

ORDER ON EX-PARTE PETITION FOR APPOINTMENT OF SPECIAL CO-ADMINISTRATORS AND FOR ISSUANCE OF LETTERS OF SPECIAL CO-ADMINISTRATION

This Matter upon the Ex-Parte Petition of KRISTI L. WOTTON and KAY A. HILL, for appointment of Special Co-Administrators and for Issuance of Letters of Special Co-Administration of the Estate of RYAN KIRBY HUPPERT, Deceased; the Court having considered this matter and having found that all the allegations contained in said Petition are true and correct, and good cause appearing therefor, the Court finds:

The Decedent, RYAN KIRBY HUPPERT, died on or about the 17th day of September, 2013, in the City of Las Vegas, State of Nevada, and at the time of his death was a resident of Clark County, State of Nevada. A certified copy of the Decedent's death certificate was filed with the Ex-Parte Petition.

IT IS HEREBY ORDER, ADJUDICATED AND DECREED that KRISTI L. WOTTON and KAY A. HILL be appointed Special Co-Administrators for the Estate and that Letters of Special Co-Administration be issued to them upon taking the oath of office, as required by law.

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL are qualified to serve as Special Co-Administrators of the above-referenced Estate.

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IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL shall have all rights and duties of Special Co-Administrators which are outlined in the laws of the State of Nevada including, but not limited to, the power and authority to locate and securing assets of the Decedent, the power to continue with any litigation proceeding that RYAN KIRBY HUPPERT was a party to at the time of his death (including for Clark County District Court Case No. A-12-0666641-C, Dept. XXXI), the power to commence any litigation that the Special Co-Administrators believe is necessary on behalf of the Estate of RYAN KIRBY HUPPERT, and the ability to publish a Notice to Creditors on behalf of the Estate.

IT IS FURTHER ORDERED that the requirement of bond is waived.

IT IS FURTHER ORDERED that any liquid assets shall be placed in the trust account of GERRARD COX LARSEN pending further order of this Court.

IT IS FURTHER ORDERED that any settlement of the Decedent's lawsuit is subject to this Court's approval.

DATED this 19th day of November, 2013.

DISTRICT COURT JUDGE

Respectfully submitted by:

GERRARD COX LARSEN

RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
2450 St. Rose Parkway, Suite #200
Henderson, Nevada 89074
(702) 796-4000

359

EXHIBIT 4

EXHIBIT 4

360

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CLERK OF THE COURT

LETT
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of RYAN KIRBY HUPPERT, Deceased.	Case No. P-13-078874-E Hearing Date: Hearing Time:

LETTERS OF SPECIAL CO-ADMINISTRATION

On the 7 day of NOV., 2013, an Order of the Court was entered appointing KRISTI L. WOTTON and KAY A. HILL, as Special Co-Administrators of the Estate of the Decedent and who, having duly qualified, are hereby authorized to act and have the authority and shall perform the duties of such Co-Administrators.

That the requirement for bond is waived.

That should any liquid assets be located, the same shall be placed into the trust account of GERRARD COX LARSEN pending further order of this Court.

In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

Dated this ____ day of NOV 07 2013, 2013.

CLERK OF COURT

MARICELA CORRALES

By: _____
Deputy Clerk

DISTRICT COURT SEAL

///

///

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OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KRISTI L. WOTTON, whose mailing address is: 1074 Oak Shade Lane, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KRISTI L. WOTTON

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 06-107022-1 My Appointment Expires June 8, 2014

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OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KAY A. HILL, whose mailing address is: 335 W. Atlantic Avenue, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KAY A. HILL

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 06-107022-1 My Appointment Expires June 8, 2014

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TAB 24

TAB 24

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ORIGINAL

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CLERK OF THE COURT

REQT
BRIAN F. ZIMMERMAN, ESQ.
Nevada Bar No. 7570
RENEE M. MAXFIELD, ESQ.
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mbourassa@bourassalawgroup.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

REQUEST FOR ORDER SHORTENING TIME REGARDING PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY

Hearing Date:
Hearing Time:

11-19-13 A11:30 IN

REQUEST FOR ORDER SHORTENING TIME REGARDING PLAINTIF'SS MOTION FOR SUBSTITUTION OF PARTY

COMES NOW, Plaintiff RYAN KIRBY HUPPERT, by and through his counsel of record, ZIMMERMAN LAW FIRM, P.C. and BOURASSA LAW GROUP, LLC, and hereby moves this Honorable Court for an Order Shortening time to hear Plaintiff's Motion to Substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert.

This Motion is made and based upon the Declaration of Brian F. Zimmerman, attorney for Plaintiff Ryan Kirby Huppert, the Points and Authorities in its Motion to Substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert attached hereto as Exhibit "A", the papers and pleadings on file herein, and any oral argument this Court deems necessary.

Respectfully submitted November 18, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

ORDER SHORTENING TIME

Upon good cause shown, Plaintiff, RYAN KIRBY HUPPERT's Request for Order Shortening Time to hear its Motion for Substitution of Party is hereby granted. Plaintiff, RYAN KIRBY HUPPERT's Motion for Substitution of Party is hereby ordered to be heard on the 5 day of December, 2013, at 9 a.m., in Dept. XXXI.

JOANNA S. KISHNER

DISTRICT COURT JUDGE JOANNA S. KISHNER

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DECLARATION OF BRIAN F. ZIMMERMAN
ATTORNEY FOR PLAINTIFF, RYAN KIRBY HUPPERT

I, BRIAN F. ZIMMERMAN, being duly sworn, deposes and says:

1. The Declarant is a duly licensed and practicing attorney in the State of Nevada in good standing and is an attorney with THE ZIMMERMAN LAW FIRM, P.C.

2. That Declarant is counsel of record for Plaintiff Ryan Kirby Huppert, who is now deceased. A suggestion of death was filed as to Ryan Kirby Huppert on September 25, 2013.

3. Pursuant to NRS 41.100 and NRCP 25 Ryan Kirby Huppert's claims for damages survive his death and a motion for substitution may be made by the Ryan Kirby Huppert's successor or representative. On November 7, 2013, Kristi L. Wotton and Kay A. Hill were appointed as Special Co-Administrators pursuant to the attached Order on Ex-Parte Petition for Appointing of Special Co-Administrators and for Issuance of Letters of Special Co-Administration and the Letters of Special Co-Administration, in Clark County District Court Case Number P-13-078874-E, see Exhibit B. Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert have been authorized by the District Court to pursue all litigation proceeding that Ryan Kirby Huppert was a party to at the time of his death, including Clark County District Court Case No. A-12-0666641-C, Department 31.

4. NRCP 25 requires dismissal of an action where a Motion to Substitute the proper party has not been made within 90 days after the service of a Suggestion of Death. A Motion to Substitute would have to be "made" by December 24, 2013. A Motion to Substitute has been filed with the District Court in this matter and is not scheduled to be heard until December 17, 2013, which is within the time period called for in NRCP 25, but since only parties are being substituted, Kristi L. Wotton and Kay A. Hill as Special Co-Administrators request earlier hearing date based upon an order shortening time.

5. Trial has been scheduled for July 28, 2014. Since Kristi L. Wotton and Kay A. Hill as Special Co-Administrators have been authorized by the District Court to pursue the instant litigation, their substitution in place of Ryan Kirby Huppert is a matter of form and Defendants cannot have any substantive opposition to the Motion to Substitute.

6. Commissioner Bulla has set discovery deadlines that are set forth in the attached Exhibit C. Many depositions have already taken place in this matter and at the time of Mr. Huppert's death, there were depositions pending that needed to be continued, including depositions of Defendant Aleksandr Krivonovskiy, M.D., employees of Defendants THI of Nevada at Las Vegas I, LLC and THI of Nevada at Henderson Convalescent, as well as treating physician, Irwin Simon, M.D. Although the discovery deadlines may need to be extended because of the stay of the case from the death of Mr. Huppert, the issue of the case agenda is not presently before the court. Nevertheless, an earlier hearing on the Motion to Substitute will increase the chances of being able to complete more discovery to be able to attempt to conclude discovery without moving the current trial date.

7. This motion for order shorting time to obtain the earliest possible hearing date on the Motion to Substitute will allow the parties to resume litigation and avoid further delay in the litigation.

8. Therefore, Declarant requests that the instant Motion be set for hearing on an Order Shortening Time on the Court's earliest available date.

9. The instant request is made in good faith and not for the purposes of harassment or delay.

Executed 18th day of November, 2013

BRIAN F. ZIMMERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of November, 2013, I served a true and correct copy of the foregoing document entitled **REQUEST FOR ORDER SHORTENING TIME REGARDING PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY** via U.S. Mail, prepaid to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
John H. Cotton , Esq. Katherine L. Turpen, Esq. Cotton, Driggs, Walch, Holley, Woloson & Thompson 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101 702-791-0308; Facsimile 702-791-1912 Attorneys for Andrea Pernell, M.D.	Lynn M. Hansen, Esq. James M. Jimmerson, Esq. Jimmerson Hansen, P.C. 415 South 6th Street, Suite 100 Las Vegas, NV 89101 702-388-7171; Facsimile 702-380-6406 Attorneys for HealthSouth Rehabilitation Hospital of Desert Canyon, LLC dba HealthSouth Desert Canyon Rehabilitation Hospital
Robert D. Rourke, Esq. Rourke Law Firm 10161 Park Run Drive, Suite 150 Las Vegas, NV 89135 702-515-7440; Facsimile 702-515-7441 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center	Dale A. Hayes, Esq. Jason M. Gerber, Esq. Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 702-207-6097; Facsimile 702-856-8923 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center
Mark J. Bourassa, Esq. Marilyn A. Caston, Esq. The Bourassa Law Group 8668 Spring Mountain Road, Suite 101 Las Vegas, NV 89117 702-851-2180; Facsimile 702-851-2189 Co-Counsel for Ryan Huppert	

An employee of
ZIMMERMAN LAW FIRM P.C.

EXHIBIT A

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CLERK OF THE COURT

MSUB
BRIAN F. ZIMMERMAN, ESQ.
Nevada Bar No. 7570
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

MOTION FOR SUBSTITUTION OF PARTY

MOTION FOR SUBSTITUTION OF PARTY

COMES NOW, Plaintiff RYAN KIRBY HUPPERT, by and through his counsel of record, ZIMMERMAN LAW FIRM, P.C. and BOURASSA LAW GROUP, LLC, hereby files this Motion to Substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert.

This Motion is made and based upon the following memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument this Court deems necessary.

Dated November 12, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

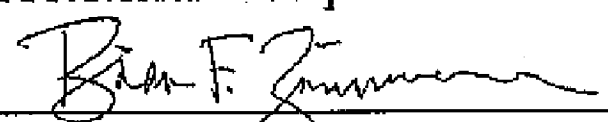
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NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 17 day of December, 2013, at the hour of 9:00am on said date, or as soon thereafter as counsel can be heard, the undersigned attorneys for PLAINTIFF RYAN KIRBY HUPPERT will bring the foregoing Motion on for hearing before the above-entitled Court, Department XXXI at the Clark County Courthouse, Las Vegas, Nevada.

DATED November 12, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation



BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

POINTS AND AUTHORITIES

I. FACTS

On August 10, 2012, Plaintiff Ryan Kirby Huppert filed a Complaint against HealthSouth Rehabilitation Hospital of Desert Canyon d/b/a HealthSouth Desert Canyon Rehabilitation Hospital (hereinafter "HealthSouth"), Andrea Elizabeth Pernell, M.D. (hereinafter "Dr. Pernell"), THI of Nevada at Las Vegas, I, LLC d/b/a/ Harmon Medical and Rehabilitation Hospital (hereinafter "Harmon"), Aleksandr Krivonovskiy, M.D. (hereinafter "Dr. Krivonovskiy"), THI of Nevada at Henderson Convalescent, LLC d/b/a Henderson Healthcare Center (hereinafter "Henderson"), and Roland Jayson F. Pua, M.D. (hereinafter "Dr. Pua") for medical malpractice and professional negligence. Plaintiff alleged that the Defendants' care fell below the standard of care resulting in the development of a large sacral pressure ulcer and infections.

On or about September 17, 2013 Plaintiff Ryan Kirby Huppert passed away. Defendant Dr. Pua filed a Suggestion of Death on September 25, 2013. *See* Exhibit "1" attached hereto. On or about September 27, 2013, Defendant HealthSouth filed a Suggestion of Death. *See* Exhibit "2" attached hereto.

On or about October 30, 2013, Kristi L. Wotton and Kay A. Hill filed, as petitioners, for appointment of Special Co-Administrators and issuance of letter of special co-administration for the Estate of Ryan Kirby Huppert. The Petition was granted and the letters were issued on November 7, 2013. *See* Order on Ex-Parte Petition for Appointment of Special Co-Administrators for Issuance of Letters of Special Co-Administration and Letters of Special Co-Administration, attached hereto as Exhibits "3" and "4," respectively. Kristi L. Wotton and Kay A. Hill were properly appointed as Special Co-Administrators of the Estate of Ryan Kirby Huppert on or about November 7, 2013.

The Plaintiff now moves to substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert as a party in place of Ryan Kirby Huppert in this case.

///

///

II. ARGUMENT

Nevada Rule of Civil Procedure Rule 25(a) states the following,

> (a) Death.
>
> (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representative of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Pursuant to NRCP 25, Plaintiff files this Motion to Substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert to preserve the claims he had against the Defendants before he died. Kristi L. Wotton and Kay A. Hill were properly appointed by the Probate Court as Special Co-Administrators of Ryan Kirby Huppert's Estate. *See* Exhibits "3" and "4." This Estate includes any and all claims held by Mr. Huppert personally before he died. Substituting Kristi A. Wotton and Kay A. Hill as a party does not prejudice Defendants in any way.

Based upon the foregoing, Plaintiff requests this Court grant his Motion and substitute Kristi L. Wotton and Kay A. Hill as Special Co-Administrators of the Estate of Ryan Kirby Huppert as a party in the above-mentioned case, in place of Ryan Kirby Huppert, individually.

Dated November 12, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of November, 2013, I served a true and correct copy of the foregoing document entitled **MOTION FOR SUBSTITUTION OF PARTY** via U.S. Mail, prepaid to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
John H. Cotton , Esq. Katherine L. Turpen, Esq. Cotton, Driggs, Walch, Holley, Woloson & Thompson 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101 702-791-0308; Facsimile 702-791-1912 Attorneys for Andrea Pernell, M.D.	Lynn M. Hansen, Esq. James M. Jimmerson, Esq. Jimmerson Hansen, P.C. 415 South 6th Street, Suite 100 Las Vegas, NV 89101 702-388-7171; Facsimile 702-380-6406 Attorneys for HealthSouth Rehabilitation Hospital of Desert Canyon, LLC dba HealthSouth Desert Canyon Rehabilitation Hospital
Robert D. Rourke, Esq. Rourke Law Firm 10161 Park Run Drive, Suite 150 Las Vegas, NV 89135 702-515-7440; Facsimile 702-515-7441 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center	Dale A. Hayes, Esq. Jason M. Gerber, Esq. Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 702-207-6097; Facsimile 702-856-8923 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center
Mark J. Bourassa, Esq. Marilyn A. Caston, Esq. The Bourassa Law Group 8668 Spring Mountain Road, Suite 101 Las Vegas, NV 89117 702-851-2180; Facsimile 702-851-2189 Co-Counsel for Ryan Huppert	

An employee of
ZIMMERMAN LAW FIRM P.C.

EXHIBIT 1

EXHIBIT 1

378

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CLERK OF THE COURT

SUGG
ALVERSON, TAYLOR, MORTENSEN & SANDERS
DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
Nevada Bar No. 010904
7401 West Charleston Boulevard
Las Vegas, NV 89117-1401
702-384-7000
702-385-7000 (fax)
E-File: efile@alversontaylor.com
Attorneys for DEFENDANT
Roland Jayson F. Pua, MD

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive,

Defendants.

CASE NO.: A-12-666641-C
DEPT. NO.: 31

SUGGESTION OF DEATH UPON THE RECORD

Defendant, Roland Jayson F. Pua, M.D., hereby suggests, upon the record, the death of

#20196 / DJM:sm

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

379

Plaintiff, Ryan Kirby Huppert herein, pursuant to Nev. R. Civ. P. 25(a), during the pendency of this matter.

DATED this 25 day of September, 2013.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
Nevada Bar No. 010904
7401 West Charleston Boulevard
Las Vegas, NV 89117-1401
702-384-7000
702-385-7000 (fax)
E-File: efile@alversontaylor.com
Attorneys for DEFENDANT
Roland Jayson F. Paa, MD

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

380

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

CERTIFICATE OF MAILING

I hereby certify that on this 25 day of September, 2013, I did deposit in the United States Post Office, with postage fully prepaid thereon, a copy of the above and foregoing **SUGGESTION OF DEATH UPON THE RECORD** addressed to:

Brian F. Zimmerman, Esq.
ZIMMERMAN LAW FIRM
7201 West Lake Mead Blvd., Ste. 110
Las Vegas, NV 89128
F: 702-228-8947
bzimmerman@za-law.com

Mark J. Bourassa, Esq.
BOURASSA LAW GROUP, LLC
8668 Spring Mountain Road, Suite 101
Las Vegas, NV 89117
F: 702-851-2189
mbourassa@bourassalawgroup.com

Attorneys for Plaintiff

John H. Cotton, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 S. Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorneys for Andrea Elizabeth Pennell, MD

Keith A. Weaver, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 South Rainbow Blvd, Suite 600
Las Vegas, NV 89118
Attorneys for Aleksandr Krivonovskiy, MD

Lynn M. Hansen, Esq.
James M. Jimmerson, Esq.
JIMMERSON HANSEN, P.C.
415 South 6th Street, Suite 100
Las Vegas, NV 89101
Attorneys for Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Desert Canyon Rehabilitation Hospital

#261196 / 09/25/13

381

Robert D. Rourke, Esq.
ROURKE LAW FIRM
10161 Park Run Drive, Suite 150
Las Vegas, NV 89135

Jason M. Gerber, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145

Attorneys for Tbi of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital and Tbi of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center

An Employee of Alverson Taylor Mortensen & Sanders

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

382

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding SUGGESTION OF DEATH UPON THE RECORD filed in District Court Case No. A-12-666641-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 25 day of September, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
Nevada Bar No. 010904
7401 West Charleston Boulevard
Las Vegas, NV 89117-1401
703-384-7000
702-385-7000 (fax)
E-File: efile@alversontaylor.com
Attorneys for DEFENDANT
Roland Jayson F. Pua, MD

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

383

EXHIBIT 2

EXHIBIT 2

384

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CLERK OF THE COURT

SUG
LYNN M. HANSEN, ESQ.
Nevada Bar No.: 244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No.: 12599
JIMMERSON HANSEN, P.C.
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Tel No.: (702) 388-7171; Fax No.: (702) 380-6406
lmh@jimmersonhansen.com
jmj@jimemrsonhansen.com
Attorneys for Defendant
Healthsouth Rehabilitation Hospital of Desert Canyon, LLC
dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILIATION HOPSITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC, dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D., ROLAND JAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 though 20 inclusive. Defendants.	**CASE NO.: A-12-666641-C** **DEPT NO.: XXXI**

SUGGESTION OF DEATH ON THE RECORD

COMES NOW Defendant, Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC, by and through his

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

385

counsel of record, Lynn M. Hansen, Esq. of the Law Firm of JIMMERSON HANSEN, P.C., and suggest upon the record, pursuant to NRCP 25(a)(1), the death of Ryan Kirby Huppert, Plaintiff, during the pendency of this action.

Dated this 27th of September, 2013.

JIMMERSON HANSEN, P.C.

LYNN M. HANSEN, ESQ.
Nevada Bar No.: 0244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendant
Healthsouth Rehabilitation Hospital of Desert Canyon, LLC dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 · Facsimile (702) 387-1167

386

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of **SUGGESTION OF DEATH ON THE RECORD** was made on the 27th day of September, 2013, as indicated below:

X **By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below**

____ By facsimile, pursuant to EDCR 7.26 (as amended)

____ By receipt of copy as indicated below

Brian F. Zimmerman, Esq.
ZIMMERMAN LAW FIRM
7670 W. Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff
Fax No.: 702-228-8917

Mark. J. Bourassa, Esq.
BOURASSA LAW GROUP, LLC
8668 Spring Mountain Road, Suite 101
Las Vegas, Nevada 89117
Attorneys for Plaintiff
Fax No.: 702-851-2189

John H. Cotton, Esq.
Katherine L. Turpen, Esq.
COTTON DRIGGS WALCH HOLLEY WOLSON & THOMPSON
400 South 4th Street, 3rd Floor
Las Vegas, Nevada 89101
Attorneys for Defendant
Andrea Pernell, M.D.
Fax No.: 702-791-1912

V. Andrew Cass, Esq.
Keith A. Weaver, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant
Aleksandr Krivonovskiy, M.D.
Fax No.: 702-893-3789

David J. Mortensen, Esq.
Chelsea R. Hueth, Esq.
ALVERSON TAYLOR MORTENSEN & SANDERS
7401 West Charleston Blvd.
Las Vegas, Nevada 89117
Attorneys for Defendant
Roland Jayson F. Pua, M.D.
Fax No.: 702-385-7000

Dale A. Hayes, Esq.
Jason M. Gerber, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendant
THI of Nevada at Henderson Healthcare Center & THI of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital
Fax No.: 702-856-8923

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 • Facsimile (702) 387-1167

Robert D. Rourke, Esq.
ROURKE LAW FIRM
10161 Park Run Drive, Ste. 150
Las Vegas, Nevada 89145
Attorney for Defendants
THI of Nevada at Henderson Convalescent, LLC, dba Henderson Healthcare Center & THI of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital
Fax No.: 702-515-7441

An employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

EXHIBIT 3

EXHIBIT 3

389

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CLERK OF THE COURT

ORDR
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of

RYAN KIRBY HUPPERT,

Deceased.

Case No. P-13-078874-E

ORDER ON EX-PARTE PETITION FOR APPOINTMENT OF SPECIAL CO-ADMINISTRATORS AND FOR ISSUANCE OF LETTERS OF SPECIAL CO-ADMINISTRATION

This Matter upon the Ex-Parte Petition of KRISTI L. WOTTON and KAY A. HILL, for appointment of Special Co-Administrators and for Issuance of Letters of Special Co-Administration of the Estate of RYAN KIRBY HUPPERT, Deceased; the Court having considered this matter and having found that all the allegations contained in said Petition are true and correct, and good cause appearing therefor, the Court finds:

The Decedent, RYAN KIRBY HUPPERT, died on or about the 17th day of September, 2013, in the City of Las Vegas, State of Nevada, and at the time of his death was a resident of Clark County, State of Nevada. A certified copy of the Decedent's death certificate was filed with the Ex-Parte Petition.

IT IS HEREBY ORDER, ADJUDICATED AND DECREED that KRISTI L. WOTTON and KAY A. HILL be appointed Special Co-Administrators for the Estate and that Letters of Special Co-Administration be issued to them upon taking the oath of office, as required by law.

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL are qualified to serve as Special Co-Administrators of the above-referenced Estate.

///

390

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL shall have all rights and duties of Special Co-Administrators which are outlined in the laws of the State of Nevada including, but not limited to, the power and authority to locate and securing assets of the Decedent, the power to continue with any litigation proceeding that RYAN KIRBY HUPPERT was a party to at the time of his death (including for Clark County District Court Case No. A-12-0666641-C, Dept. XXXI), the power to commence any litigation that the Special Co-Administrators believe is necessary on behalf of the Estate of RYAN KIRBY HUPPERT, and the ability to publish a Notice to Creditors on behalf of the Estate.

IT IS FURTHER ORDERED that the requirement of bond is waived.

IT IS FURTHER ORDERED that any liquid assets shall be placed in the trust account of GERRARD COX LARSEN pending further order of this Court.

IT IS FURTHER ORDERED that any settlement of the Decedent's lawsuit is subject to this Court's approval.

DATED this 10th day of November, 2013.

DISTRICT COURT JUDGE

Respectfully submitted by:

GERRARD COX LARSEN

RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
2450 St. Rose Parkway, Suite #200
Henderson, Nevada 89074
(702) 796-4000

391

EXHIBIT 4

EXHIBIT 4

392

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CLERK OF THE COURT

LETT
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of RYAN KIRBY HUPPERT, Deceased.	Case No. P-13-078874-E Hearing Date: Hearing Time:

LETTERS OF SPECIAL CO-ADMINISTRATION

On the 7 day of Nov., 2013, an Order of the Court was entered appointing KRISTI L. WOTTON and KAY A. HILL, as Special Co-Administrators of the Estate of the Decedent and who, having duly qualified, are hereby authorized to act and have the authority and shall perform the duties of such Co-Administrators.

That the requirement for bond is waived.

That should any liquid assets be located, the same shall be placed into the trust account of GERRARD COX LARSEN pending further order of this Court.

In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

Dated this ____ day of NOV 07 2013, 2013.

CLERK OF COURT

MARICELA CORRALES

By: _____
Deputy Clerk

DISTRICT COURT SEAL

///

///

393

OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KRISTI L. WOTTON, whose mailing address is: 1074 Oak Shade Lane, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KRISTI L. WOTTON

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 06-107028-1 My Appointment Expires June 8, 2014

394

OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KAY A. HILL, whose mailing address is: 335 W. Atlantic Avenue, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KAY A. HILL

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 08-107022-1 My Appointment Expires June 8, 2014

395

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CLERK OF THE COURT

ORDR
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of

RYAN KIRBY HUPPERT,

Deceased.

Case No. P-13-078874-E

ORDER ON EX-PARTE PETITION FOR APPOINTMENT OF SPECIAL CO-ADMINISTRATORS AND FOR ISSUANCE OF LETTERS OF SPECIAL CO-ADMINISTRATION

This Matter upon the Ex-Parte Petition of KRISTI L. WOTTON and KAY A. HILL, for appointment of Special Co-Administrators and for Issuance of Letters of Special Co-Administration of the Estate of RYAN KIRBY HUPPERT, Deceased; the Court having considered this matter and having found that all the allegations contained in said Petition are true and correct, and good cause appearing therefor, the Court finds:

The Decedent, RYAN KIRBY HUPPERT, died on or about the 17th day of September, 2013, in the City of Las Vegas, State of Nevada, and at the time of his death was a resident of Clark County, State of Nevada. A certified copy of the Decedent's death certificate was filed with the Ex-Parte Petition.

IT IS HEREBY ORDER, ADJUDICATED AND DECREED that KRISTI L. WOTTON and KAY A. HILL be appointed Special Co-Administrators for the Estate and that Letters of Special Co-Administration be issued to them upon taking the oath of office, as required by law.

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL are qualified to serve as Special Co-Administrators of the above-referenced Estate.

///

396

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL shall have all rights and duties of Special Co-Administrators which are outlined in the laws of the State of Nevada including, but not limited to, the power and authority to locate and securing assets of the Decedent, the power to continue with any litigation proceeding that RYAN KIRBY HUPPERT was a party to at the time of his death (including for Clark County District Court Case No. A-12-0666641-C, Dept. XXXI), the power to commence any litigation that the Special Co-Administrators believe is necessary on behalf of the Estate of RYAN KIRBY HUPPERT, and the ability to publish a Notice to Creditors on behalf of the Estate.

IT IS FURTHER ORDERED that the requirement of bond is waived.

IT IS FURTHER ORDERED that any liquid assets shall be placed in the trust account of GERRARD COX LARSEN pending further order of this Court.

IT IS FURTHER ORDERED that any settlement of the Decedent's lawsuit is subject to this Court's approval.

DATED this 16th day of November, 2013.

DISTRICT COURT JUDGE

Respectfully submitted by:

GERRARD COX LARSEN

RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
2450 St. Rose Parkway, Suite #200
Henderson, Nevada 89074
(702) 796-4000

397

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CLERK OF THE COURT

LETT
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of RYAN KIRBY HUPPERT, Deceased.	Case No. P-13-078874-E Hearing Date: Hearing Time:

LETTERS OF SPECIAL CO-ADMINISTRATION

On the 7 day of NOV., 2013, an Order of the Court was entered appointing KRISTI L. WOTTON and KAY A. HILL, as Special Co-Administrators of the Estate of the Decedent and who, having duly qualified, are hereby authorized to act and have the authority and shall perform the duties of such Co-Administrators.

That the requirement for bond is waived.

That should any liquid assets be located, the same shall be placed into the trust account of GERRARD COX LARSEN pending further order of this Court.

In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

Dated this ____ day of NOV 07 2013, 2013.

CLERK OF COURT

MARICELA CORRALES

By: _____
Deputy Clerk

DISTRICT COURT SEAL

///

///

398

OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KRISTI L. WOTTON, whose mailing address is: 1074 Oak Shade Lane, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KRISTI L. WOTTON

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 05-107021-1 My Appointment Expires June 8, 2014

399

OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KAY A. HILL, whose mailing address is: 335 W. Atlantic Avenue, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KAY A. HILL

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 05-101022-1 My Appointment Expires June 8, 2014

EXHIBIT B

401

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11/07/2013 10:00:06 AM

CLERK OF THE COURT

ORDR
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of RYAN KIRBY HUPPERT, Deceased.	Case No. P-13-078874-E

ORDER ON EX-PARTE PETITION FOR APPOINTMENT OF SPECIAL CO-ADMINISTRATORS AND FOR ISSUANCE OF LETTERS OF SPECIAL CO-ADMINISTRATION

This Matter upon the Ex-Parte Petition of KRISTI L. WOTTON and KAY A. HILL, for appointment of Special Co-Administrators and for Issuance of Letters of Special Co-Administration of the Estate of RYAN KIRBY HUPPERT, Deceased; the Court having considered this matter and having found that all the allegations contained in said Petition are true and correct, and good cause appearing therefor, the Court finds:

The Decedent, RYAN KIRBY HUPPERT, died on or about the 17th day of September, 2013, in the City of Las Vegas, State of Nevada, and at the time of his death was a resident of Clark County, State of Nevada. A certified copy of the Decedent's death certificate was filed with the Ex-Parte Petition.

IT IS HEREBY ORDER, ADJUDICATED AND DECREED that KRISTI L. WOTTON and KAY A. HILL be appointed Special Co-Administrators for the Estate and that Letters of Special Co-Administration be issued to them upon taking the oath of office, as required by law.

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL are qualified to serve as Special Co-Administrators of the above-referenced Estate.

///

IT IS FURTHER ORDERED that KRISTI L. WOTTON and KAY A. HILL shall have all rights and duties of Special Co-Administrators which are outlined in the laws of the State of Nevada including, but not limited to, the power and authority to locate and securing assets of the Decedent, the power to continue with any litigation proceeding that RYAN KIRBY HUPPERT was a party to at the time of his death (including for Clark County District Court Case No. A-12-0666641-C, Dept. XXXI), the power to commence any litigation that the Special Co-Administrators believe is necessary on behalf of the Estate of RYAN KIRBY HUPPERT, and the ability to publish a Notice to Creditors on behalf of the Estate.

IT IS FURTHER ORDERED that the requirement of bond is waived.

IT IS FURTHER ORDERED that any liquid assets shall be placed in the trust account of GERRARD COX LARSEN pending further order of this Court.

IT IS FURTHER ORDERED that any settlement of the Decedent's lawsuit is subject to this Court's approval.

DATED this 19th day of November, 2013.

DISTRICT COURT JUDGE

Respectfully submitted by:

GERRARD COX LARSEN

RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
2450 St. Rose Parkway, Suite #200
Henderson, Nevada 89074
(702) 796-4000

403

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CLERK OF THE COURT

LETT
RICHARD D. CHATWIN, ESQUIRE
Nevada Bar No. 10870
GERRARD COX LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

In the Matter of the Estate of RYAN KIRBY HUPPERT, Deceased.	Case No. P-13-078874-E Hearing Date: Hearing Time:

LETTERS OF SPECIAL CO-ADMINISTRATION

On the 7 day of NOV., 2013, an Order of the Court was entered appointing KRISTI L. WOTTON and KAY A. HILL, as Special Co-Administrators of the Estate of the Decedent and who, having duly qualified, are hereby authorized to act and have the authority and shall perform the duties of such Co-Administrators.

That the requirement for bond is waived.

That should any liquid assets be located, the same shall be placed into the trust account of GERRARD COX LARSEN pending further order of this Court.

In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

Dated this ____ day of NOV 07 2013, 2013.

CLERK OF COURT

MARICELA CORRALES

By: _____
Deputy Clerk

DISTRICT COURT SEAL

///

///

404

OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KRISTI L. WOTTON, whose mailing address is: 1074 Oak Shade Lane, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KRISTI L. WOTTON

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 06-107022-1 My Appointment Expires June 8, 2014

405

OATH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, KAY A. HILL, whose mailing address is: 335 W. Atlantic Avenue, Henderson, Nevada 89015, solemnly affirm that I will faithfully perform according to law the duties of Special Administrator.

KAY A. HILL

SUBSCRIBED and SWORN to before me this 17th day of October, 2013.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
DAWN M. WADDOUPS
No. 05-107022-1 My Appointment Expires June 8, 2014

406

EXHIBIT C

407

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CLERK OF THE COURT

NEO
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@cdwnvlaw.com
KATHERINE L. TURPEN, ESQ.
Nevada Bar No. 008911
E-mail: KTurpen@cdwnvlaw.com
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912

Attorney for Defendant Andrea Pernell, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT;

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC d/b/a HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC d/b/a HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC d/b/a HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D.; ROLAND HAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive;

Defendants.

Case No: A12-666641-C
Dept. No.: XXXI

NOTICE OF ENTRY OF ORDER

YOU, and each of you, will please take notice that an Order regarding Discovery Commissioner's Report and Recommendations regarding August 6, 2013 Hearing in the above entitled matter was filed and entered by the Clerk of the above-entitled Court on the 8th day of October, 2013, a copy of which is attached hereto.

/ / /

01601-61/1167194

408

Dated this 8 day of October, 2013.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
KATHERINE L. TURPEN, ESQ.
Nevada Bar No. 008911
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Defendant Andrea Pernell, M.D.

01601-61/1167194

409

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 31st day of October, 2013, and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY**, postage prepaid and addressed to:

Brian F. Zimmerman
ZIMMERMAN LAW FIRM P.C.
7670 West Lake Mead Boulevard, Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

Lyn M. Hansen, Esq.
JIMMERSON HANSEN
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendant Health South – Desert Canyon

Keith A. Weaver, Esq.
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6385 South Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Aleksandr Krivonovskiy, M.D.

Chelsea R. Hueth, Esq.
ALVERSON, TAYLOR, MORTENSEN & SANDERS
7401 West Charleston Boulevard
Las Vegas, Nevada 89117
Attorneys for Defendant Roland Jayson F. Pua, M.D

An employee of Cotton, Driggs, Walch, Holley, Woloson & Thompson

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CLERK OF THE COURT

DCRR
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
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KATHERINE L. TURPEN, ESQ.
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400 South Fourth Street, Third Floor
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Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Defendant Andrea Pernell, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT; Plaintiff, v. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC d/b/a HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC d/b/a HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC d/b/a HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D.; ROLAND HAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive; Defendants.	Case No.: A12-666641-C Dept. No.: XXXI

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: August 6, 2013
Hearing Time: 1:00 p.m.

411

CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 1:00 p.m.

APPEARANCES:

Attorney for Plaintiff: Brian Zimmerman, Esq.
Zimmerman Law Offices
Attorneys for Plaintiff Ryan K. Huppert

Attorney for Defendants: Adam Schneider, Esq. of Cotton, Driggs, Walch, Holley, Woloson & Thompson
Attorneys for Defendant Dr. Andrea Pernell

Lyn M. Hansen, Esq.
Jimerson Hansen
Attorneys for Defendant Health South – Desert Canyon

Robert Rourke, Esq.
ROURKE LAW FIRM
Attorneys for Defendants THI of Nevada at Henderson Convalescent, LLC, dba Henderson Healthcare Center & THI of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital

Keith A. Weaver, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
Attorneys for Defendant Aleksandr Krivonovskiy, M.D.

Stephanie Zinna, Esq.
ALVERSON TAYLOR
MORTENSEN & SANDERS
Attorneys for Defendant Roland Jayson F. Pua, M.D

I.

FINDINGS

This matter came before the Honorable Discovery Commissioner to extend discovery deadlines during the medical malpractice status checks. The Discovery Commissioner set forth the following recommendations:

. . .

. . .

. . .

CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 1:00 p.m.

II.

RECOMMENDATIONS

IT IS RECOMMENDED that the Discovery deadlines be extended as follows:

1. Close of Discovery: April 28, 2014

2. Final Date to File Motions to Amend Pleadings or add parties (without a further court order): December 30, 2013

3. Final Dates for Expert Disclosures:

   i. Initial Expert Disclosures: January 28, 2014

   ii. Rebuttal Expert Disclosures: February 28, 2014

4. Final Date to File Dispositive Motions: May 28, 2014

The trial date of 7-28-14 Stands BB

DATED this 9 day of September 2013.

Discovery Commissioner
Honorable Bonnie A. Bulla

Submitted this 6 day of August 2013.

By: _____
KATHERINE L. TURPEN, ESQ.
Nevada Bar No. 8911
COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Defendant
Andrea Pernell, M.D.

Approved to Form and Content:

By: _____
BRAIN F. ZIMMERMAN, ESQ.
RENEE MAXFIELD, ESQ.
ZIMMERMAN LAW FIRM
7201 W. Lake Mead Blvd., Suite 110
Las Vegas, Nevada 89128
Attorneys for Plaintiff

CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 1:00 p.m.

II.

RECOMMENDATIONS

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   - i. Initial Expert Disclosures: January 28, 2014
   - ii. Rebuttal Expert Disclosures: February 28, 2014

4. Final Date to File Dispositive Motions: May 28, 2014

DATED this ____ day of _____ 2013.

Discovery Commissioner
Honorable Bonnie A. Bulla

Submitted this ____ day of August 2013.

By: _____
KATHERINE L. TURPEN, ESQ.
Nevada Bar No. 8911
COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON
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Andrea Pernell, M.D.

Approved to Form and Content:

By: Renee Maxfield
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RENEE MAXFIELD, ESQ.
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Las Vegas, Nevada 89128
Attorneys for Plaintiff

CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 1:00 p.m.

Approved to Form and Content:

By: Carrie Parra #12071
Lyn M. Hansen, Esq.
JIMMERSON HANSEN
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Las Vegas, Nevada 89101
Attorneys for Defendant
Health South – Desert Canyon

Approved to Form and Content:

By: _____
Keith A. Weaver, Esq.
LEWIS BRISBOIS
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Las Vegas, Nevada 89118
Attorneys for Defendant
Aleksandr Krivonovskiy, M.D.

Approved to Form and Content:

By: _____
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Attorneys for Defendant
Roland Jayson F. Pua, M.D

Approved to Form and Content:

By: _____
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10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants
THI of Nevada at Henderson Convalescent, LLC, dba Henderson Healthcare Center & THI of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital

CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 9:00 a.m.

Approved to Form and Content:

By: Carrie Parnell, #12071
Lyn M. Hansen, Esq.
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Attorneys for Defendant
Health South – Desert Canyon

Approved to Form and Content:

By: Naylin Key for #12984
Keith A. Weaver, Esq.
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Las Vegas, Nevada 89118
Attorneys for Defendant
Aleksandr Krivonovskiy, M.D.

Approved to Form and Content:

By: _____
Chelsea R. Hueth, Esq.
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MORTENSEN & SANDERS
7401 West Charleston Blvd.
Las Vegas, Nevada 89117
Attorneys for Defendant
Roland Jayson F. Pua, M.D

Approved to Form and Content:

By: _____
Robert D. Rourke, Esq.
ROURKE LAW FIRM
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants
THI of Nevada at Henderson Convalescent, LLC, dba Henderson Healthcare Center & THI of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital

CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 2:00 p.m.

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

[Pursuant to E.D.C.R. 2.34(f) an objections must be filed and served no more than five (5) judicial days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or (3) days after mailing to a party or his attorney, or three (3) days after mailing to a party or his attorney, or three (3) days after the Clerk of the Court deposits a copy of the Report in the folder of a party's lawyer in the Clerk's Office. See E.D.C.R. 2.34(f)]

A copy of the foregoing Discovery Commissioner's Report was:

____ Mailed to Plaintiffs at the following address on the ____ day of _____, 20__:

√ Placed in the folder of Plaintiff's & Defendants' counsel in the Clerk's office on the 12 day of Sept., 2013.

STEVEN D. GRIERSON

By _____
Deputy Clerk

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CASE NAME: Huppert v. Healthsouth, et al
CASE NUMBER: A666641
Hearing Date: 08/06/2013
Hearing Time: 8:00 p.m.

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

___ The parties having waived the right to object thereto,

X No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

___ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

_X_ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

___ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (attached hereto)

___ IT IS HEREBY OREDRED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 20__, at __:__a.m.

Dated this 3 day of Oct, 2013

JOANNA S. KISHNER
DISTRICT COURT JUDGE

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

RYAN HUPPERT, ET AL., PLAINTIFF(S), VS. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC., ET AL., DEFENDANT(S).	Case No.: A-12-666641-C Dept. No.: XXXI

AMENDED ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL CONFERENCE, CALENDAR CALL, AND STATUS CHECK

IT IS HEREBY ORDERED that:

A. **Trial** - This matter is set for Trial by Jury on a **FIRM TRIAL SETTING** to begin on **JULY 28, 2014, at 10:00 a.m.**, in Department XXXI, **Courtroom 12B.**

B. **Pre-Trial Conference** - A Pre-Trial Conference with the designated attorney(s) and/or parties in proper person will be held on **JULY 3, 2014,** beginning at **10:15 a.m.**

C. **Calendar Call** - A calendar call will be held on **JULY 22, 2014,** beginning at **9:00 a.m.** Unless otherwise directed by the Court, the parties must bring to Calendar Call the following:

(1) Typed exhibit lists; with all stipulated exhibits marked;
(2) All exhibits marked by counsel for identification purposes;
(3) Jury instructions in two groups, unopposed and opposed;

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DANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
S VEGAS, NEVADA 89155

(4) Proposed voir dire questions;
(5) List of depositions;
(6) List of equipment needed for trial, including audiovisual equipment;[1] and
(7) Courtesy copies of any legal briefs on trial issues.

D. **Status Check** - Parties are to appear on **JUNE 19, 2014,** beginning at **9:00 a.m.**, for a Status Check on the matter.

E. **Pre-Trial Memorandum** - The Pre-Trial Memorandum must be filed no later than **4:00 p.m.**, on **JULY 18, 2014,** with a courtesy copy delivered to Department XXXI. All parties, (attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69.

Counsel should include in the Memorandum an identification of orders on all motions in limine or motions for partial summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

F. **Motions in Limine** - All motions in limine, must be in writing and filed no later than **8 weeks before Trial. Orders shortening time will not be signed except in extreme emergencies.**

G. **Discovery Issues** - All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order. Pursuant to EDCR 2.35, a

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[1]If counsel anticipates the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3205 or via E-Mail at SLATW@clarkcountycourts.us or PETERSENJ@clarkcountycourts.us.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

motion to continue trial due to any discovery issues or deadlines must be made before the Discovery Commissioner.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is asked to notify the Court Recorder, 671-0897, at least two weeks in advance if they are going to require a recorder and/or daily copies of the transcripts/CDs of this trial. Failure to do so may result in a delay in the production of the transcripts and/or CDs.

Counsel is required to advise the Court immediately if the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 3rd day of September, 2013

JOANNA S. KISHNER
DISTRICT COURT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through e-mail, via facsimile, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper party as follows:

BRIAN F. ZIMMERMAN, ESQ.
ZIMMERMAN LAW FIRM

MARK J. BOURASSA, ESQ.
BOURASSA LAW GROUP, LLC.

LYNN M. HANSEN, ESQ.
JAMES M. JIMMERSON, ESQ
JIMMERSON HANSEN, P.C.

DAVID MORTENSEN, ESQ.
CHELSEA R. HUETH, ESQ.
ALVERSON, TAYLOR, MORTENSEN & SANDERS

JOHN H. COTTON, ESQ.
KATHERINE L. TURPEN, ESQ.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

ROBERT D. ROURKE, ESQ.
ROURKE LAW FIRM

DALE A. HAYES, ESQ.
MARQUIS, AURBACH, COFFING

KEITH A. WEAVER, ESQ.
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP

TRACY L. CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

TAB 25

TAB 25

423

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CLERK OF THE COURT

NOTC
LYNN M. HANSEN, ESQ.
Nevada Bar No.: 244
JAMES M. JIMMERSON, ESQ.
Nevada Bar No.: 12599
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415 South 6th Street, Suite 100
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Tel No.: (702) 388-7171
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jmJ@jimmersonhansen.com

Attorneys for Defendant HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILIATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC, dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D., ROLAND JAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 though 20 inclusive. Defendants.	**CASE NO.: A-12-666641-C** **DEPT NO.: XXXI** Date of Hearing: 12/5/13 Time of Hearing: 9:00 a.m. **NOTICE OF NON-OPPOSITION TO PLAINTIFF'S REQUEST FOR ORDER SHORTENING TIME REGARDING MOTION FOR SUBSTITUION OF PARTY**

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

NOTICE OF NON-OPPOSITION TO PLAINTIFF'S REQUEST FOR ORDER SHORTENING TIME REGARDING MOTION FOR SUBSTITUION OF PARTY

COMES NOW, Defendant, HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL by and through its counsel of record, LYNN M. HANSEN, ESQ. and JAMES M. JIMMERSON, ESQ. of the law firm, JIMMERSON HANSEN, P.C., and hereby gives notice of Non-Opposition to Plaintiff's Request for Order Shortening Time Regarding Motion for Substitution of Party filed and served on November 22, 2013.

DATED this 25th day of November 2013.

JIMMERSON HANSEN, P.C.

By: /s/ Lynn M. Hansen, Esq.
LYNN M. HANSEN, ESQ.
Nevada Bar No.: 244
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 12599
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendant
HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

425

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy **NOTICE OF NON-OPPOSITION TO PLAINTIFF'S REQUEST FOR ORDER SHORTENING TIME REGARDING MOTION FOR SUBSTITUION OF PARTY** was made on the 25th day of November 2013, as indicated below:

__X__ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

_____ By facsimile, pursuant to EDCR 7.26 (as amended)

_____ By receipt of copy as indicated below

Brian F. Zimmerman, Esq.
ZIMMERMAN LAW FIRM
7670 W. Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
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Fax No.: 702-228-8917

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Attorneys for Plaintiff
Fax No.: 702-851-2189

John H. Cotton, Esq.
Katherine L. Turpen, Esq.
COTTON DRIGGS WALCH HOLLEY WOLSON & THOMPSON
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Attorneys for Defendant
Andrea Pernell, M.D.
Fax No.: 702-791-1912

V. Andrew Cass, Esq.
Keith A. Weaver, Esq.
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Aleksandr Krivonovskiy, M.D.
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Chelsea R. Hueth, Esq.
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Roland Jayson F. Pua, M.D.
Fax No.: 702-385-7000

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THI of Nevada at Henderson Healthcare Center & THI of Nevada at Las Vegas I, LLC dba Harmon Medical and Rehabilitation Hospital
Fax No.: 702-856-8923

JIMMERSON HANSEN, P.C.
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Robert D. Rourke, Esq.
ROURKE LAW FIRM
10161 Park Run Drive, Ste. 150
Las Vegas, Nevada 89145
Attorney for Defendants
THI of Nevada at Henderson
Convalescent, LLC, dba Henderson
Healthcare Center & THI of Nevada at Las
Vegas I, LLC dba Harmon Medical and
Rehabilitation Hospital
Fax No.: 702-515-7441

Vicki Payne

An employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

427

TAB 26

TAB 26

428

ORIGINAL

MOT

BRIAN F. ZIMMERMAN, ESQ.
Nevada Bar No. 7570
RENEE M. MAXFIELD, ESQ.
Nevada Bar No. 12814
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rmaxfield@za-law.com

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(702) 851-2180, (702) 851-2189 (fax)
mbourassa@bourassalawgroup.com

Attorneys for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME

Hearing Date:
Hearing Time:

12-05-13 A09:51 IN

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MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME

COMES NOW, Plaintiff RYAN KIRBY HUPPERT, by and through his counsel of record, ZIMMERMAN LAW FIRM, P.C. and BOURASSA LAW GROUP, LLC, hereby files this Motion for Stay of Proceedings on Order Shortening Time to enable Plaintiff to file an Application for Writ of Mandamus.

This Motion is made and based upon the following memorandum of Points and Authorities, the attached Declaration of Brian F. Zimmerman, Esq., the papers and pleadings on file herein, and any oral argument this Court deems necessary.

Dated: December 5, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

430

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore,

IT IS HEREBY ORDERED that the foregoing Motion for Stay of Proceedings on Order Shortening Time shall be heard on the 19 day of Dec, 2013, at the hour of 10:15 in Department XXXI.

DATED this 5 day of December, 2013.

Opposition due by 12/13. Replies due by noon on 12/17.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Submitted by:
ZIMMERMAN LAW FIRM, P.C.

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

431

DECLARATION OF BRIAN F. ZIMMERMAN
ATTORNEY FOR PLAINTIFF, RYAN KIRBY HUPPERT

I, BRIAN F. ZIMMERMAN, being duly sworn, deposes and says:

1. The Declarant is a duly licensed and practicing attorney in the State of Nevada in good standing and is an attorney with THE ZIMMERMAN LAW FIRM, P.C.
2. That Declarant is counsel of record for Plaintiff Ryan Kirby Huppert, who is now deceased. A suggestion of death was filed as to Ryan Kirby Huppert on September 25, 2013.
3. On April 2, 2013, Defendant Aleksandr Krivonovskiy, M.D. filed a Motion to Dismiss the Abuse of a Vulnerable Person and Punitive Damages Claims.
4. A written Opposition to the Motion was filed on April 22, 2013 and this Honorable Court granted leave to amend the Complaint.
5. On June 18, 2013, Plaintiff filed a Second Amended Complaint pursuant to the leave to amend.
6. On July 5, 2013, Defendant Aleksandr Krivonovskiy, M.D. filed a Motion to Dismiss. That this Motion requested the dismissal of the Neglect of a Vulnerable Person and Punitive Damages causes of action.
7. On August 6, 2013, the Court heard Defendant Krivonovskiy, M.D.'s Motion to Dismiss and gave the parties an opportunity to provide supplemental briefing of the legislative history of NRS 41.1395.
8. On August 30, 2013, the Court issued its ruling granting in part and denying in part Defendant Krivonovskiy, M.D.'s Motion to Dismiss.
9. On September 17, 2013, Mr. Huppert passed away.
10. On September 25, 2013, Defendant Roland Pua, M.D. filed a Suggestion of Death Upon the Record. On September 27, 2013, Defendant Healthsouth Desert Canyon Rehabilitation Hospital filed a Suggestion of Death Upon the Record.
11. On October 8, 2013, this Honorable Court granted and denied in part the Motion. This Honorable Court denied the Motion to Dismiss the Punitive Damages claim, but granted the Motion as to the Vulnerable Person claim.

12. On October 9, 2013, Defendant Aleksandr Krivonovskiy, M.D. filed a Notice of Entry of Order regarding this issue.

13. On or about November 7, 2013, Kristi L. Wotton and Kay A. Hill were appointed as Special Co-Administrators of the Estate of Ryan Kirby Huppert by the Probate Court.

14. On November 12, 2013, Plaintiff filed a Motion for Substitution of Party to substitute Kristi Wotton and Kay Hill in their capacity as Special Co-Administrators of Mr. Huppert's estate into this matter.

15. That the Plaintiff respectfully believes that the Court's ruling in this matter is in error and is preparing an application for Writ of Mandamus to the Nevada Supreme Court requiring the District Court to vacate the Order.

16. That pursuant to Nevada Rule of Appellate Procedure 8(a), before filing a Writ, the party must move the District Court for a stay of proceedings. That because the Order related to this matter was heard on Chambers calendar, the Plaintiff was unable to orally request a stay at that time.

17. That an Order Shortening Time is necessary to file the Writ of Mandamus in a timely manner.

18. That Plaintiff must request this Stay of Proceedings before he can file an application for Writ of Mandamus and Emergency Motion for a Stay with the Nevada Supreme Court.

19. Therefore, Declarant requests that the instant Motion be set for hearing on an Order Shortening Time on the Court's earliest available date.

20. The instant request is made in good faith and not for the purposes of harassment or delay.

21. I declare under penalty of perjury the foregoing is true and correct.

Executed: December 5, 2013

BRIAN F. ZIMMERMAN

POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

On August 10, 2012, Plaintiff Ryan Kirby Huppert filed a Complaint against HealthSouth Rehabilitation Hospital of Desert Canyon d/b/a HealthSouth Desert Canyon Rehabilitation Hospital (hereinafter "HealthSouth"), Andrea Elizabeth Pernell, M.D. (hereinafter "Dr. Pernell"), THI of Nevada at Las Vegas, I, LLC d/b/a/ Harmon Medical and Rehabilitation Hospital (hereinafter "Harmon"), Aleksandr Krivonovskiy, M.D. (hereinafter "Dr. Krivonovskiy"), THI of Nevada at Henderson Convalescent, LLC d/b/a Henderson Healthcare Center (hereinafter "Henderson"), and Roland Jayson F. Pua, M.D. (hereinafter "Dr. Pua") for medical malpractice, professional negligence, abuse of a vulnerable person, and punitive damages. Plaintiff alleged that the Defendants' care fell below the standard of care resulting in the development of a large sacral pressure ulcer and infections.

On April 2, 2013, Defendant Dr. Krivonovskiy filed a Motion to Dismiss the Abuse of a Vulnerable Person and Punitive Damages Claims. Plaintiff filed a written Opposition to the Motion April 22, 2013 and this Honorable Court granted leave to amend the Complaint. On June 18, 2013, Plaintiff filed a Second Amended Complaint amending the third and fourth causes of action.

On July 5, 2013, Defendant Dr. Krivonovskiy filed a Motion to Dismiss. The Motion requested the dismissal of the Neglect of a Vulnerable Person and Punitive Damages causes of action. On October 8, 2013, this Honorable Court denied the Motion to Dismiss the Punitive Damages claim, but granted the Motion as to the Vulnerable Person claim. On October 9, 2013, Defendant Dr. Krivonovskiy filed a Notice of Entry of Order. Plaintiff is moving for a stay in order to file an Application for Writ of Mandamus with the Nevada Supreme Court.

On or about September 17, 2013, Plaintiff Ryan Kirby Huppert passed away. Defendant Dr. Pua filed a Suggestion of Death on September 25, 2013. On or about September 27, 2013, Defendant HealthSouth filed a Suggestion of Death. Kristi Wotton and Kay Hill were properly appointed as Special Co-Administrators of the Estate of Ryan Kirby Huppert on or about November 7, 2013, after the above-mentioned Complaint was filed, in order to be substituted into

this lawsuit as a party. Due to Mr. Huppert's death, Plaintiff could not file this Motion for Stay until the Motion for Substitution of Party was granted.

II. ARGUMENT

Pursuant to EDCR 7.30(a), "[a]ny party may, for good cause, move the court for an order continuing the day set for trial of any cause." In this matter, good cause exists for the Plaintiff to file an Application for Writ of Mandamus to the Nevada Supreme court as Plaintiff believes the recent Court Order dismissing Plaintiff's Fourth Cause of Action of the Neglect of a Vulnerable Person was in error and in direct contradiction to the plain language and legislative intent of NRS 41.1395.

NRS 34.150 establishes that a "writ of mandamus, or writ of mandate, is a proper remedy to compel performance of a judicial act." NRS 34.170 states that "a writ of mandamus shall be issued where there is no plain, speedy and adequate remedy in the ordinary course of law." The Supreme Court will exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification and it's review would serve considerations of public policy, sound judicial economy, and administration. *Dayside Inc. v. Dist. Ct.*, 119 Nev. 404, 407, 75 P.3d 384, 386 (2003).

Plaintiff asserts that the issues presented by way of the writ petition constitute an important issue of law that requires clarification. The provisions of NRS 41.1395 that protect vulnerable persons from abuse, neglect, and exploitation need to be interpreted to resolve the ambiguities in the statute that relate to what type of persons are considered vulnerable persons.

Nevada Rule of Appellate Procedure requires the party seeking a writ petition to move for a stay before proceeding before the Nevada Supreme Court. Nevada Rule of Appellate Procedure 8 provides in pertinent part:

> **a) Motion for Stay.**
>
> **1) Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:
>
> (A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court for an extraordinary writ;
>
> (B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring or granting an injunction while an appeal or original writ petition is pending.

Therefore, Plaintiff files this Motion for Stay of Proceedings on Order Shortening Time pending a Writ of Mandamus with the Nevada Supreme Court to determine the issue regarding the dismissal of Plaintiff's Fourth Cause of Action.

III. CONCLUSION

Plaintiff respectfully requests this Honorable Court hear this matter on Order Shortening Time and grant Plaintiff's Motion for a Stay of all proceedings in order to file an Application for Writ of Mandamus. In this alternative, if this Honorable Court is not inclined to grant a Stay, then this is a request that the matter be heard on the Court's Chambers calendar so as to address this request as soon as possible.

Dated: December 5, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
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Attorneys for Plaintiff

436

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5 day of December, 2013, I served a true and correct copy of the foregoing document entitled **MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME** via facsimile to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
John H. Cotton , Esq. Katherine L. Turpen, Esq. Cotton, Driggs, Walch, Holley, Woloson & Thompson 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101 702-791-0308; Facsimile 702-791-1912 Attorneys for Andrea Pernell, M.D.	Lynn M. Hansen, Esq. James M. Jimmerson, Esq. Jimmerson Hansen, P.C. 415 South 6th Street, Suite 100 Las Vegas, NV 89101 702-388-7171; Facsimile 702-380-6406 Attorneys for HealthSouth Rehabilitation Hospital of Desert Canyon, LLC dba HealthSouth Desert Canyon Rehabilitation Hospital
Robert D. Rourke, Esq. Rourke Law Firm 10161 Park Run Drive, Suite 150 Las Vegas, NV 89135 702-515-7440; Facsimile 702-515-7441 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center	Dale A. Hayes, Esq. Jason M. Gerber, Esq. Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 702-207-6097; Facsimile 702-856-8923 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center
Mark J. Bourassa, Esq. Marilyn A. Caston, Esq. The Bourassa Law Group 8668 Spring Mountain Road, Suite 101 Las Vegas, NV 89117 702-851-2180; Facsimile 702-851-2189 Co-Counsel for Ryan Huppert	

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TAB 27

TAB 27

438

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Attorneys for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY

Hearing Date: December 5, 2013
Hearing Time: 9:00 a.m.

12-09-13 A08:26 IN

ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY

Upon the hearing and oral argument for Plaintiff RYAN KIRBY HUPPERT's Motion for Substitution of Party on December 5, 2013, and upon reading the papers on file herein, and there being no opposition filed and no opposition raised during oral argument, it appears to the satisfaction of this Court, and this Court finds, that Plaintiff RYAN KIRBY HUPPERT'S motion for Substitution of Party is GRANTED.

JOANNA S. KISHNER

HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE

Submitted by:
ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of December, 2013, I served a true and correct copy of the foregoing document entitled **ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY** via U.S. Mail, prepaid to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
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An employee of
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TAB 28

TAB 28

442

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BRIAN F. ZIMMERMAN, ESQ.
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RENEE M. MAXFIELD, ESQ.
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mbourassa@bourassalawgroup.com

Attorneys for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

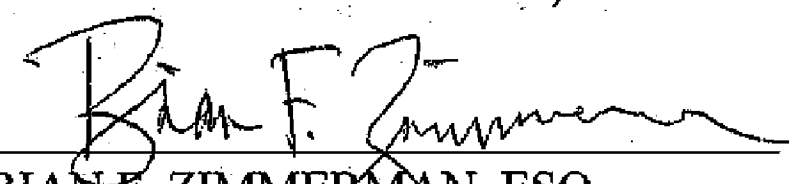
RYAN KIRBY HUPPERT, Plaintiff, v. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive. Defendants.	CASE NO.: A-12-666641-C DEPT. NO.: XXXI **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY**

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YOU WILL PLEASE TAKE NOTICE that on the 12th day of December, 2013, an ORDER was entered in the above-entitled matter. A copy of the Order is attached.

Dated this 13th day of December, 2013.

ZIMMERMAN LAW FIRM, P.C.



BRIAN F. ZIMMERMAN, ESQ.
RENEE M. MAXFIELD, ESQ.
7670 W. Lake Mead Boulevard, Suite 140
Las Vegas, NV 89128
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of December, 2013, I served a true and correct copy of the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY** via U.S. Mail, prepaid to the following persons:

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An employee of
ZIMMERMAN LAW FIRM P.C.

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Attorneys for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY

Hearing Date: December 5, 2013
Hearing Time: 9:00 a.m.

12-09-13 A08:26 IN

446

ORDER GRANTING PLAINTIFF RYAN KIRBY HUPPERT'S MOTION FOR SUBSTITUTION OF PARTY

Upon the hearing and oral argument for Plaintiff RYAN KIRBY HUPPERT's Motion for Substitution of Party on December 5, 2013, and upon reading the papers on file herein, and there being no opposition filed and no opposition raised during oral argument, it appears to the satisfaction of this Court, and this Court finds, that Plaintiff RYAN KIRBY HUPPERT'S motion for Substitution of Party is GRANTED.

JOANNA S. KISHNER

HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE

Submitted by:
ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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TAB 29

TAB 29

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CLERK OF THE COURT

JOIN
LYNN M. HANSEN, ESQ.
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JAMES M. JIMMERSON, ESQ.
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Attorneys for Defendant
Healthsouth Rehabilitation Hospital of Desert Canyon, LLC
dba Healthsouth Rehabilitation Hospital of Desert Canyon, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

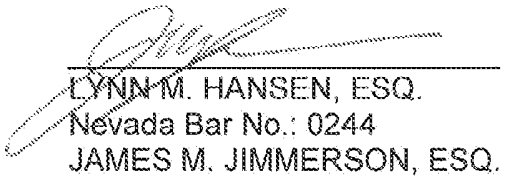
RYAN KIRBY HUPPERT, Plaintiff, vs. HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILIATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC, dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, M.D., ALEKSANDR KRIVONOVSKIY, M.D., ROLAND JAYSON F. PUA, M.D.; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 though 20 inclusive. Defendants.	**CASE NO.: A-12-666641-C** **DEPT NO.: XXIII** **DEFENDANT HEALTHSOUTH REHABILITATION HOSPITAL DESERT CANYON REHABILITATION HOSPITAL, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL JOINDER TO DEFENDANT ROLAND JAYSON F. PUA, M.D.'s OPPOSITION TO PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME**

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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COMES NOW, Defendant, DEFENDANT HEALTHSOUTH REHABILITATION HOSPITAL DESERT CANYON REHABILITATION HOSPITAL, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL, by and through its counsel of record Lynn M. Hansen, Esq. and James M. Jimmerson, Esq., of the law firm of JIMMERSON HANSEN, P.C., hereby joins in Defendant's Royland Jayson F. Pua, M.D.'s Opposition to Plaintiff's Motion for Stay of Proceedings on Order Shortening Time.

Dated this 17th day of December 2013.

JIMMERSON HANSEN, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of **DEFENDANT HEALTHSOUTH REHABILITATION HOSPITAL DESERT CANYON REHABILITATION HOSPITAL, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL JOINDER TO DEFENDANT ROLAND JAYSON F. PUA, M.D.'s OPPOSITION TO PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME** was made on the 17th day of December, 2013, as indicated below:

_X_ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

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TAB 30

TAB 30

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Attorneys for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, by and through KRISTI WOTTON and KAY HILL, Special Administrators of the ESTATE OF RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

PLAINTIFFS KRISTI WOTTON AND KAY HILL SPECIAL ADMINISTRATORS OF THE ESTATE OF RYAN KIRBY HUPPERT'S REPLY TO DEFENDANT ROLAND PUA, M.D.'S OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME AND ALL JOINDERS HERETO

Hearing Date: December 19, 2013
Hearing Time: 10:15 a.m.

inclusive.

Defendants.

PLAINTIFFS KRISTI WOTTON AND KAY HILL SPECIAL ADMINISTRATORS OF THE ESTATE OF RYAN KIRBY HUPPERT'S REPLY TO DEFENDANT ROLAND PUA, M.D.'S OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME AND ALL JOINDERS HERETO

COMES NOW, Plaintiffs KRISTI WOTTON and KAY HILL, SPECIAL ADMINISTRATORS OF THE ESTATE OF RYAN KIRBY HUPPERT, by and through their counsel of record, ZIMMERMAN LAW FIRM, P.C. and BOURASSA LAW GROUP, LLC, hereby file this Reply to Defendant Roland Pua, M.D.'s Opposition to Motion for Stay of Proceedings on Order Shortening Time and All Joinders Hereto.

This Reply is made and based upon the following memorandum of Points and Authorities, all papers and pleadings on file herein, and any oral argument this Court deems necessary.

Dated: December 17, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

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Attorneys for Plaintiff

POINTS AND AUTHORITIES

I. ARGUMENT

A. Defendant Pua's Opposition to Plaintiffs' Motion for Stay was not Filed and Improperly Served

Pursuant to this Court's granting of Plaintiffs' request for Order Shortening Time, Oppositions to the Motion for Stay were due December 13, 2013. At the time of this Reply, Defendant Pua's Opposition has not been filed nor any other Opposition by Defendants. Under Nevada Rule of Civil Procedure 5(d) all pleadings and motions must be filed either before or at the time of service. Defendant Pua's Opposition is in direct violation of the Rules and should not be considered.

Furthermore, all pleadings, motions, and responses to motions must be served upon all parties to the case. If a party elects to effect service by mailing a copy to the attorney or the party, NRCP 5 requires the filing party to use the last known address. Defendant Pua failed to properly serve Plaintiffs' counsel. On September 26, 2013, Plaintiffs' counsel filed and served a Notice of Change of Address to all parties. After September 26, 2013, Plaintiffs' counsel has communicated with Defendant Pua's attorney's office from the new address. Therefore, Defendant Pua had knowledge of Plaintiffs' counsel's new address and failed to properly serve a copy of his Opposition to the Motion for Stay.

For these reasons alone, this Court should not accept nor consider Defendant Pua's improper Opposition to Plaintiffs' Motion for Stay.

B. Plaintiffs are not Required to Address the Factors for Determining Whether a Stay is Appropriate

Pursuant to NRCP 8(a), a party seeking a writ with the Supreme Court must first file a Motion for Stay in the District Court. Plaintiffs filed the Motion for Stay on December 5, 2013 in order to pursue a Petition for Extraordinary Writ Relief with the Supreme Court regarding the dismissal of Plaintiffs' fourth cause of action for neglect of a vulnerable person. NRCP 8(c) lays out several factors to consider when issuing a stay; however, the language of the rule clearly states, "the *Supreme Court* will generally consider the following factors…" (emphasis added). It is Plaintiff's position that the factors in NRCP 8(c) apply to motions for stays made in the

Supreme Court, not the District Court. If it was the intent to have these factors apply to a District Court's decision on a motion for stay, the Rule would not state otherwise.

Even though Plaintiffs should not be required to address Defendant Pua's improper Opposition, the factors outlined in NRCP 8(c) support the granting of Plaintiffs' Motion for Stay.

1. The Object of the Writ Petition will be Defeated if the Stay is Denied

The purpose of Plaintiffs' Petition for Writ is to overturn this Court's dismissal of the neglect of a vulnerable person cause of action on the grounds that Plaintiffs qualify as a vulnerable person. If the Motion for Stay is not granted, Plaintiffs will be forced to pursue their claims against the Defendants without obtaining relief for the injuries they suffered as a result of the neglect by each Defendant. This action is subject to a statute of limitations regarding when this matter has to go to trial and that time will continue to run if this Motion is denied.

2. Plaintiff will Suffer Irreparable Harm if the Stay is Denied

Regardless of the other causes of action against the Defendants, Plaintiff's representatives are entitled to recover for their losses and injuries that occurred due to Defendants' neglect of Plaintiffs while under their care. Plaintiff's representatives should not be denied access to relief on the basis that there are other causes of actions alleged in the same Complaint. Plaintiff's representatives will suffer irreparable harm for not being able to recover damages caused by the Defendants and will not be able to hold each Defendant accountable for their failure to provide Plaintiffs with services necessary to maintain his physical and mental health. Defendants should not be relieved of liability simply because Plaintiffs are able to plead multiple causes of action under different legal theories.

3. Defendant Pua will not Suffer Irreparable Harm if the Stay is Granted

Any delay a stay may cause will not cause Defendant Pua any irreparable or serious harm. It is due to Defendant Pua's actions, or lack of action, that Plaintiff sustained serious injuries while under Defendant Pua's care. Defendant Pua opened himself up to suit and liability when he failed to provide Plaintiff with care and treatment for his sacral pressure ulcer and left him lying in his own excrement, resulting in infections. Furthermore, Defendants brought the Motion to Dismiss, and should thereby anticipate the filing of a Writ Petition or appeal based on the Court's ruling.

4. Plaintiffs are Likely to Prevail on the Merits of the Writ Petition

The Supreme Court of Nevada has the authority to issue writs of mandamus to control arbitrary or capricious abuses of discretion by district courts. *Marshall v. Dist. Ct.*, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992). An abuse of discretion occurs if the district court's decision is arbitrary and capricious or if it exceeds the bounds of the law or reason. *Crawford v. State*, 121 Nev. 744, 121 P.3d 582, 585 (2005). "Arbitrary and capricious" is defined as a willful and unreasonable action without consideration or in disregard of the facts or law, or without a determining principle. *Elwood Investors Co. v. Behme*, 361 N.Y.S.2d 488, 492 (1974). An "abuse of discretion" is defined as the failure to exercise a sound, reasonable, and legal discretion. *State v. Draper*, 27 P.2d 39, 50 (Utah 1993). "[E]ach case must be individually examined, and where circumstances reveal urgency or strong necessity, extraordinary relief may be granted." *Jeep Corp. v. Dist. Ct.*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982), *citing Shelton v. Dist. Ct.*, 64 Nev. 487, 185 P.2d 320 (1947). The Supreme Court will exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification and the Court's review would serve considerations of public policy, sound judicial economy, and administration. *Dayside Inc. v. Dist. Ct.*, 119 Nev. 404, 407, 75 P.3d 384, 386 (2003).

Plaintiffs need not outline or discuss in detail the basis of their Writ Petition in the Motion for Stay, but only that they are seeking a Writ with the Supreme Court. As discussed in prior pleadings and oral arguments before this Court, Plaintiffs argue that the language and legislative intent of NRS 41.1395 include paraplegics as vulnerable persons, invoking the protections of that statute. A Writ Petition is appropriate to seek clarification of an important issue of law, and it is Plaintiffs' position that this case has implications not only in the instant case, but for other vulnerable persons. The legislative intent of NRS 41.1395 shows that paraplegics are the type of people meant to be protected from injury occurring as a result of the failure to provide services necessary to maintain their physical or mental health.

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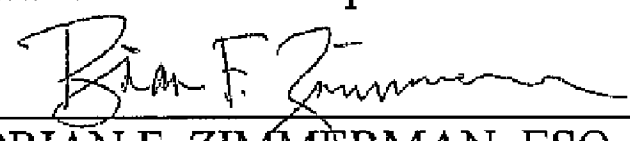
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II. CONCLUSION

Based on the foregoing reasons, Plaintiffs respectfully request this Honorable Court strike Defendant Pua's Opposition due to his failure to file and properly serve said Opposition and All Joinders Hereto. Plaintiffs further request this Court enter an order granting Plaintiffs' Motion for a Stay of all proceedings in order to file an Application for Writ of Mandamus.

Dated: December 17, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation



BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of December, 2013, I served a true and correct copy of the foregoing document entitled **PLAINTIFFS KRISTI WOTTON AND KAY HILL SPECIAL ADMINISTRATORS OF THE ESTATE OF RYAN KIRBY HUPPERT'S REPLY TO DEFENDANT ROLAND PUA, M.D.'S OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME AND ALL JOINDERS HERETO** via facsimile to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
John H. Cotton , Esq. Katherine L. Turpen, Esq. Cotton, Driggs, Walch, Holley, Woloson & Thompson 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101 702-791-0308; Facsimile 702-791-1912 Attorneys for Andrea Pernell, M.D.	Lynn M. Hansen, Esq. James M. Jimmerson, Esq. Jimmerson Hansen, P.C. 415 South 6th Street, Suite 100 Las Vegas, NV 89101 702-388-7171; Facsimile 702-380-6406 Attorneys for HealthSouth Rehabilitation Hospital of Desert Canyon, LLC dba HealthSouth Desert Canyon Rehabilitation Hospital
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT,

Plaintiff,

vs.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive,

Defendants.

CASE NO.: A-12-666641-C
DEPT. NO.: 31

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME

COMES NOW Defendant ROLAND JAYSON F. PUA, M.D. by and through his counsel

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of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby submits his Opposition to Plaintiff's Motion for Stay of Proceedings on Order Shortening Time.

This Opposition is made and based upon the Points and Authorities attached hereto, the papers and pleadings on file herein, and such oral argument as may be entertained by the Court at the time and place of the hearing for this Motion.

DATED this 13 day of December, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

#12706
By FOR

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POINTS AND AUTHORITIES

ISSUES PRESENTED

A. Plaintiffs' Request for Stay Should be Denied as Plaintiffs' Fail to Address Any of the Considerations in Determining Whether a Stay is Appropriate

B. The Object of the Writ Petition Will Not Be Defeated if the Stay is Denied

C. Plaintiffs Will Not Suffer Irreparable or Serious Harm If the Stay Is Denied

D. Defendant Roland Jayson F. Pua, M.D. Will Suffer Irreparable or Serious Harm if the Stay is Granted

E. Even if Plaintiffs' Writ is Considered, Plaintiffs Potential Success on the Merits Does Not Warrant a Stay as it is Speculative At Best

FACTUAL BACKGROUND

As this court is well aware, this is a medical malpractice action arising out of the care and treatment by various Defendants to Ryan Kirby Huppert. On June 18, 2013, Plaintiff filed his Second Amended Complaint alleging neglect of a vulnerable person.[1] On July 5, 2013, a Motion to Dismiss the vulnerable person claim was filed arguing that Plaintiff was not a "vulnerable person" as defined and contemplated by NRS § 41.1395.[2] This Court subsequently allowed the parties to submit supplemental briefing on the legislative history of NRS §41.1395 to aid in determining whether Mr. Huppert fell within the purview of the statute's limitations given the intended definition of a "vulnerable" person. After reviewing the pleadings, supplemental briefing, applicable case law, and the arguments of the parties, this Court properly dismissed Plaintiff's neglect of a vulnerable person claim.[3] Specifically, this Court held that the factual circumstances as set forth in Plaintiff's Second Amended Complaint did not fall within the ambit

1 *See* Pl's 2nd Am. Compl.
2 *See* Def.'s Mot. To Dismiss and joinders thereto.
3 *See* Order granting Def.'s Mot. To Dismiss and joinders thereto.

of the NRS §41.1395's protections.[4] Now, for the first time, Plaintiffs seek to stay the instant litigation in anticipation of a petition for writ of mandamus requesting reversal of this Court's ruling.

A party moving for a stay pending a writ, must satisfy four factors to meet its heavy burden of obtaining a stay. Plaintiffs fail to do so here. In fact, the only reason Plaintiffs provide for requesting a stay is because the Nevada Rules of Appellate Procedure require the same. Given its familiarity with the facts of this case, this Honorable Court is more than just a gate keeper as it is well suited to consider Plaintiffs' request on the merits. Plaintiffs' failure to substantively support their Motion warrants denial. Even if Plaintiffs' were to address the factors generally considered upon a request for a stay, Plaintiffs' Motion should still be denied as they cannot establish that a stay is warranted.

II.

ARGUMENT

A. Plaintiffs' Request for Stay Should be Denied as Plaintiffs' Fail to Address Any of the Considerations in Determining Whether a Stay is Appropriate

A request for a stay pending a ruling on a writ must first be addressed by the District Court.[5] In deciding whether to issue a stay, Nevada Rule of Appellate Procedure 8(c) outlines four factors for the court to consider:

> (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the appellant will suffer irreparable or serious injury if the stay is denied; (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant is likely to prevail on the merits in the appeal or writ petition.[6]

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4 *Id.*

5 Nev. R. App. P. 8(a); *see also Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657-58, 8 P.3d 982, 986-87 (2000).

6 *NRAP 8(c); Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657-658, 8 P.3d 982, 986-87 (2000); *see also Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

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The Nevada Supreme Court has recognized that the requirement that Plaintiffs request a stay first with the District Court is due to its "vastly greater familiarity with the facts and circumstances of the particular case."[7] Therefore, Plaintiffs Motion for Stay should be denied for their failure to set forth and support any claimed grounds for the requested relief.

As set forth fully below, even if they were to address these factors, a stay should not be issued as Plaintiffs cannot meet the burden required to stay the District Court proceedings.

B. The Object of the Writ Petition Will Not Be Defeated if the Stay is Denied

According to Plaintiffs, the object of their impending writ is to resolve "the ambiguities" of NRS §41.1395, relating to what type of persons fall within the ambit of the statute's protection against abuse, neglect and exploitation.[8] However, Plaintiffs' Motion fails to precisely state how the object of the writ will be defeated if this Court does not grant a stay of the proceedings. It appears that the object of Plaintiffs' Writ is to reinstate their claim for neglect of a vulnerable person. Given that Plaintiffs' claim for neglect arises out of the same allegations giving rise to their claim for medical malpractice, the object of Writ is not outcome determinative. Therefore, a stay is not appropriate.

C. Plaintiffs Will Not Suffer Irreparable or Serious Harm If the Stay Is Denied

A showing of "irreparable harm" requires the movant to prove that it will suffer some harm "for which compensatory damages is an inadequate remedy."[9] Without justification for plaintiffs' request, Defendant is required to speculate as to Plaintiffs' anticipated arguments.

Here, the issues anticipated to be addressed in Plaintiffs' writ are not a threshold issues, but instead relate to the dismissal of one cause of action. Regardless of the outcome of their Writ, Plaintiffs will still need to litigate their medical malpractice, professional negligence, and

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7 *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252 (2005).
8 *Id.* at p. 7.
9 *Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987) (*citing Number One Rent-A-Car v. Ramada Inns*, 587 P.2d 1329, 1330 (Nev. 1978).

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punitive damages claims for which Plaintiffs' seek compensatory damages. Moreover, should this matter proceed to trial and result in a defense verdict, Plaintiffs will be able to utilize the appeal process to address the dismissal of the neglect claim. Thus, Plaintiffs' will not suffer any irreparable or serious harm if the stay is denied.

D. Defendant Roland Jayson F. Pua, M.D. Will Suffer Irreparable or Serious Harm if the Stay is Granted

The Supreme Court has acknowledged that "unnecessary delay" of the underlying proceedings supports the denial of a stay.[10] This action has been ongoing for over a year and staying the litigation would unnecessarily delay final resolution of this action, constituting irreparable and serious harm to Dr. Pua. As such, the third factor weighs in favor of this Court denying the stay.

E. Even if Plaintiffs' Writ is Considered, Plaintiffs Potential Success on the Merits Does Not Warrant a Stay as it is Speculative At Best

Nevada has long recognized that a writ is only proper "when there is no plain, adequate and speedy legal remedy."[11] Moreover, in cases, just as this one, where the order being challenged in not immediately appealable, "the fact that the order may ultimately be challenged on appeal from the final judgment generally precludes writ relief."[12] Even in the uncertain event the Nevada Supreme Court considers Plaintiffs' writ, its probability of success on the merits does not warrant a stay of the litigation.

Plaintiffs cannot show a probability of success of the merits warranting a stay of the underlying litigation. After several rounds of amended pleadings, extensive briefing and oral argument, Plaintiffs have failed to demonstrate that NRS §41.1395 was intended to protect individuals such as Mr. Huppert. In addition to the voluminous case law supporting Defendants'

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[10] *Id.*

[11] *Pan v. Eighth Judicial Dist. Ct.*, 120 Nev. 222, 88 P.3d 840 (2004).

[12] *Id.*

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position, this Court requested additional briefing on the legislative history of NRS §41.1395 before making its ruling. The legislative intent, as demonstrated by the supplemental briefing of the parties, demonstrates that this Court's ruling was proper. As such, Plaintiffs cannot show a high probability of success on the merits of their Writ sufficient to stay the District Court litigation.

CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Court deny Plaintiffs' Motion for Stay of the Proceedings.

DATED this 13 day of December, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

#12706
FOR

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Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
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CERTIFICATE OF MAILING

I hereby certify that on this 13 day of December, 2013, I did deposit in the United States Post Office, with postage fully prepaid thereon, a copy of the above and foregoing DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME addressed to:

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James M. Jimmerson, Esq.
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An Employee of Alverson Taylor Mortensen & Sanders

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AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME** filed in District Court Case No. A-12-666641-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 13 day of December, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

#12704 FOR

DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
CHELSEA R. HUETH, ESQ.
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TAB 32

TAB 32

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REGISTER OF ACTIONS

CASE NO. A-12-666641-C

Ryan Huppert, Plaintiff(s) vs. Healthsouth Rehabilitation Hospital of Desert Canyon LLC, Defendant(s)

Case Type:	**Negligence - Medical/Dental**
Date Filed:	**08/10/2012**
Location:	**Department 31**
Cross-Reference Case Number:	**A666641**

PARTY INFORMATION

		Lead Attorneys
Defendant	**Healthsouth Rehabilitation Hospital of Desert Canyon LLC *Doing Business As* Healthsouth Desert Caynon Rehabilitation Hospital**	**Lynn M. Hansen** *Retained* 7023887171(W)
Defendant	**Krivonovskiy, Aleksandr, M.D.**	**Vincent A Cass** *Retained* 7028933383(W)
Defendant	**Pernell MD, Andrea Elizabeth**	**Katherine Turpen** *Retained* 702-367-9993(W)
Defendant	**Pua MD, Roland Jayson F**	**David James Mortensen** *Retained* 7023847000(W)
Defendant	**THI of Nevada at Henderson Convalescent LLC *Doing Business As* Henderson Healthcare Center**	**Dale A. Hayes, Sr.** *Retained* 7023820711(W)
Defendant	**THI of Nevada at Las Vegas I LLC *Doing Business As* Harmon Medical and Rehabilitation Hospital**	**Dale A. Hayes, Sr.** *Retained* 7023820711(W)
Plaintiff	**Huppert, Ryan Kirby**	**Brian F. Zimmerman** *Retained* 702-228-8916(W)

EVENTS & ORDERS OF THE COURT

12/19/2013 **Motion to Stay** (10:15 AM) (Judicial Officer Kishner, Joanna S.)
Plaintiff's Motion For Stay Of Proceedings On Order shortening Time

Minutes
12/19/2013 10:15 AM
- Matter argued and submitted. Court finds no basis and ORDERED, Plaintiff's Motion For Stay of Proceedings on Order Shortening Time is DENIED. Ms. Hueth to prepare the Order, circulating to all counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order. 1/3/14 STATUS CHECK: ORDER 12/19/13 (CHAMBERS)

Parties Present
Return to Register of Actions

TAB 33

TAB 33

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NOTC
BRIAN F. ZIMMERMAN, ESQ.
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RENEE M. MAXFIELD, ESQ.
Nevada Bar No. 12814
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Attorneys for Plaintiff

Electronically Filed
12/20/2013 12:06:39 PM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RYAN KIRBY HUPPERT, by and through KRISTI WOTTON and KAY HILL, Special Administrators of the ESTATE OF RYAN KIRBY HUPPERT,

Plaintiff,

v.

HEALTHSOUTH REHABILITATION HOSPITAL OF DESERT CANYON, LLC dba HEALTHSOUTH DESERT CANYON REHABILITATION HOSPITAL; THI OF NEVADA AT LAS VEGAS I, LLC dba HARMON MEDICAL AND REHABILITATION HOSPITAL; THI OF NEVADA AT HENDERSON CONVALESCENT, LLC dba HENDERSON HEALTHCARE CENTER; ANDREA ELIZABETH PERNELL, MD; ALEKSANDR KRIVONOVSKIY, MD; ROLAND JAYSON F. PUA, MD; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20 inclusive.

Defendants.

CASE NO.: A-12-666641-C

DEPT. NO.: XXXI

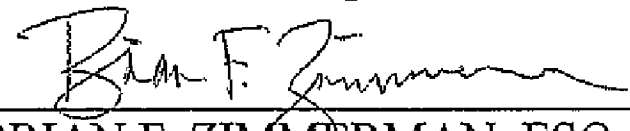
NOTICE OF FILING PETITION FOR EXTRAORDINARY WRIT RELIEF

NOTICE OF FILING PETITION FOR EXTRAORDINARY WRIT RELIEF

PLEASE TAKE NOTICE that Plaintiff RYAN KIRBY HUPPERT, by and through KRISTI WOTTON and KAY HILL, Special Administrators of the ESTATE OF RYAN KIRBY HUPPERT, by and through his counsel of record, ZIMMERMAN LAW FIRM, P.C. and BOURASSA LAW GROUP, LLC, hereby files a Petition for Extraordinary Writ Relief with the Nevada Supreme Court.

Dated: December 20, 2013.

ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation



BRIAN F. ZIMMERMAN, ESQ. #7570
RENEE M. MAXFIELD, ESQ. #12814
7670 West Lake Mead Blvd., Suite 140
Las Vegas, Nevada 89128
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20 day of December, 2013, I served a true and correct copy of the foregoing document entitled **NOTICE OF FILING PETITION FOR EXTRAORDINARY WRIT RELIEF** via U.S. mail, prepaid to the following persons:

David J. Mortensen, Esq. Chelsea R. Hueth, Esq. Alverson, Taylor, Mortensen & Sanders 7401 West Charleston Boulevard Las Vegas, NV 89117-1401 702-384-7000; Facsimile 702-385-7000 Attorneys for Roland Pua, M.D.	V. Andrew Cass, Esq. Keith A. Weaver, Esq. Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, NV 89118 702-893-3383; Facsimile 702-366-9563 Attorneys for Aleksandr Krivonovskiy, M.D.
John H. Cotton , Esq. Katherine L. Turpen, Esq. Cotton, Driggs, Walch, Holley, Woloson & Thompson 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101 702-791-0308; Facsimile 702-791-1912 Attorneys for Andrea Pernell, M.D.	Lynn M. Hansen, Esq. James M. Jimmerson, Esq. Jimmerson Hansen, P.C. 415 South 6th Street, Suite 100 Las Vegas, NV 89101 702-388-7171; Facsimile 702-380-6406 Attorneys for HealthSouth Rehabilitation Hospital of Desert Canyon, LLC dba HealthSouth Desert Canyon Rehabilitation Hospital
Robert D. Rourke, Esq. Rourke Law Firm 10161 Park Run Drive, Suite 150 Las Vegas, NV 89135 702-515-7440; Facsimile 702-515-7441 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center	Dale A. Hayes, Esq. Jason M. Gerber, Esq. Marquis Aurbach Coffing 10001 Park Run Drive Las Vegas, NV 89145 702-207-6097; Facsimile 702-856-8923 Attorneys for THI of Nevada at Las Vegas, I, LLC dba Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC dba Henderson Healthcare Center
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An employee of
ZIMMERMAN LAW FIRM P.C.

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TAB 34

TAB 34

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December 10, 2013

VIA FACSIMILE AND EMAIL (Appendix Documents to be Emailed Due to Size)

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Jason M. Gerber, Esq.
Marquis Aurbach Coffing
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Las Vegas, NV 89145

Re: ***Huppert v. Healthsouth Rehabilitation, et al.***
Case No.: A666641

Dear Counsel:

Pursuant to Nevada Rule of Appellate Procedure 30(a), please find attached a proposed appendix which we intend to submit with our Petition for Writ of Mandamus to the Nevada Supreme Court in this matter. We are providing you with this proposed appendix in compliance with NRAP 30(a), in an attempt to agree with you on a Joint Appendix for this Petition.

Please respond with any objections to or comments regarding this proposed appendix by the close of business on **December 16, 2013**. Thank you for your attention to this matter.

Very truly yours,

Law Offices of
ZIMMERMAN LAW FIRM, P.C.
A Professional Corporation

Brian F. Zimmerman

BFZ/jk
Enclosure: Proposed Joint Appendix

Cc: Mark Bourassa, Esq.

Huppert v. Healthsouth Desert Canyon, et al

DOCUMENTS TO BE INCLUDED IN APPENDIX

Tab	Document	Date	Vol.	Pages
1	Plaintiff's Second Amended Complaint	6-18-13		
2	Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-5-13		
3	Defendant Healthsouth Rehabilitation Hospital of Desert Canyon, LLC d/b/a Healthsouth Desert Canyon Rehabilitation Hospital's Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-10-13		
4	Defendant THI of Nevada at Las Vegas I, LLC d/b/a Harmon Medical and Rehabilitation Hospital's Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-15-13		
5	Defendant THI of Nevada at Henderson Convalescent, LLC d/b/a Henderson Healthcare Center's Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-15-13		
6	Defendant Andrea Pernell, M.D.'s Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-17-13		
7	Defendant Roland Pua, M.D.'s Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-17-13		
8	Plaintiff's Opposition to Defendant Aleksandr Krivonovskiy, M.D.'s Second Motion to Dismiss	7-23-13		
9	Defendant Aleksandr Krivonovskiy, M.D.'s Reply to Plaintiff's Opposition to Second Motion to Dismiss	7-30-13		
10	Defendant Roland Pua, M.D.'s Reply in Support of Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Motion to Dismiss	7-30-13		
11	Court Minutes on Second Motion to Dismiss	8-6-13		
12	Plaintiff's Supplemental Brief in Support of Opposition to Second Motion to Dismiss	8-20-13		
13	Defendant Aleksandr Krivonovskiy, M.D.'s Supplemental Brief in Support of Second Motion to Dismiss	8-20-13		
14	Defendants THI of Nevada at Las Vegas I, LLC d/b/a Harmon Medical and Rehabilitation Hospital and THI of Nevada at Henderson Convalescent, LLC d/b/a Henderson Healthcare Center's Joinder to Defendant	8-21-13		

	Aleksandr Krivonovskiy, M.D.'s Supplemental Brief			
15	Defendant Andrea Pernell, M.D.'s Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Supplemental Brief	8-22-13		
16	Defendant Roland Pua, M.D.'s Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Supplemental Brief	8-23-13		
17	Defendant Healthsouth Rehabilitation Hospital of Desert Canyon, LLC d/b/a Healthsouth Desert Canyon Rehabilitation Hospital's Joinder to Defendant Aleksandr Krivonovskiy, M.D.'s Supplemental Brief	8-26-16		
18	Transcript of Proceedings: All Pending Motions	8-30-13		
19	Defendant Roland Pua, M.D.'s Suggestion of Death Upon the Record	9-25-13		
20	Defendant Healthsouth Rehabilitation Hospital of Desert Canyon, LLC d/b/a Healthsouth Desert Canyon Rehabilitation Hospital's Suggestion of Death Upon the Record	9-27-13		
21	Order Granting in Part and Denying in Part Motion to Dismiss	10-8-13		
22	Notice of Entry of Order Granting in Part and Denying in Part Motion to Dismiss	10-8-13		
23	Plaintiff's Motion for Substitution of Party	11-12-13		
24	OST for Plaintiff's Motion for Substitution of Party	11-22-13		
25	Defendant Healthsouth Rehabilitation Hospital of Desert Canyon, LLC d/b/a Healthsouth Desert Canyon Rehabilitation Hospital's Non-Opposition to Plaintiff's Motion for Order Shortening Time	11-25-13		
26	Plaintiff's Motion for Stay of Proceedings	12-5-13		
27	Order Granting Motion for Substitution			
28	Notice of Entry of Order Granting Motion for Substitution			
29	Opposition to Motion for Stay	TBD		
30	Joinder to Opposition to Motion for Stay	TBD		
31	Reply to Opposition to Motion for Stay	TBD		
32	Order Granting/Denying Motion for Stay of Proceedings	TBD		

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December 10, 2013

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	Keith A. Weaver, Esq.	893-3789
	John H. Cotton, Esq.	791-1912
	Robert Rourke, Esq.	515-7441
	Jason Gerber, Esq.	856-8923
	Mark J. Bourassa, Esq.	851-2189
FROM:	Brian Zimmerman, Esq. Zimmerman Law Firm P.C.	
RE:	**Huppert v Healthsouth Rehabilitation** Case No.: A666641	
TOTAL PAGES:	4 including cover sheet	

CONFIDENTIALITY NOTE:

The information contained in this facsimile message is protected by the attorney/client privilege and is confidential information only for the use of the individual or entity named below. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone. Thank you.

MESSAGE:

483

BROADCAST REPORT

TIME : 12/10/2013 11:35
NAME : ZIMMERMAN
FAX : 7022288917
TEL :
SER.# : 000A0N307159

PAGE(S)	04

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
12/10	11:22	3806406	01:13	04	OK	ECM
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12/10	11:30	5157441	01:30	04	OK	
12/10	11:32	8568923	01:13	04	OK	ECM
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