Electronically Filed
03/06/2013 09:48:40 AM

CLERK OF THE COURT

NOT
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@cdwnvlaw.com
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
E-mail: CRigler@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
Attorneys for Frank J. DeLee, M.D.

Electronically Filed
Mar 08 2013 02:19 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor,

Plaintiff,

v.

FRANK J. DELEE, M.D.,

Defendant.

Case No.: A568152
Dept. No.: XXXI

NOTICE OF APPEAL

Defendant, Frank J. DeLee, M.D., by and through his attorneys of record, Cotton, Driggs, Walch, Holley, Woloson & Thompson, hereby appeal to the Nevada Supreme Court: (1) The Amended Judgment, notice filed on March 4, 2013; (2) the Decision and Order regarding Post Trial Motions signed by the District Court and notice filed on March 4, 2013; (3) the Judgment, notice filed on September 7, 2012; (4) the Order denying Defendant DeLee's Joinder to Motion to Strike Plaintiff's Expert, notice filed on August 16, 2012; (5) the Order granting Plaintiff's Motion to Continue Trial, notice filed on February 16, 2012; (6) the Order denying Defendant DeLee's Motion for Reconsideration, notice filed on March 4, 2013; (7) the Order denying Defendant DeLee's Motion for Summary Judgment, notice filed on April 12, 2011; and (8) all

Docket 62767 Document 2013-07135

rulings made on in Court objections or Motions made during and before trial.

Dated this 4th day of March, 2013.

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Frank J. DeLee, M.D.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 6th day of March, 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 APPEAL**, postage prepaid and addressed to:

Thomas Christensen, Esq.
Christensen Law Office, LLC.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Breen Arntz, Esq.
Arntz Associates, Inc.
1060 Wigwam Pkwy
Henderson, NV 89074
Attorneys for Plaintiff

Terri Bryson

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

Electronically Filed
03/06/2013 09:49:32 AM

CLERK OF THE COURT

CAS
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@cdwnvlaw.com
CHRISTOPHER G. RIGLER, ESQ.
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HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
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Telephone: 702/791-0308
Facsimile: 702/791-1912
Attorneys for Frank J. DeLee, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor,

Plaintiff,

v.

FRANK J. DELEE, M.D.,

Defendant.

Case No.: A568152
Dept. No.: XXXI

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Frank J. DeLee is the Appellant filing this Case Appeal Statement.

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

This appeal is from Orders, Judgments and in Court rulings rendered by the Honorable Joanna Kishner.

3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited):

Appellant: Frank J. DeLee, M.D.

Respondent: Tonya Fowler, as Guardian Ad Litem for Ava Fowler, a minor

4. Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited):

Appellant: Frank J. DeLee, M.D.

Respondent: Tonya Fowler, as Guardian Ad Litem for Ava Fowler, a minor

5. Set forth the name, law firm, address and telephone number of all counsel on appeal and identify the parties whom they represent

Appellant is represented by John H. Cotton, Esq. and Christopher Rigler, Esq. of the law firm Cotton, Driggs, Walch, Holley, Woloson & Thompson, 400 South Fourth Street, Third Floor, Las Vegas, Nevada 89101, (702)791-0308. The representing attorneys are licensed to practice law in the state of Nevada.

Respondent is represented by Thomas Christensen, Esq. and Derek Muaina, Esq. of Christensen Law Office, LLC, 3627 South Eastern Avenue, Las Vegas, Nevada 89169, (702)870-1000, and Breen Arntz, Esq. of Arntz Associates, Inc., 1060 Wigwam Pkwy, Henderson, NV 89074, (702)433-1663. The representing attorneys are licensed to practice law in the state of Nevada.

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

Appellant was represented by retained counsel, listed above, in the District Court.

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

Appellant is represented by retained counsel, listed above, on appeal.

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

Appellant has not been granted leave to proceed in forma pauperis.

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

The Complaint was filed in the District Court on July 24, 2008 and the Amended Complaint was filed in the District Court on September 25, 2008.

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

This is a medical malpractice case involving a child birth wherein the child had a brachial plexus injury. The District Court denied a Motion to Dismiss and a subsequent Motion to Reconsider on the issue of the one year statute of limitations. The District Court granted Plaintiff's Emergency Motion to Vacate Trial on the eve of trial and allowed for a second Plaintiff's expert to be designated thereafter. The District Court denied a Joinder to Motion to Strike the new expert and allowed the matter to proceed to trial. At trial, a jury found in favor of Plaintiff and awarded damages ultimately totaling $1.85 million after reduction based on the medical malpractice statutory scheme at NRS 41A. The District Court thereafter denied Post Trial Motions for JNOV and New Trial. The District Court granted a Motion for Attorney Fees, Costs and Prejudgment Interest. This appeal followed.

This appeal challenges all Orders, findings and Judgments made by the District Court referenced in the Notice of Appeal and incorporated herein.

11. Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

This case has been previously subject to an original writ proceeding in the Supreme Court Case No. 60041.

12. Whether the appeal involves child custody or visitation:

The appeal does not involve child custody or visitation.

13. Whether the appeal involves the possibility of settlement:

This appeal involves the possibility of settlement.

Dated this 14th day of March, 2013.

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Frank J. DeLee, M.D.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 6th day of March, 2013 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **CASE APPEAL STATEMENT**, postage prepaid and addressed to:

Thomas Christensen, Esq.
Christensen Law Office, LLC.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Breen Arntz, Esq.
Arntz Associates, Inc.
1060 Wigwam Pkwy
Henderson, NV 89074
Attorneys for Plaintiff

Terri Bryson

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

Electronically Filed
03/06/2013 09:46:58 AM

CLERK OF THE COURT

NOT
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@cdwnvlaw.com
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
E-mail: CRigler@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
Attorneys for Frank J. DeLee, M.D.

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor,

Plaintiff,

v.

FRANK J. DELEE, M.D.,

Defendant.

Case No.: A568152
Dept. No.: XXXI

NOTICE OF DEPOSIT OF COSTS BOND WITH THE CLERK OF THE COURT

Defendants, Frank J. DeLee, M.D., by and through his attorneys of record, Cotton, Driggs, Walch, Holley, Woloson & Thompson, hereby give notice of posting of bond for costs on an appeal in a civil case pursuant to NRAP 7. An image of the check in the amount of $500.00 is attached hereto.

Dated this 4th day of March, 2013.

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Frank J. DeLee, M.D.

01659-14/1022148

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 S 4TH ST FL 3
LAS VEGAS, NV 89101-6201
702-791-0308

WELLS FARGO BANK, N.A.
www.wellsfargo.com

94-7074/3212

19756

3/6/2013

PAY TO THE ORDER OF Clerk of the Court

$ 500.00

Five Hundred & No/100 Dollars

Clerk of the Court

DOLLARS

MEMO

AUTHORIZED SIGNATURE

WZ319403-04-12

⑈019756⑈ ⑆321270742⑆ 505307533⑧⑈

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
Clerk of the Court

DLO 3/6/2013 $ 500.00 19756

Invoice #	Account No.	Account Description	Matter ID	Amount
	1700-000-00	Client Costs - reimbursed client	01659-14	500.00

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 14th day of March, 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 DEPOSIT OF COSTS BOND WITH THE CLERK OF THE COURT**, postage prepaid and addressed to:

Thomas Christensen, Esq.
Christensen Law Office, LLC.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Breen Arntz, Esq.
Arntz Associates, Inc.
1060 Wigwam Pkwy
Henderson, NV 89074
Attorneys for Plaintiff

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

DEPARTMENT 31

CASE SUMMARY

CASE NO. 08A568152

Tonya Fowler	§	Location:	**Department 31**
vs	§	Judicial Officer:	**Kishner, Joanna**
Frank DeLee MD, Sunrise Hospital And Medical Center LL	§	Filed on:	**07/24/2008**
	§	Case Number History:	
	§	Conversion Case Number:	**A568152**

CASE INFORMATION

Statistical Closures
09/07/2012 Jury Trial

Case Type: **Negligence - Medical/Dental**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Med Mal Case

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	08A568152
Court	Department 31
Date Assigned	02/02/2011
Judicial Officer	Kishner, Joanna

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Fowler, Tonya**	**Christensen, Thomas F.** *Retained* 7028701000(W)
Defendant	**DeLee MD, Frank**	**Cotton, John H** *Retained* 702-791-0308(W)
	Sunrise Hospital And Medical Center LL Removed: 08/14/2012 Dismissed	**Webster, Kenneth M.** *Retained* 7028896400(W)
Conversion Extended Connection Type	**No Convert Value @ 08A568152** Removed: 04/24/2009 Converted From Blackstone	
Guardian Ad Litem	**Fowler, Tonya**	**Christensen, Thomas F.** *Retained* 7028701000(W)
Subject Minor	**Fowler, Ava**	**Christensen, Thomas F.** *Retained* 7028701000(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

DATE	EVENTS & ORDERS OF THE COURT	INDEX
07/24/2008	Complaint *PETITION FOR ORDER APPOINTING GUARDIAN AS LITEM FILED Fee $148.00*	*08A5681520001.tif pages*
07/24/2008	Initial Appearance Fee Disclosure Filed By: Plaintiff Fowler, Tonya *INITIAL APPEARANCE FEE DISCLOSURE*	*08A5681520002.tif pages*
07/30/2008	Order Appointing Guardian Ad Litem Filed By: Plaintiff Fowler, Tonya *ORDER APPOINTING GUARDIAN AD LITEM*	*08A5681520003.tif pages*

09/25/2008	Amended Complaint Filed By: Plaintiff Fowler, Tonya *COMPLAINT*	*08A5681520004.tif pages*
10/21/2008	Summons Filed by: Plaintiff Fowler, Tonya *SUMMONS - SUNRISE HOSPITAL AND MEDICAL CENTER LLC*	*08A5681520010.tif pages*
10/21/2008	Summons Filed by: Plaintiff Fowler, Tonya *SUMMONS - FRANK DELEE MD*	*08A5681520011.tif pages*
10/30/2008	Peremptory Challenge *PEREMPTORY CHALLENGE Halverson CASE REASSIGNED TO Williams*	*08A5681520005.tif pages*
10/30/2008	Notice of Department Reassignment *NOTICE OF DEPARTMENT REASSIGNMENT 002326002326??????002326FC 002326??????002326002326*	*08A5681520006.tif pages*
10/30/2008	Answer Filed By: Defendant DeLee MD, Frank *DEFENDANT FRANK J DELEE MD'S ANSWER TO COMPLAINT*	*08A5681520007.tif pages*
10/30/2008	Initial Appearance Fee Disclosure Filed By: Defendant DeLee MD, Frank *INITIAL APPEARANCE FEE DISCLOSURE*	*08A5681520009.tif pages*
10/30/2008	Demand for Jury Trial Filed By: Defendant DeLee MD, Frank *DEFENDANT FRANK J DELEE MDS DEMAND FOR JURY TRIAL*	*08A5681520012.tif pages*
11/03/2008	Answer Filed By: Defendant Sunrise Hospital And Medical Center LL *DEFENDANT SUNRISE HOSPITAL'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT*	*08A5681520008.tif pages*
11/03/2008	Demand for Jury Trial Filed By: Defendant Sunrise Hospital And Medical Center LL *DEMAND FOR JURY TRIAL*	*08A5681520013.tif pages*
11/03/2008	Initial Appearance Fee Disclosure Filed By: Defendant Sunrise Hospital And Medical Center LL *INITIAL APPEARANCE FEE DISCLOSURE*	*08A5681520014.tif pages*
12/12/2008	Joint Case Conference Report Filed By: Plaintiff Fowler, Tonya *JOINT CASE CONFERENCE REPORT*	*08A5681520015.tif pages*
01/20/2009	Conversion Case Event Type *STATUS CHECK: MEDICAL/DENTAL MALPRACTICE Dept 16*	*08A5681520016.tif pages*
01/30/2009	Discovery Scheduling Order *DISCOVERY/SCHEDULING ORDER*	*08A5681520019.tif pages*

02/04/2009	**Status Check: Medical/Dental Malpractice** (1:30 PM) (Judicial Officer: Hardcastle, Kathy) Events: 01/20/2009 Conversion Case Event Type *STATUS CHECK: MEDICAL/DENTAL MALPRACTICEDept 16 Court Clerk: Denise Trujillo Relief Clerk: Dameda Scott/ds Heard By: Kathy Hardcastle*	
02/23/2009	Conversion Case Event Type *STATUS CHECK: MEDICAL/DENTAL MALPRACTICE*	*08A5681520020.tif pages*
08/05/2009	**Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Bixler, James) Events: 02/23/2009 Conversion Case Event Type *STATUS CHECK: MEDICAL/DENTAL MALPRACTICE*	
12/30/2009	Order Setting Civil Jury Trial *Order Setting Civil Jury Tiral and Calendar Call*	
12/31/2009	Notice of Taking Deposition Filed By: Defendant DeLee MD, Frank *Notice of Taking Deposition of Plaintiff Tonya Fowler*	
01/11/2010	Stipulation and Order to Extend Discovery Deadlines Filed By: Defendant DeLee MD, Frank *Stipulation and Order Regarding Discovery Deadlines*	
02/03/2010	**Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Bixler, James)	
03/08/2010	Application *Application to Take Out of State Deposition: Rahul K. Nath, M.D.*	
04/26/2010	Application for Issuance of Commission to Take Deposition *Application to Take Out of State Deposition: Michael Lu, M.D.*	
07/06/2010	Acceptance of Service *Acceptance of Service*	
07/06/2010	Acceptance of Service Filed By: Plaintiff Fowler, Tonya *Acceptance of Service*	
07/06/2010	Subpoena Filed by: Defendant Sunrise Hospital And Medical Center LL *Subpoena to Daysha Ford*	
07/06/2010	Subpoena Filed by: Defendant Sunrise Hospital And Medical Center LL *Subpoena to Jason Fowler*	
07/15/2010	Motion Filed By: Plaintiff Fowler, Tonya *Plaintiff's Motion for Limited Discovery Extension*	

07/23/2010	Opposition to Motion Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Opposition to Motion to Extend Discovery Deadlines*
07/26/2010	Motion for Summary Judgment Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Notice of Motion and Motion for Summary Judgment*
07/26/2010	Motion for Summary Judgment Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Motion for Summary Judgment*
07/27/2010	Certificate of Mailing Filed By: Defendant DeLee MD, Frank *Certificate of Mailing*
08/02/2010	Opposition to Motion Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center's Opposition to Plaintiff's Motion for Limited Discovery Extension*
08/03/2010	**Status Check: Medical/Dental Malpractice** (1:30 PM) (Judicial Officer: Bixler, James)
08/04/2010	Joinder to Motion For Summary Judgment Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. Delee, M.D.'s Motion for Summary Judgment*
08/11/2010	Opposition Filed By: Plaintiff Fowler, Tonya *Plaintiffs' Opposition to Defendant Sunrise Hospital's Motion for Summary Judgment*
08/12/2010	Addendum Filed By: Plaintiff Fowler, Tonya *Errata to Plaintiffs' Opposition to Defendant Sunrise Hospital's Motion for Summary Judgment*
08/17/2010	Opposition Filed By: Plaintiff Fowler, Tonya *Plaintiffs' opposition to Defendant Frank J. DeLee, M.D's Motion for Summary Judgment*
08/17/2010	Reply in Support Filed By: Plaintiff Fowler, Tonya *Plaintiffs' Reply in Support of Motion for Limited Discovery Extension*
08/18/2010	**Motion** (9:30 AM) (Judicial Officer: Bulla, Bonnie) Events: 07/15/2010 Motion *Plaintiff's Motion for Limited Discovery Extension*
08/20/2010	Notice Filed By: Guardian Ad Litem Fowler, Tonya *Defendant Sunrise Hospital and Medical Center, LLC's Notice of Vacating Hearing on Motion for Summary Judgment*

08/23/2010	Notice Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Notice of Vacating Hearing on Motion for Summary Judgment*
08/30/2010	Objection Filed By: Plaintiff Fowler, Tonya *Plaintiffs' Objection to Defendants' Notice of Vacating Hearing on Motions for Summary Judgment*
08/31/2010	*CANCELED* **Motion for Summary Judgment** (9:00 AM) **(Judicial Officer: Ames, Jack)** *Vacated* *Notice of Vacating Hearing*
08/31/2010	*CANCELED* **Motion for Summary Judgment** (9:00 AM) **(Judicial Officer: Ames, Jack)** *Vacated* *Notice of Vacating Hearing*
12/08/2010	Discovery Commissioners Report and Recommendations Filed By: Plaintiff Fowler, Tonya; Subject Minor Fowler, Ava; Guardian Ad Litem Fowler, Tonya
01/03/2011	Renotice Filed by: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Re-Notice of Motion and Motion for Summary Judgment*
01/04/2011	Notice of Hearing Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Notice of Hearing on it's Motion for Summary Judgment*
01/12/2011	Joinder to Motion For Summary Judgment Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, M.D.'s Motion for Summary Judgment*
01/26/2011	Motion in Limine Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.' s Notice of Motion and Motions in Limine*
01/26/2011	Objection Filed By: Plaintiff Fowler, Tonya *Plaintiffs' Objection to Defendant Sunrise Hospital and Medical Center, LLC'S and Frank J. DeLee, M.D..'s Re-Notice of Motion of Hearing on Motions for Summary Judgment*
01/28/2011	Motion for Summary Judgment Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Motion for Summary Judgment*
01/28/2011	Motion in Limine Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 1 to Permit Introduction of Collateral Source Evidence*
01/28/2011	Motion in Limine Filed By: Defendant Sunrise Hospital And Medical Center LL

	Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 2 to Bar Discussion or Reference to Punitive Damages until Close of Plaintiff's Case
01/28/2011	Motion in Limine Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 3 to Preclude Plaintiffs' Nurse Expert from Providing Medical Causation Testimony*
01/28/2011	Motion in Limine Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 4 to Exclude Daysha Ford as a Witness*
01/28/2011	Motion in Limine Filed By: Plaintiff Fowler, Tonya *Plaintiffs' Motions in Limine*
02/01/2011	*CANCELED* **Status Check: Medical/Dental Malpractice** (1:30 PM) **(Judicial Officer: Wiese, Jerry A)** *Vacated - per Secretary*
02/01/2011	**Status Check: Medical/Dental Malpractice** (1:30 PM) (Judicial Officer: Bixler, James)
02/04/2011	Joinder to Motion For Summary Judgment Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Joinder to Co-Defendant's Motion for Summary Judgment*
02/04/2011	Joinder to Motion in Limine Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Joinder to Co-Defendant's Motions in Limine*
02/08/2011	Joinder Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, M.D.'s Motions in Limine*
02/10/2011	Opposition to Motion in Limine Filed By: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Opposition to Plaintiff's Motions in Limine*
02/10/2011	Reply to Opposition Filed by: Defendant DeLee MD, Frank *Frank J. DeLee, M.D.'s Reply to Opposition to Motion and Motion for Summary Judgment*
02/11/2011	Reply in Support Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Reply in Support of It's Motion for Summary Judgment and Response to Plaintiffs' Objection*
02/18/2011	Opposition to Motion in Limine Filed By: Plaintiff Fowler, Tonya *Plaintiff's Opposition to Defendant Sunrise Hospital's Motions in Limine*
02/18/2011	**Motion for Summary Judgment** (10:00 AM) (Judicial Officer: Kishner, Joanna) Events: 01/03/2011 Renotice

	Frank J. DeLee, M.D.'s Re-Notice of Motion and Motion for Summary Judgment
02/18/2011	**Joinder** (10:00 AM) (Judicial Officer: Kishner, Joanna) Events: 01/12/2011 Joinder to Motion For Summary Judgment *Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, M.D.'s Motion for Summary Judgment*
02/18/2011	**All Pending Motions** (10:00 AM) (Judicial Officer: Kishner, Joanna)
02/18/2011	Joinder to Opposition to Motion Filed by: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, M.D.'s Opposition to Plaintiff's Motions in Limine*
02/22/2011	Amended Order Setting Jury Trial Party: Plaintiff Fowler, Tonya *Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call*
03/01/2011	*CANCELED* **Calendar Call** (9:15 AM) **(Judicial Officer: Wall, David)** *Vacated*
03/04/2011	Stipulation and Order Filed by: Subject Minor Fowler, Ava *Stipulation and Order to Continue Hearing Dates*
03/07/2011	Opposition to Motion For Summary Judgment Filed By: Plaintiff Fowler, Tonya *Plaintiffs' Opposition to Defendant Sunrise Hospital and Medical Center, LLC's Motion For Summary Judgment*
03/07/2011	Opposition to Motion in Limine Filed By: Plaintiff Fowler, Tonya *Plaintiff's Reply To Opposition To Motions In Limine*
03/07/2011	Opposition to Motion in Limine Filed By: Plaintiff Fowler, Tonya *Plaintiff's Opposition to Defendant Frank J. Delee, M.D.'s Motion In Limine*
03/14/2011	Reply in Support Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Reply in Support of it's Motion in Limine No. 1 to Permit Introduction of Collateral Source Evidence*
03/14/2011	Reply in Support Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Reply in Support it's Motion in Limine No. 2 to Bar Discussion or Reference to Punitive Damages until Close of Plaintiff's Case*
03/14/2011	Reply in Support Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Reply in Support of it's Motion in Limine No. 3 to Preclude Plaintiffs' Nurse Expert from Providing Medical Causation Testimony*
03/14/2011	Motion in Limine

Filed By: Defendant Sunrise Hospital And Medical Center LL
Defendant Sunrise Hospital and Medical Center, LLC's Reply in Support of it's Motion in Limine No. 4 to Exclude Daysha Ford as a Witness

03/14/2011 Reply in Support
Filed By: Defendant Sunrise Hospital And Medical Center LL
Defendant Sunrise Hospital and Medical Center, LLC's Reply in Support of it's Motion for Summary Judgment

03/14/2011 *CANCELED* **Jury Trial** (10:00 AM) **(Judicial Officer: Wall, David)**
Vacated - On In Error

03/14/2011 *CANCELED* **Jury Trial** (1:30 PM) **(Judicial Officer: Tao, Jerome T.)**
Vacated

03/15/2011 Reply to Opposition
Filed by: Defendant DeLee MD, Frank
Frank J. DeLee, M.D.'s Reply to Opposition to Motions in Limine

03/21/2011 **Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/28/2011 Motion for Summary Judgment
Defendant Sunrise Hospital and Medical Center, LLC's Motion for Summary Judgment

03/21/2011 **Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/26/2011 Motion in Limine
Frank J. DeLee, M.D.' s Notice of Motion and Motions in Limine

03/21/2011 **Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/28/2011 Motion in Limine
Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 1 to Permit Introduction of Collateral Source Evidence

03/21/2011 **Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/28/2011 Motion in Limine
Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 2 to Bar Discussion or Reference to Punitive Damages until Close of Plaintiff's Case

03/21/2011 **Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/28/2011 Motion in Limine
Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 3 to Preclude Plaintiffs' Nurse Expert from Providing Medical Causation Testimony

03/21/2011 **Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/28/2011 Motion in Limine
Defendant Sunrise Hospital and Medical Center, LLC's Motion in Limine No. 4 to Exclude Daysha Ford as a Witness

03/21/2011 **Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/28/2011 Motion in Limine
Plaintiffs' Motions in Limine

03/21/2011 *CANCELED* **Joinder** (9:30 AM) **(Judicial Officer: Tao, Jerome T.)**
Vacated - On in Error
Motion was entered in wrong case.

03/21/2011 **Joinder** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 02/04/2011 Joinder to Motion in Limine
Frank J. DeLee, M.D.'s Joinder to Co-Defendant's Motions in Limine

03/21/2011 **Joinder to Motion in Limine** (9:30 AM) (Judicial Officer: Kishner, Joanna)

Events: 02/08/2011 Joinder
Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, M.D.'s Motions in Limine

03/21/2011 **All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna)

03/23/2011 **Decision** (3:00 AM) (Judicial Officer: Kishner, Joanna)
Frank Delee MD s Motion in Limine No. 5- Motion to Exclude Evidence of Personal Practices of Expert Witnesses

04/04/2011 Order
Filed By: Defendant Sunrise Hospital And Medical Center LL
Order on Defendant Sunrise Hospital and Medical Center, LLC and Defendant Frank J. DeLee, M.D.'s Motions for Summary Judgment

04/06/2011 Order
Filed By: Defendant Sunrise Hospital And Medical Center LL
Order on Defendant Sunrise Hospital and Medical Center, LLC's Motions in Limine

04/12/2011 Order
Filed By: Defendant DeLee MD, Frank
Order Regarding Defendant Frank J. DeLee, M.D.'s Motions in Limine

04/12/2011 Notice of Entry of Order
Filed By: Defendant Sunrise Hospital And Medical Center LL
Notice of Entry of Order

04/13/2011 Notice of Entry of Order
Filed By: Defendant Sunrise Hospital And Medical Center LL
Notice of Entry of Order

04/15/2011 Notice of Entry of Order
Filed By: Defendant DeLee MD, Frank
Notice of Entry of Order

04/20/2011 Order
Filed By: Plaintiff Fowler, Tonya
Order on Plaintiff's Motions in Limine

04/22/2011 *CANCELED* **Pre Trial Conference** (10:15 AM) **(Judicial Officer: Kishner, Joanna)**
Vacated - per Judge

05/04/2011 Notice of Entry of Order
Filed By: Plaintiff Fowler, Tonya
Notice of Entry of Order

05/10/2011 Motion to Continue Trial
Filed By: Defendant DeLee MD, Frank
Notice of Motion and Motion to Continue Trial on Order Shortening Time

05/10/2011 Certificate of Service
Filed by: Defendant DeLee MD, Frank
Certificate of Servica Via Mail and Facsimile

05/10/2011	Notice of Hearing Filed By: Defendant DeLee MD, Frank *Notice of Hearing*
05/11/2011	Opposition Filed By: Plaintiff Fowler, Tonya *Plaintiff's Opposition to Defendant DeLee's Motion to Continue Trial on OST*
05/12/2011	Subpoena Duces Tecum Filed by: Defendant Sunrise Hospital And Medical Center LL *Subpoena Duces Tecum Civil*
05/13/2011	**All Pending Motions** (8:45 AM) (Judicial Officer: Kishner, Joanna)
05/13/2011	**Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna) Events: 02/22/2011 Amended Order Setting Jury Trial
05/13/2011	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna) *Status Check: Daysha Ford's Appearance at Deposition (Motion in Limine No. 4 to Exclude Daysha Ford as a Witness)*
05/13/2011	**Motion to Continue Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna) Events: 05/10/2011 Motion to Continue Trial *Defendant Frank F DeLee, MD's Motion to Continue Trial on Order Shortening Time*
05/13/2011	Pre-Trial Disclosure Party: Plaintiff Fowler, Tonya *Plaintiff's NRCP 16.1 (a)(3) Pretrial Disclosures and Objections*
06/20/2011	*CANCELED* **Jury Trial** (9:00 AM) **(Judicial Officer: Kishner, Joanna)** *Vacated - per Clerk*
06/20/2011	*CANCELED* **Jury Trial** (1:00 PM) **(Judicial Officer: Kishner, Joanna)** *Vacated - per OST*
08/02/2011	**Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
08/10/2011	Amended Order Setting Jury Trial *Second Amended Order Setting Civil Jury Trial, Pre-Trial Conference And Calendar Call*
09/13/2011	Order *Order Amending date and Time for Calender Call*
10/13/2011	Order Setting Settlement Conference Filed By: Plaintiff Fowler, Tonya *Order Setting Settlement Conference*
11/30/2011	**Settlement Conference** (9:00 AM)
12/05/2011	Motion to Reconsider Filed By: Defendant DeLee MD, Frank *Notice of Motion and Motion for Reconsideration of Motion for Summary Judgment*
12/07/2011	Joinder To Motion

Filed By: Defendant Sunrise Hospital And Medical Center LL
Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, MD's Motion for Reconsideration of Motion for Summary Judgment

12/09/2011 **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna)

12/20/2011 Amended Order Setting Jury Trial
Third Amended Order Setting Civil Jury Trial, Calendar Call and Pre-Trial Memorandum Due Date

12/23/2011 Opposition to Motion
Filed By: Plaintiff Fowler, Tonya
Plaintiff's Opposition to Defendant DeLee's Motion for Reconsideration

12/29/2011 Pre-Trial Disclosure
Party: Defendant DeLee MD, Frank
Frank J. DeLee, M.D.'s Pre-Trial Disclosures

12/29/2011 Objection
Filed By: Defendant DeLee MD, Frank
Frank J. DeLee, M.D.'s Objection to Plaintiff's Pre-Trial Disclosures

01/05/2012 Reply to Opposition
Filed by: Defendant DeLee MD, Frank
Reply to Opposition to Motion to Reconsider Motion for Summary Judgment

01/09/2012 **Motion to Reconsider** (9:00 AM) (Judicial Officer: Kishner, Joanna)
Defendant Frank J. DeLee, M.D.'s Motion for Reconsideration of Motion for Summary Judgment

01/09/2012 **Joinder** (9:00 AM) (Judicial Officer: Kishner, Joanna)
Defendant Sunrise Hospital and Medical Center's Joinder to Defendant Frank J. DeLee, MD's Motion for Reconsideration of Motion for Summary Judgment

01/09/2012 **All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna)

01/11/2012 **Decision** (3:00 AM) (Judicial Officer: Kishner, Joanna)
DEFENDANT FRANK J. DELEE, M.D.'S MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT

01/17/2012 Pre-trial Memorandum
Filed by: Defendant Sunrise Hospital And Medical Center LL
Defendants Frank J. DeLee, MD and Sunrise Hospital and Medical Center, LLC's Defense Pretrial Memorandum

01/19/2012 Transcript of Proceedings
Transcript of Proceedings: Defendant Frank J. DeLee M.D.'s Motion for Reconsideration of Motion for Summary Judgment; Defendant Sunrise Hospital and Medical Center's Joinder to Motion -- 1-9-12

01/23/2012 Pre-trial Memorandum
Filed by: Subject Minor Fowler, Ava
Plaintiff's Pretrial Memo (not joint)

01/23/2012 **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna)

01/26/2012	Motion to Continue Trial Filed By: Plaintiff Fowler, Tonya *Plaintiff's Emergency Motion to Continue Trial on Order Shortening Time*
01/26/2012	Proposed Voir Dire Questions Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and Medical Center, LLC's Proposed Voir Dire Questions*
01/27/2012	**Motion to Continue Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna) *Plaintiff's Emergency Motion to Continue Trial on Order Shortening Time*
01/30/2012	*CANCELED* **Jury Trial - FIRM** (1:00 PM) **(Judicial Officer: Kishner, Joanna)** *Vacated - per Judge* *return to sweeps*
02/07/2012	**Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Cory, Kenneth)
02/14/2012	Order Granting Motion Filed By: Defendant Sunrise Hospital And Medical Center LL *Order Granting Plaintiff's Emergency Motion to Continue Trial on an Order Shortening Time*
02/16/2012	Notice of Entry of Order Filed By: Defendant Sunrise Hospital And Medical Center LL *Notice of Entry of Order*
02/28/2012	Amended Order Setting Jury Trial Party: Plaintiff Fowler, Tonya *Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call And Status Check*
03/21/2012	**Decision** (3:00 AM) (Judicial Officer: Kishner, Joanna) *Decision: Defendants Oral Motion for Sanctions (1/27/12)*
03/27/2012	Disclosure of Expert Filed By: Plaintiff Fowler, Tonya *Plaintiff's Disclosure of Expert Witnesses*
04/16/2012	Stipulation and Order Filed by: Defendant Sunrise Hospital And Medical Center LL *Stipulation and Order to Extend Deadline Pursuant to Court Order for Deposition of Plaintiff's Expert and Disclosure of Rebuttal Expert*
04/18/2012	Notice of Entry of Order Filed By: Defendant Sunrise Hospital And Medical Center LL *Notice of Entry of Order*
05/16/2012	Application for Issuance of Commission to Take Deposition Party: Defendant DeLee MD, Frank *Application for Issuance of Commission to Take Out of State Deposition*
05/18/2012	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna)

05/23/2012 Commission to Take Deposition Outside the State of Nevada
Filed By: Defendant DeLee MD, Frank
Commission to Take Deposition Outside of the State of Nevada

06/04/2012 Stipulation and Order
Filed by: Subject Minor Fowler, Ava
Stipulation and Order to Extend Deadline of Taking Deposition of Plaintiff's Expert Dr. Stephen Pine

07/03/2012 Joinder to Motion For Partial Summary Judgment
Filed By: Defendant DeLee MD, Frank
Joinder to Defendant Sunrise Hospital's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on Order Shortening Time

07/03/2012 Motion for Partial Summary Judgment
Filed By: Defendant Sunrise Hospital And Medical Center LL
Defendant Sunrise Hospital and Medical Center, LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time

07/06/2012 **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna)

07/13/2012 Pre-Trial Disclosure
Party: Plaintiff Fowler, Tonya
Plaintiff's Second Amended NRCP 16.1 (a)(3) PreTrial Disclosures and Objections

07/17/2012 Opposition to Motion
Filed By: Guardian Ad Litem Fowler, Tonya
Opposition to Defendant Sunrise Hospital and Medical Center, LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on Order Shortening Time and Opposition to Joinder of Defendant Frank J. DeLee

07/18/2012 Reply to Opposition
Filed by: Defendant DeLee MD, Frank
Reply to Opposition to Joinder to Defendant Sunrise Hospital's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on Order Shortening Time

07/19/2012 Reply in Support
Filed By: Defendant Sunrise Hospital And Medical Center LL
Defendant Sunrise Hospital and Medical Center, LLC's Reply in SUpport of Its Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time

07/20/2012 Pre-trial Memorandum
Filed by: Defendant Sunrise Hospital And Medical Center LL
Defendants Frank J. DeLee, MD and Sunrise Hospital and Medical Center, LLC's Amended Defense Pre-Trial Memorandum

07/23/2012 **Motion to Strike** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Defendant Sunrise Hospital and Medical Center, LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time

07/23/2012 **Joinder** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Defendant Frank DeLee MD's Joinder to Defendant Sunrise Hospital's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on Order Shortening Time

07/23/2012	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna)
07/24/2012	**Decision** (2:00 PM) (Judicial Officer: Kishner, Joanna) *Decision: Defendant Sunrise Hospital and Medical Center, LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment...Defendant Frank DeLee MD's Joinder to Defendant Sunrise Hospital's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment*
07/27/2012	Pre-trial Memorandum Filed by: Subject Minor Fowler, Ava *Plaintiff's Amended PreTrial Memorandum*
08/02/2012	Joint Pre-Trial Memorandum Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendants Frank J. DeLee, MD and Sunrise Hospital and Medical Center, LLC's Second Amended Joint Pre-Trial Memorandum*
08/03/2012	Proposed Voir Dire Questions Filed By: Defendant DeLee MD, Frank *Defendant DeLee's Proposed Voir Dire Questions*
08/06/2012	**Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna)
08/06/2012	**Motion for Determination of Good Faith Settlement** (9:00 AM) (Judicial Officer: Kishner, Joanna) *Defendant Sunrise Hospital and Medical Center, LLC's Motion for Determination of Good Faith Settlement*
08/06/2012	**All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna)
08/07/2012	Motion for Good Faith Settlement Filed By: Defendant Sunrise Hospital And Medical Center LL *Defendant Sunrise Hospital and MEdical Center, LLC's Motion for Determination of Good Faith Settlement*
08/07/2012	**Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Cory, Kenneth)
08/13/2012	**Jury Trial - FIRM** (1:00 PM) (Judicial Officer: Kishner, Joanna) **08/13/2012-08/17/2012**
08/13/2012	Jury List
08/14/2012	Order Granting Summary Judgment Filed By: Defendant Sunrise Hospital And Medical Center LL *Order on Defendant Sunrise Hospital and Medical Center, LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time and Defendant Frank J. DeLee, MD's Joinder Thereto*
08/14/2012	Order Granting Motion Filed By: Defendant Sunrise Hospital And Medical Center LL *Order Granting Defendant Sunrise Hospital and Medical Center, LLC's Motion for Determination of Good Faith Settlement*
08/14/2012	Stipulation and Order for Dismissal With Prejudice

Filed By: Defendant Sunrise Hospital And Medical Center LL
Stipulation and Order to Dismiss with Prejudice Defendant Sunrise Hospital and Medical Center, LLC

08/14/2012 **Order of Dismissal With Prejudice** (Judicial Officer: Kishner, Joanna)
Debtors: Tonya Fowler (Plaintiff), Ava Fowler (Subject Minor), Tonya Fowler (Guardian Ad Litem)
Creditors: Sunrise Hospital And Medical Center LL (Defendant)
Judgment: 08/14/2012, Docketed: 08/21/2012

08/14/2012 **Partial Summary Judgment** (Judicial Officer: Kishner, Joanna)
Debtors: Tonya Fowler (Plaintiff), Ava Fowler (Subject Minor), Tonya Fowler (Guardian Ad Litem)
Creditors: Sunrise Hospital And Medical Center LL (Defendant)
Judgment: 08/14/2012, Docketed: 08/21/2012

08/15/2012 Objection
Filed By: Defendant DeLee MD, Frank
Defendant DeLee's Objections to Pasimio Deposition Sections and Additional Sections Defendant Intends to Read into the Record

08/16/2012 Notice of Entry of Order for Dismissal With Prejudice
Filed By: Defendant Sunrise Hospital And Medical Center LL
Notice of Entry of Order

08/16/2012 Notice of Entry of Order
Filed By: Defendant Sunrise Hospital And Medical Center LL
Notice of Entry of Order

08/16/2012 Notice of Entry of Order
Filed By: Defendant Sunrise Hospital And Medical Center LL
Notice of Entry of Order

08/17/2012 Verdict

08/17/2012 Amended Jury List

08/17/2012 Instructions to the Jury
Jury Instructions

08/17/2012 Proposed Jury Instructions Not Used At Trial
Plaintiff's Proposed Jury Instructions Not Used At Trail

08/17/2012 Verdict Submitted to the Jury But Returned Unsigned

08/23/2012 Memorandum of Costs and Disbursements
Filed By: Subject Minor Fowler, Ava
Plaintiff's Memorandum of Costs

08/23/2012 Memorandum of Costs and Disbursements
Filed By: Subject Minor Fowler, Ava
Plaintiff's Memorandum of Costs

08/29/2012 Motion to Retax

Filed By: Defendant DeLee MD, Frank
Motion to Retax Costs and Motion to Reduce Judgment

09/05/2012 Petition for Compromise of Minors Claim
Filed by: Guardian Ad Litem Fowler, Tonya
Petitio to Compromise Claim of Minor

09/07/2012 Judgment on Jury Verdict
Filed By: Subject Minor Fowler, Ava
Judgement on Jury Verdict

09/07/2012 Notice of Entry of Judgment
Filed By: Subject Minor Fowler, Ava
Notice of Entry of Judgment

09/07/2012 Judgment Upon Jury Verdict
Filed By: Subject Minor Fowler, Ava
Judgment On Jury Verdict

09/07/2012 **Judgment Upon the Verdict** (Judicial Officer: Kishner, Joanna)
Debtors: Frank DeLee MD (Defendant)
Creditors: Ava Fowler (Subject Minor), Tonya Fowler (Guardian Ad Litem)
Judgment: 09/07/2012, Docketed: 09/14/2012
Total Judgment: 4,861,101.33

09/07/2012 **Judgment Upon the Verdict** (Judicial Officer: Kishner, Joanna)
Debtors: Frank DeLee MD (Defendant)
Creditors: Ava Fowler (Subject Minor), Tonya Fowler (Guardian Ad Litem)
Judgment: 09/07/2012, Docketed: 09/14/2012

09/11/2012 Errata
Filed By: Subject Minor Fowler, Ava
Errata to Notice of Entry of Judgment

09/13/2012 Memorandum of Costs and Disbursements
Filed By: Subject Minor Fowler, Ava
Plaintiff's Memorandum of Cost

09/14/2012 Opposition to Motion
Filed By: Subject Minor Fowler, Ava
Plaintiff's Opposition to Motion to Retax Costs and Motion to Reduce Judgment

09/20/2012 Motion
Filed By: Defendant DeLee MD, Frank
Defendant DeLee's Notice of Motion, NRCP 50 Rewnewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial and NRCP 59 Motion to Alter or Amend Judgment

09/27/2012 Motion for Attorney Fees and Costs
Filed By: Plaintiff Fowler, Tonya
Motion for Attorney's Fees, Costs and Prejudgment Interest

09/28/2012 Transcript of Proceedings
Transcript of Proceedings: Civil Jury Trial -- 8-13-12

09/28/2012	Transcript of Proceedings *Transcript of Proceedings: Civil Jury Trial -- 8-14-12*
09/28/2012	Transcript of Proceedings *Transcript of Proceedings: Civil Jury Trial -- 8-15-12*
09/28/2012	Transcript of Proceedings *Transcript of Proceedings: Civil Jury Trial -- 8-16-12*
09/28/2012	Transcript of Proceedings *Transcript of Proceedings: Civil Jury Trial -- 8-17-12*
10/04/2012	Opposition to Motion Filed By: Plaintiff Fowler, Tonya *Opposition to Defendant's Motion for New Trial*
10/08/2012	Opposition to Motion Filed By: Defendant DeLee MD, Frank *Opposition to Motion for Attorney Fees, Costs and Prejudgment Interest*
10/10/2012	Reply to Opposition Filed by: Defendant DeLee MD, Frank *Reply to Opposition to Motion to Retax Costs and Motion to Reduce Judgment*
10/15/2012	Reply to Opposition Filed by: Defendant DeLee MD, Frank *Reply to Opposition to Defendant DeLee's NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial and NRCP 59 Motion to Alter or Amend Judgment*
10/16/2012	Transcript of Proceedings Party: Plaintiff Fowler, Tonya *Amended Transcript of Proceedings: Civil Jury Trial -- 8-17-12*
10/22/2012	**Motion to Retax** (10:00 AM) (Judicial Officer: Kishner, Joanna) *Defendant Frank DeLee MD's Motion to Retax Costs and Motion to Reduce Judgment*
10/22/2012	**Motion** (10:00 AM) (Judicial Officer: Kishner, Joanna) **10/22/2012, 01/08/2013** *Defendant DeLee's Notice of Motion, NRCP 50 Rewnewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial and NRCP 59 Motion to Alter or Amend Judgment*
10/22/2012	**All Pending Motions** (10:00 AM) (Judicial Officer: Kishner, Joanna)
11/08/2012	Reply to Opposition Filed by: Plaintiff Fowler, Tonya *Reply to Defendant, Frank J. DeLee, M.D.'s Opposition to Plaintiff's Motion for Attorney Fees, Costs and Prejudgment Interest*
11/13/2012	Stipulation and Order Filed by: Plaintiff Fowler, Tonya *Stipulation and Order to Continue Hearing*
11/26/2012	

	Supplement Filed by: Subject Minor Fowler, Ava *Supplement to Opposition*
11/28/2012	Motion Filed By: Plaintiff Fowler, Tonya *Motion for Reconsideration*
12/03/2012	Reply in Support Filed By: Defendant DeLee MD, Frank *Supplemental Reply to Supplemental Opposition to Defendant DeLee's Notice of Motion, NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial and NRCP 59 Motion to Alter or Amend Judgment*
12/05/2012	Opposition to Motion Filed By: Defendant DeLee MD, Frank *Opposition to Motion for Reconsideration*
12/26/2012	Reply in Support Filed By: Subject Minor Fowler, Ava *Reply in Support of Motion for Reconsideration*
01/07/2013	Order Filed By: Subject Minor Fowler, Ava *Order*
01/07/2013	Notice of Entry of Order Filed By: Plaintiff Fowler, Tonya *Notice of Entry of Order*
01/08/2013	**Motion for Attorney Fees and Costs** (10:00 AM) (Judicial Officer: Kishner, Joanna) *Plaintiffs' Motion for Attorney's Fees, Costs and Prejudgment Interest*
01/08/2013	**Motion to Retax** (10:00 AM) (Judicial Officer: Kishner, Joanna) *Defendant Frank DeLee MD's Motion to Retax Costs*
01/08/2013	**Motion to Reconsider** (10:00 AM) (Judicial Officer: Kishner, Joanna) *Plaintiff's Motion for Reconsideration*
01/08/2013	**All Pending Motions** (10:00 AM) (Judicial Officer: Kishner, Joanna)
02/08/2013	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna) **02/08/2013, 02/15/2013, 02/22/2013, 03/08/2013** *Status Check: Order on Judgment*
02/27/2013	Order Denying Motion *Decision On Defendant Delee's NRCP 50 Renewed Motion For Directed Verdict, NRCP 50 Motion For JNOV, NRCP 59 Motion For New Trial And NRCP 59 Motion Alter Or Amend Judgment*
02/27/2013	Decision and Order *Decision and Order On Plaintiff's Motion For Reconsideration*
03/01/2013	Order Filed By: Subject Minor Fowler, Ava

	Order
03/01/2013	Amended Judgment Filed By: Defendant DeLee MD, Frank *Amended Judgment*
03/04/2013	Notice of Entry of Order Filed By: Subject Minor Fowler, Ava *Notice of Entry of Order*
03/04/2013	Notice of Entry of Order Filed By: Defendant DeLee MD, Frank *Notice of Entry of Decision and Order on Plaintiff's Motion for Reconsideration*
03/04/2013	Notice of Entry of Order Filed By: Defendant DeLee MD, Frank *Notice of Entry of Decision on Defendant DeLee's NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JVNOV, NRCP 59 Moton for New Trial and NRCP 59 Motion Alter or Amend Judgment*
03/04/2013	Notice of Entry of Order Filed By: Defendant DeLee MD, Frank *Notice of Entry of Amended Judgment*
03/06/2013	Notice of Filing Cost Bond Filed By: Defendant DeLee MD, Frank *Notice of Deposit of Costs Bond with the Clerk of the Court*
03/06/2013	Notice of Appeal Filed By: Defendant DeLee MD, Frank *Notice of Appeal*
03/06/2013	Case Appeal Statement Filed By: Defendant DeLee MD, Frank *Case Appeal Statement*

DATE	FINANCIAL INFORMATION	
	Conversion Extended Connection Type No Convert Value @ 08A568152	
	Total Charges	353.00
	Total Payments and Credits	353.00
	Balance Due as of 3/8/2013	**0.00**
	Defendant Sunrise Hospital And Medical Center LL	
	Total Charges	1,000.00
	Total Payments and Credits	1,000.00
	Balance Due as of 3/8/2013	**0.00**
	Defendant DeLee MD, Frank	
	Total Charges	624.00
	Total Payments and Credits	624.00
	Balance Due as of 3/8/2013	**0.00**
	Plaintiff Fowler, Tonya	
	Total Charges	914.00
	Total Payments and Credits	914.00
	Balance Due as of 3/8/2013	**0.00**

Defendant DeLee MD, Frank
APPEAL BOND Balance as of 3/8/2013 **500.00**

CIVIL COVER SHEET

Clark County, Nevada

Case No. A568152 (Assigned by Clerk's Office)

XXIII

I. Party Information

Plaintiff(s): Tonya Fowler, as Guardian Ad Litem for Ava Fowler Attorney: c/o Kristine Jensen, Esq., of CHRISTENSEN LAW OFFICES, LLC, 3627 S. Eastern Ave., Las Vegas, NV 89169	Defendant(s): Frank DeLee, M.D. Attorney (name/address/phone): unknown

II Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) ( ) **Arbitration Requested**

Civil Cases

Real Property	Torts	
( )**Landlord/Tenant** ( )Unlawful Detainer ( )**Title to Property** ( )Foreclosure ( )Liens ( )Quiet Title ( )Specific Performance ( )**Condemnation/Eminent Domain** ( )**Other Real Property** ( )Partition ( )Planning/Zoning	Negligence ( )**Negligence - Auto** (X)**Negligence - Medical/Dental** ( )**Negligence - Premises Liability** *(Slip/Fall)* ( )**Negligence –Other**	( )**Product Liability** ( )Product Liability/Motor Vehicle ( )Other Torts/Product Liability ( )**Intentional Misconduct** ( )Torts/Defamation (Libel/Slander) ( )Interfere with Contract Rights ( )**Employment Torts** (Wrongful termination) ( )**Other Torts** ( )Anti-trust ( )Fraud/Misrepresentation ( )Insurance ( )Legal Tort ( )Unfair Competition

Probate	Other Civil Filing Types	
( )**Summary Administration** ( )**General Administration** ( )**Special Administration** ( )**Set Aside Estates** ( )**Probate Trust/Conservatorships** ( )**Other Probate**	( )**Construction Defect** ( )**Breach of Contract** ( )Building & Construction ( )Insurance Carrier ( )Commercial Instrument ( )Other Contracts/Acct/Judgment ( )Collection of Actions ( )Employment Contract ( )Guarantee ( )Sale Contract ( )Uniform Commercial Code ( )**Civil Petition for Judicial Review** ( )Other Administrative Law ( )Department of Motor Vehicles ( )Employer's Insurance of Nevada	( )**Appeal from Lower Court** *also check applicable civil case box)* ( )Transfer from Justice Court ( )Justice Court Civil Appeal ( )**Civil Writ** ( )Other Special Proceeding ( )**Other Civil Filing** ( )Compromise of Minor's Claim ( )Conversion of Property ( )Damage to Property ( )Employment Security ( )Enforcement of Judgment ( )Foreign Judgment – Civil ( )Other Personal Property ( )Recovery of Property ( )Stockholder Suit (X)Other Civil Matters

III. Business Court Requested (Please check applicable category; for *Clark* or *Washoe Counties only.)*

( )NRS Chapters 78-88	( )Investments (NRS 104B)	( )Enhanced Case Mgmt/Business
( )Commodities (NRS 90)	( )Deceptive Trade Practices (NRS 598)	( )Other Business Court Matters
( )Securities (NRS 90)	( )Trademarks (NRS 600A)	

7/14/08
Date

Signature of initiating party or representative

AJ
JOHN H. COTTON, ESQ.
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Facsimile: 702/791-1912
Attorneys for Frank J. DeLee, M.D.

Electronically Filed
03/01/2013 01:40:03 PM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor,

Plaintiff,

v.

FRANK J. DELEE, M.D.,

Defendant

Case No.: A568152
Dept. No.: XXXI

AMENDED JUDGMENT

This matter having come on regularly for jury trial before this Court, the jury having heard and considered the testimony and proof offered by the respective parties and arguments of the respective parties and the cause having been submitted to the jury for decision, the Court having heard and considered the parties subsequent pleadings and oral arguments, being fully advised in the premises, it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiff, TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, has Judgment against the Defendant FRANK J. DELEE, M.D., as follows:

1. Past Pain and Suffering:	$300,000.00
2. Future Pain and Suffering:	$50,000.00
3. Future Medical Treatment:	$1,500,000.00

Total Damages $1,850,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may recover costs in the agreed upon amount of $40,177.74.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may recover attorneys' fees according to statutory limit in the following breakdown:

40%	of first $50,000	$ 20,000.00
33.3%	of second $50,000	$ 16,666.65
25%	of next $500,000	$ 125,000.00
15%	of everything exceeding $600,000	$ 187,500.00
	Total Fees:	$ 349,166.65

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff may recover pre-judgment interest at 3.25% plus 2%[1] from October 14, 2008, the date the Offer of Judgment was served, to September 7, 2012, the date of Judgment, totaling $61,489.73. The formula used to calculate such interest is (Prime Rate + two percent/365 day year) x (number of days between Offer of Judgment and Judgment) x (amount of total interest bearing judgment). This formula leads to the following calculation of prejudgment interest (.0525/365) x 1425 days x $300,000[2]= $61,489.73.

For a total Judgment breakdown as follows:

Verdict:	$1,850,000.00
Costs:	$40,177.74

[1] Pursuant to NRS 17.130(2), prejudgment interest bears at prime rate plus two percent. Pursuant to Lee v. Ball, 121 Nev. 391, 396 116 P.3d 64, 67 (2005), the amount used to calculate prejudgment interest is the single prime rate in effect on the date of judgment.

[2] Pursuant to Albios v. Horizon Communities, Inc., 122 Nev. 409, 428, 132 P.3d 1022, 1034-1035 (2006), only past damages can be charged with prejudgment interest (only $300,000 was awarded as past damages in this matter and the remaining was future damages). See also NRS 17.130(2). In addition, attorneys' fees in this matter were awarded only via the offer of judgment and not as damages and, as such, prejudgment interest cannot be awarded for attorneys' fees. Albios, 122 Nev. at 430, 132 P.3d at 1036. Finally, costs do not bear prejudgment interest as Plaintiff has not substantiated the date the costs were all incurred and has not presented a breakdown of such so as to allow for such interest. Id. at 429, 132 P.3d at 1035.

Attorneys' Fees:	$349,166.65
Pre-Judgment Interest:	$61,489.73
Total Judgment:	**$2,300,834.12**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total Judgment has and will continue to bear interest at the legal rate from September 7, 2012 until paid.

This Amended Judgment is to be signed by the Court and effective concurrently with the Court issuing its written Order on the previously heard post-trial Motions and the Court signing an Order on Plaintiff's Motion for Reconsideration. All issues will be final on that date and ripe for appeal thereafter.

DATED this 12 day of Feb, 2013.

JOANNA S. KISHNER

DISTRICT JUDGE

Submitted by:

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
CHRISTOPHER G. RIGLER, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Frank J. DeLee, M.D.

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JOHN H. COTTON, ESQ.
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Facsimile: (702) 791-1912
Attorneys for Defendant, Frank J. DeLee, M.D.

DISTRICT COURT
* * *
CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor Plaintiffs, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC.; DOES I through V, DOE EMPLOYEES VI thorugh XXVI; and ROES I through V, inclusive, Defendants.	Case No.: A-08-568152-C Dept. No.: XXXI **NOTICE OF ENTRY OF AMENDED JUDGMENT**

TO: PLAINTIFF AND HER COUNSEL OF RECORD:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered in the above entitled matter on the 1st day of March 2013, a copy of which is attached hereto.

Dated this 4th day of March 2013.

COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
CHRISTOPHER G. RIGLER, ESQ.
Attorneys for Defendant, Frank J. DeLee, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March 2013, I served the foregoing **NOTICE OF ENTRY OF AMENDED JUDGMENT** upon the following parties by placing a true and correct copy thereof in the United States Mail at Las Vegas, Nevada with first class postage fully prepaid thereon and by facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, this date by faxing a true and correct copy of the same to each party as follows:

Thomas Christensen, Esq.
Christensen Law Office, LLC.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Facsimile: (702)792-9647

Breen Arntz, Esq.
Arntz Associates, Inc.
1060 Wigwam Pkwy
Henderson, NV 89074
Attorneys for Plaintiff

Facsimile: (702)446-8164

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

AJ
JOHN H. COTTON, ESQ.
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Attorneys for Frank J. DeLee, M.D.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor,

Plaintiff,

v.

FRANK J. DELEE, M.D.,

Defendant

Case No.: A568152
Dept. No.: XXXI

AMENDED JUDGMENT

This matter having come on regularly for jury trial before this Court, the jury having heard and considered the testimony and proof offered by the respective parties and arguments of the respective parties and the cause having been submitted to the jury for decision, the Court having heard and considered the parties subsequent pleadings and oral arguments, being fully advised in the premises, it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiff, TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, has Judgment against the Defendant FRANK J. DELEE, M.D., as follows:

1. Past Pain and Suffering:	$300,000.00
2. Future Pain and Suffering:	$50,000.00
3. Future Medical Treatment:	$1,500,000.00

Total Damages $1,850,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may recover costs in the agreed upon amount of $40,177.74.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may recover attorneys' fees according to statutory limit in the following breakdown:

40%	of first $50,000	$ 20,000.00
33.3%	of second $50,000	$ 16,666.65
25%	of next $500,000	$ 125,000.00
15%	of everything exceeding $600,000	$ 187,500.00
	Total Fees:	$ 349,166.65

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff may recover pre-judgment interest at 3.25% plus 2%[1] from October 14, 2008, the date the Offer of Judgment was served, to September 7, 2012, the date of Judgment, totaling $61,489.73. The formula used to calculate such interest is (Prime Rate + two percent/365 day year) x (number of days between Offer of Judgment and Judgment) x (amount of total interest bearing judgment). This formula leads to the following calculation of prejudgment interest (.0525/365) x 1425 days x $300,000[2]= $61,489.73.

For a total Judgment breakdown as follows:

Verdict:	$1,850,000.00
Costs:	$40,177.74

[1] Pursuant to NRS 17.130(2), prejudgment interest bears at prime rate plus two percent. Pursuant to Lee v. Ball, 121 Nev. 391, 396 116 P.3d 64, 67 (2005), the amount used to calculate prejudgment interest is the single prime rate in effect on the date of judgment.

[2] Pursuant to Albios v. Horizon Communities, Inc., 122 Nev. 409, 428, 132 P.3d 1022, 1034-1035 (2006), only past damages can be charged with prejudgment interest (only $300,000 was awarded as past damages in this matter and the remaining was future damages). See also NRS 17.130(2). In addition, attorneys' fees in this matter were awarded only via the offer of judgment and not as damages and, as such, prejudgment interest cannot be awarded for attorneys' fees. Albios, 122 Nev. at 430, 132 P.3d at 1036. Finally, costs do not bear prejudgment interest as Plaintiff has not substantiated the date the costs were all incurred and has not presented a breakdown of such so as to allow for such interest. Id. at 429, 132 P.3d at 1035.

Attorneys' Fees:	$349,166.65
Pre-Judgment Interest:	$61,489.73
Total Judgment:	**$2,300,834.12**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total Judgment has and will continue to bear interest at the legal rate from September 7, 2012 until paid.

This Amended Judgment is to be signed by the Court and effective concurrently with the Court issuing its written Order on the previously heard post-trial Motions and the Court signing an Order on Plaintiff's Motion for Reconsideration. All issues will be final on that date and ripe for appeal thereafter.

DATED this 12 day of Feb, 2013.

JOANNA S. KISHNER

DISTRICT JUDGE

Submitted by:

COTTON DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
CHRISTOPHER G. RIGLER, ESQ.
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Las Vegas, Nevada 89101
Attorneys for Frank J. DeLee, M.D.

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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian ad Litem for AVA FOWLER, a minor, PLAINTIFF(S), vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, DEFENDANT(S).	CASE NO.: 08-568152 A ~~-11-653529-C~~ DEPT. NO.: XXXI **DECISION ON DEFENDANT DELEE'S NRCP 50 RENEWED MOTION FOR DIRECTED VERDICT, NRCP 50 MOTION FOR JNOV, NRCP 59 MOTION FOR NEW TRIAL AND NRCP 59 MOTION ALTER OR AMEND JUDGMENT**

On October 22, 2012, the Court held a hearing regarding Defendant DeLee's NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial, and NRCP 59 Motion to Alter or Amend Judgment. The hearing was held before Department XXXI of the Eighth Judicial District Court in and for Clark County, Nevada, and was presided over by the Honorable Joanna S. Kishner. Present at the hearing were Thomas F. Christensen, Esq., Breen Arntz, Esq., and Jennifer M. Gooss, Esq. on behalf of the Plaintiff Tonya Fowler as Guardian ad Litem for Ava Fowler, a minor (hereinafter "Plaintiff"), and John H. Cotton, Esq., on behalf of Defendant Frank DeLee. At the

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

conclusion of the hearing, Mr. Arntz requested additional time to supplement his brief before the Court made its ruling. The Court allowed both parties to provide supplemental briefing if they wished, and ordered that any supplements were due November 1, 2012, and any response to that supplement due November 7, 2012. Subsequently, on November 13, 2012, the parties stipulated to continue the hearing on other post trial motions to December 10, 2012, and provided new scheduling dates for their supplements on Defendant's new trial motions to November 26, 2012, and any reply to the supplement due December 3, 2012. The parties subsequently agreed to continue the consolidated hearing to January 8, 2013. It was further agreed that the Court would provide its oral ruling on Defendant DeLee's NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial, and NRCP 59 Motion to Alter or Amend Judgment at the January 8th hearing.

On January 8, 2013, Department XXXI held the consolidated hearing of the outstanding motions. The hearing was presided over by the Honorable Joanna S. Kishner. Present at the hearing were Thomas F. Christensen, Esq., Breen. Arntz, Esq., and Dennis Prince, Esq. on behalf of the Plaintiff Tonya Fowler as Guardian ad Litem for Ava Fowler, a minor (hereinafter "Plaintiff"), and John H. Cotton, Esq., on behalf of Defendant Frank DeLee. At the January hearing, the Court read its findings and allowed each party to seek clarification and/or additional discussion on the Motion. Having reviewed the pleadings, supplemental briefing, and oral argument before this Court, and the merits of the Motion and the positions of the Parties, and good cause appearing, the Court finds and rules as follows.

I. NRCP MOTION FOR JUDGMENT AS A MATTER OF LAW

NEV. R. CIV. P. 50 provides that:

> (a) Judgment as a Matter of Law.
>
> (1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a

sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at the close of the evidence offered by the nonmoving party or at the close of the case. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion the court may:

(1) if a verdict was returned:
  (A) allow the judgment to stand,
  (B) order a new trial, or
  (C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:
  (A) order a new trial, or
  (B) direct entry of judgment as a matter of law.

As the commentary to the statute notes, "[t]he revised rule (2005) takes the same approach as the federal rule, as amended in 1963 and 1991, that a post-verdict motion for judgment as a matter of law is a renewal of an earlier motion made before or at the close of evidence. Thus, a "Renewed Motion" filed under subdivision (b) must have been preceded by a motion filed at the time permitted by subdivision (a) (2). In the present case, Defendant did not seek a Rule 50 Motion, either pursuant to (a)(1) or (a)(2), and thus, although the instant Motion is titled a "Renewed Motion," it is the first time the motion or issues therein were presented to the Court. Consequently, neither the purported request for Directed Verdict or JNOV (as provided for in the pre-2005 amendments), nor the relief pursuant to

JOANNA S. KISHNER
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NEV. R. CIV. P. 50(b), is available to Defendant. Instead, the Court can only treat Defendant's Motion as a Motion for a New Trial.

Further, at the October and January hearings on the Motion, the Court noted that though the Motion was filed as a "Renewed Motion for a Directed Verdict" and a "Motion for JNOV", (what is now referred to as a NEV. R. CIV. P. 50(a)(2) Motion), that no such Motion was initially made during the trial at the close of either party's case-in-chief. Defense Counsel confirmed for the Court that the Motion should only be heard as a Motion for New Trial and as a Motion to Alter or Amend Judgment.

II. MOTION FOR NEW TRIAL

The Court may grant a new trial where an aggrieved party's substantial rights were materially affected by any of the grounds stated in NEV. R. CIV. P. 59. *Edwards Indus. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1035-36, 923 P.2d 569, 575-76 (1996). The decision to grant a motion for a new trial is within the sound discretion of the trial court. *Id.* Under NEV. R. CIV. P. 59, the grounds for a new trial include:

> (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion.

Defendant alleged violations under subparts 2, 5 and 7. Specifically, Defendant asserts that there was misconduct by Plaintiff's Counsel, manifest disregard for the jury instructions, and errors of law which resulted in an erroneous jury verdict.

JOANNA S. KISHNER
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1. **Alleged Procedural Irregularities – Improper Expert Disclosures**

NEV. R. CIV. P. 16.1(a)(2)(b) sets forth the requirements for expert reports, stating that such reports "shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore . . ." NEV. R. CIV. P. 26(e)(1) defines the requirements for supplements to expert reports.

> With respect to testimony of an expert from whom a report is required under Rule 16.1(a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 16.1(a)(3) are due.

NEV. R. CIV. P. 16.1(a)(3) mandates that pretrial disclosures must be made thirty days prior to the commencement of trial. Defendant argued that Plaintiff failed to satisfy the discovery burdens when they first did not appropriately supplement Dr. Pine's deposition testimony to reflect a change in his position on the need for a cesarean section; and second, when they did not disclose that Dr. Clauretie was going to testify to an amount which was different than the amount of damages originally requested via the life care plan.

a. Dr. Pine's Testimony

Defendant argues that Dr. Pine's deposition testimony differed so substantially from the testimony offered at trial that it violated NEV. R. CIV. P. 16.1(a)(2)(b), 16.1(a)(3), and 26(e)(1). Plaintiff contends that the deposition testimony and the trial testimony did not differ as to the expert opinions offered by Dr. Pine. Plaintiff concludes that there was no obligation to supplement the report because the testimony was consistent between the deposition and Pine's trial testimony. The Court finds that it properly allowed Dr. Pine's testimony and that it was not so inconsistent with the opinions offered previously as to violate NEV. R. CIV. P.16.

Further, the Court notes, in so holding, that Defendant did not object to the testimony at the time of trial. Thus, the Court finds that the failure to object was critical and the objection was waived as there was no plain error.

b. Dr. Pasimio's Testimony via deposition and Dr. Clauretie's Testimony on Dr. Pasimio's Life Care Plan

Defendant argues that the Court improperly allowed portions of the deposition of Dr. Pasimio to be read at trial asserting that it prevented Defendant from cross-examining Dr. Pasimio in front of the jury. In response, Plaintiff argues that Dr. Pasimio testimony was properly elicited via deposition testimony as he was unavailable. As the parties are aware, the Court made a lengthy inquiry into whether Dr. Pasimio was "unavailable " within the meaning of the rules, and what efforts had been made to secure his attendance. The Court also made an inquiry as to whether the Defense had a full opportunity to cross-examine Dr. Pasimio at his deposition and whether there were any subsequent reports or disclosures provided after the deposition took place to ensure that the Defense had full knowledge of the scope of the testimony.

The parties then fully argued the propriety of allowing the deposition testimony to be read due to Dr. Pasimio's unavailability. To ensure both parties had the opportunity to use the portions of the deposition they wished, after the Court ruled that the portions of the deposition could be read both by Plaintiff and Defendant, the parties met and agreed upon the portions to be read without Defendant waiving his initial objection. On the portions that were still at issue, the Court held a hearing and Plaintiff withdrew the portions of the deposition that Defendant objected to and Defendant also removed some proposed portions. As Dr. Pasimio was unavailable in accordance with the rules, and given the procedural

JOANNA S. KISHNER
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safeguards in place, the Court did not err in allowing the reading of Dr. Pasimio's testimony and thus there is no basis for a new trial[1].

With respect to Mr. Clauretie, Defendant asserts that it was error to allow him to provide the present value calculation based on the interest rates in effect as of the timeframe of the trial, in addition to the present value calculation that he provided at the time of his report, which was based on the interest rates a few years earlier. Defendant does not contend that the calculation was incorrect or that the witness changed the value of the life care plan. Instead, he challenges that Mr. Clauretie was allowed to present both the present value calculation of future life plan as set forth in his report, but also the updated figure utilizing the current interest rates. Defendant asserted that the aforementioned discovery rules required Plaintiff to disclose a supplemental report when the value of the life care plan changed, and the failure to disclose the updated value warrants a new trial due to the procedural irregularity.

Plaintiff contends that Mr. Clauretie employed his expertise in taking the figures originally disclosed in Dr. Pasimio's report and recalculating them given present economic data. They further argue that the discovery rules did not require the Plaintiff to supplement the life care's dollar value, as the value was never a fixed number in time; instead, the life care plan's value was a fluid representation of a given formula that required recalculation at or near the time of trial to reflect the most current economic conditions.

At the time of trial, Defendant did not object to Mr. Clauretie's calculations. Defendant also had an opportunity to fully cross-examine him on the figures he set forth.

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[1] The Court notes that over the objection of Plaintiff, the Court did not allow Plaintiff to admit the records relied upon by Dr. Pasimio through his deposition testimony; but instead, required that the documents be introduced through other witnesses who were present live and could lay a foundation.

The Court finds that Plaintiff did not properly disclose that his witness was intending to provide a present value calculation based on the economic data in place at the time of trial in addition to the calculation that had been provided previously. The Court finds, however, that this failure alone does not rise to the level of an irregularity that would dictate that Defendant did not have a fair trial.

In so holding, the Court takes into account that Defendant did not object to the introduction of the updated calculation and instead cross-examined the witness to the extent he chose to do so. The Court also notes that Mr. Clauretie clearly stated to the jury that the future life care plan figure remained the same, but that in order to demonstrate how economic factors played into the present value calculation, he was providing them with the present value calculation as of the time he prepared his expert report, and then an updated one which reflected the present value amount about the time of trial. He told the jury that the updated calculation was provided at the request of Plaintiff's Counsel right before trial, so there was no confusion as to why and when the alternative calculation was prepared. His testimony also set forth that the present value calculation was based on economic data at a particular time demonstrating that at any given time the present value calculation could fluctuate. In light of how the testimony was characterized and explained to the jury, and given that there was no objection at the time of trial to the testimony, the Court finds that although the updated number should have been disclosed, there was not a substantial impairment of justice or denial of a fundamental right.

c. Undisclosed ACOG Bulletin

Defendant's also alleged that there was procedural irregularity due to Plaintiff not complying with the discovery rules through her allegedly improper use of the ACOG

Practice Bulletin #22. It is Defendant's contention that the particular Bulletin had no relevance other than to show that a cesarean section was not required because the child was not macrosomic (less than 4500 grams in a non-diabetic mother.) They contend that since Dr. Pine substantially changed his testimony regarding the need for a cesarean section, this particular document became irrelevant and Plaintiff Counsel's use of it, over objection from Defendant DeLee's Counsel, confused the jury. Defendant, in their Reply, also contended that the Bulletin was referred to in the examination of Defendant DeLee. Defendant concedes, however, that he did not object when Plaintiff sought to admit the Bulletin as an exhibit.[2]

Plaintiff offers two justifications why the nondisclosure of the Bulletin does not constitute sufficient grounds for a new trial. First, they argue that expert witnesses for both sides relied on a variety of Bulletins from ACOG. Moreover, they contend that both parties had notice from the outset that ACOG would govern the standard of care in this case. Second, Plaintiff argues that it properly used Bulletin 22 as rebuttal evidence during the cross-examination of Defendant's expert witness, Dr. Iriye. They argue that these justifications are sufficient to find that the Bulletin's admission was not a procedural irregularity justifying a new trial.

The Court finds that both parties and their experts used the ACOG Bulletin as well as other ACOG Bulletins; the report was then jointly introduced as an exhibit. The Court does not find any procedural irregularity sufficient to warrant a new trial.

[2] Defendant also references in the Reply that Plaintiff erroneously cited ACOG 22 rather than ACOG 40 in his opening statement. The Court finds that Plaintiff's statement did not appear to be an intention to mislead the jury but instead an inadvertent slip of the tongue which was harmless. There was no objection at the time of opening.

2. **Alleged Procedural Irregularity – Individual Misconduct**

Defendant argues that Plaintiff's Counsel and experts engaged in a pattern of misconduct throughout the trial, severe enough to cause jury nullification and justify a new trial. Among the alleged transgressions are: a) the pre-trial failure to properly disclose experts; b) attempts by Plaintiff's Counsel to improperly argue informed consent issues to the jury; c) the improper introduction of ACOG Bulletin 22; d) the improper bolstering of expert testimony by reference to Dr. Lu; e) alleged improper arguments asking the jury to 'send a message'; f) Plaintiff's Counsel inappropriately offering opinions of Defendant's witnesses and their credibility; g) alleged conclusory opinions offered by Plaintiff's Counsel; h) Dr. Pine's improper assessment of Nurse Mayes' credibility; and i) the showing of the agreed upon demonstrative video clip at closing.

Lioce v. Cohen sets forth the standards for a new trial stemming from attorney misconduct. 124 Nev. 1, 174 P.3d 970 (Nev. 2008). Under *Lioce*, the "standards should vary depending on whether the purported misconduct was objected to and admonished, objected to and unadmonished, i.e., the objection was overruled, or sustained but not admonished, repeated or persistent, or un-objected-to." *Id.* at 16. Under *Lioce*, "a party moving for a new trial bears the burden of demonstrating that the [objected-to] misconduct is so extreme that the objection and admonishment could not remove the misconduct's effect." *Id.* at 17. For ongoing, objected-to misconduct, the Court is obligated to weigh the offending attorney's conduct and that the offending attorney accepted the risk that the jury would be improperly influenced by his misconduct. *Id.* at 17.

When the alleged attorney misconduct is not objected to:

> (1) the district court shall first conclude that the failure to object is critical and the district court must treat the attorney misconduct

> issue as having been waived, unless plain error exists. In deciding whether there is plain error, the district court must then determine whether the complaining party met its burden of demonstrating that its case is a rare circumstance in which the attorney misconduct amounted to irreparable and fundamental error. In the context of un-objected-to attorney misconduct, irreparable and fundamental error is error that results in a substantial impairment of justice or denial of fundamental rights such that, but for the misconduct, the verdict would have been different.

The *Lioce* Court defined jury nullification as:

> [a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness.

Id. at 20-21.

In its analysis, the Court looked first at each of the individual instances of alleged misconduct. It then looked at the totality of the misconduct alleged to determine if the legal standard for a new trial is met. Each of the instances of alleged misconduct is set forth below.

a. Improperly Disclosed Expert Opinions

Defendant reiterated its arguments set forth in Section II(1)(a)-(b) above. Plaintiff's response to Defendant's contention, in addition to the arguments set forth above, was that they presented sufficient additional evidence at trial to show that there was no substantial impairment of justice or denial of the Defendant's fundamental rights. Moreover, they argue that there is insufficient evidence to prove that but for the alleged misconduct, the verdict would have been for the Defendant. As set forth in Section II(1)(a)-(b) above, the Court did not find that the assertions set forth by Defendant merit a new trial. Pursuant to the standards of *Lioce,* the Court's evaluation of the alleged conduct would also not merit a new trial.

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

b. Dr. Pine's Testimony and the Alleged Informed Consent Arguments

Defendant incorporated its prior analysis regarding Dr. Pine's alleged testimony about informed consent, arguing that Plaintiff's Counsel brought those arguments forward when their own expert did not support that position. Plaintiff responded by arguing that Defendant objected when Plaintiff began to address informed consent at trial. They contend that under *Lioce*, because Defendant did object to the conduct at issue, the Defendant is required to show that the alleged misconduct was "so extreme that the objection and admonishment could not remove the misconduct's effect." 124 Nev. at 17-18.

The Court finds that when Plaintiff raised what could be considered the issue of informed consent, the Court sustained the objection raised by Defendant and gave a proper instruction to the jury. Thereafter, Plaintiff chose not to have a hearing outside the presence of the jury, but instead, in her Counsel's words "moved on." The Court also denied Plaintiff's proposed jury instruction. Due to the factual circumstances, the Court does not find that there was error impinging upon Defendant's rights.

c. Improper Introduction of the ACOG Bulletin

Defendant reiterated its arguments set forth above. Plaintiff stated that throughout the trial, both sides held up ACOG as the gold standard for laying out the standard of care as well as the arguments set forth above.

The Court, for the reasons set forth above, does not find that there was attorney misconduct. Further, even if the ACOG Bulletins were used prior to the agreement that it be introduced as an exhibit, there was no harm as the Bulletin came into evidence and was relied upon by both parties. Accordingly, there is no basis for a new trial.

JOANNA S. KISHNER
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d. Allegedly Improper Bolstering of Dr. Pine's Credibility.

Defendant argues that Plaintiff's use of Dr. Lu's prior involvement with the case unfairly bolstered Dr. Pine's credibility with the jury. They argue that expert witnesses are central to medical malpractice litigation, and once the jury knew of Dr. Lu's connections to President Obama's administration, the trial moved outside of the facts and towards the political arena.

Plaintiff argued that the statement about Dr. Lu was "completely innocuous and [could not] be shown as being extreme or outrageous." The Court concurs with Plaintiff's position. There was one passing reference to Dr. Lu and when Counsel was cautioned by the Court, he said it was inadvertent. Given the reference was fleeting and there was a plethora of doctors names mentioned by both parties, the Court does not find that that the mention of Dr. Lu was prejudicial to Defendant.

e. Alleged Improper Arguments Asking the Jury to 'Send a Message'

Defendant contends that Plaintiff's Counsel, in his closing statements, inappropriately asked the jury to "send a message" when he implied that the jury should harbor disdain against the medical community. Defendant points to the *Lioce* Court, which found the act of asking a jury to 'send a message' to constitute improper jury nullification and grounds for a new trial.

In Opposition, Plaintiff argues that the arguments made during the closing statements were not made to incite the jury to penalize Dr. DeLee for his actions; rather, the statements were intended to give context to the damages issues in this case by invoking the opinions of those responsible for setting the ACOG standards about the monetary impact of these kinds of injuries. Next, Plaintiff argues that when Defendant's Counsel objected to the statements,

Defendant's Counsel declined a curative admonition, opting instead to attempt to cure the mistake himself in his closing. Plaintiff contends that there was no extreme or outrageous conduct that prejudiced the Defendant's rights.

Plaintiff's Counsel erred when he made a statement which could be viewed as asking the jury to send a message. However, the Court admonished Counsel at bench and then Plaintiff's Counsel clearly stated to the jury that he was not asking them to "punish" Defendant and that the case was to make Plaintiff "whole". The Court, at the bench, also specifically offered to admonish the jury regarding the prior comment, insert a jury instruction, or provide some other curative. Defense Counsel, however, declined the Court's offer. In light of the curatives offered, and the subsequent clarifying statements of Plaintiff's Counsel, the Court does not find that the alleged conduct which was objected to merits a new trial under *Lioce.*

f. Plaintiff's Counsel inappropriately offering opinions of Defendant's witnesses and their credibility

Defendant also argues that Plaintiff's Counsel compared Defense expert Dr. Iriye to a wind-up toy pounding cymbals, thereby violating Nevada Rules of Professional Conduct 3.4(e), which prohibits Counsel from "[stating] a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused." Defendant argued that even though there was no objection at the time the remarks were made, the conduct constituted plain error so severe that the new trial provisions of *Lioce* should trigger.

Plaintiff responds by arguing that any analogies made by Counsel during closing arguments were only illustrative; they were a metaphor for Dr. Iriye's repetitious and seemingly non-responsive answers regarding the necessity of a C-Section regardless of what

question Counsel asked. Plaintiff's position is that the statements made during closing arguments about Dr. Iriye did not "clearly provid[e] a personal opinion as to the credibility of a witness."

The Court analyzes the issue under *Lioce* for un-objected-to conduct. Looking at the two-step process under *Lioce,* the Court would find that the un-objected-to conduct is waived. Even if the Court evaluated the issue as plain error, looking at the second step of the analysis, the Court does not find that the statements, while improper, rise to the level of conduct that affects Defendant's fundamental rights.

g. Alleged Conclusory Opinions Offered by Plaintiff's Counsel

Defendant also contended a new trial was warranted since throughout Plaintiff's closing arguments, her Counsel used the phrase "I think" in an impermissible attempt to substitute his opinions for conclusions supported by the evidence. Defendant objected to some of Plaintiff's Counsel's behavior during the closing argument, though as above, Defense Counsel did not request a curative instruction.

Plaintiffs contended that the phrase "I think" was not an attempt to improperly influence the jury. Instead, Plaintiff argued that the phrase was merely a linguistic gap-filler and did not have an improper prejudicial effect on the jury.

During closing, Counsel did use the term "I think" in the context of his closing argument. When an objection was raised, the Court cautioned and subsequently admonished Plaintiff and then gave a curative instruction to the jury. While the phrase was used more than once, the Court did not find that the comments were a personalization or a personification of Counsel's opinion. Hence, given the facts, including the caution and

curative instruction offered by the Court, the Court does not find that the conduct rises to a level to warrant a new trial under *Lioce*.

h. Dr. Pine's improper assessment of Nurse Mayes' credibility

Defendant, in its Reply, contended that Dr. Pine, one of Plaintiff's experts, made an impermissible statement regarding the credibility of Nurse Mayes. Plaintiff contends that the statement was about the testimony she offered, not her credibility, and fell within Dr. Pine's area of expertise.

The Court takes into consideration that the statement was not objected to and was raised for the first time in Defendant's Reply. Pursuant to *Lioce*, such un-objected-to conduct does not rise to the level to constitute plain error even if the statement could be considered error at all.

i. The showing of the agreed upon demonstrative video clip at closing

Defendant asserts that Plaintiff improperly showed a video clip of the Plaintiff during closing argument. Plaintiff argues that since the video clip was agreed upon to be shown during the evidentiary phase for demonstrative purposes, it was proper to show it during closing argument.

The video clip at issue was shown during Plaintiff's case-in-chief only for demonstrative purposes as had been originally agreed upon by the parties. At the time the same video clip was shown at closing, there was no objection by Defendant. Taking into consideration that there was no objection to showing the video clip, and given it was the same video clip that had been shown previously by initial agreement of the parties, the Court does not find that there was plain error in the showing of the demonstrative video clip.

After addressing each of the individualized conduct, the Court also looked at the

totality of the circumstances to determine if the cumulative effect of the alleged transgressions would warrant a new trial. The Court finds that the totality of the circumstances does not merit a new trial. While there were errors as noted herein, the totality of those errors did not result in jury nullification or the other factors that would warrant a new trial. Throughout the trial, the Court sustained almost all objections raised by Defense Counsel and properly instructed the jury to disregard certain statements made by Plaintiff's Counsel. Most of the issues raised by Defendant in the Motion were not objected to at the time of trial. There were also various incidents where there was an objection and the Court offered curative instructions or other remedies but they were declined by Defendant. Looking at the totality of the alleged misconduct, both evaluating the objected-to conduct as well as the non-objected-to conduct under each applicable standard under *Lioce*, the Court does not find that the alleged misconduct was so extreme that the Court sustaining the objection(s) and admonishment(s) could not remove the misconduct's effect. 124 Nev. at 17.

For ongoing, objected-to misconduct, the Court is obligated to weigh the offending attorney's conduct and that the offending attorney accepted the risk that the jury would be improperly influenced by his misconduct. *Id.* After an evaluation of the objected-to conduct, the Court finds that the error to the extent it occurred, there was not manifest injustice as the Court sustained the applicable objections and provided (or offered curative) instructions.

In evaluating the non-objected-to conduct, the Court undertakes the *Lioce* analysis. After analyzing the alleged misconduct, the Court does not find irreparable and/or fundamental errors that result in a substantial impairment of justice or denial of fundamental rights such that, but for the misconduct, the verdict would have been different.

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3. Manifest Disregard of the Jury Instructions

Defendant argues that the jury ignored Jury Instruction No. 17, which dictated that the jury must find Defendant DeLee breached the standard of care to sustain liability. Defendant contends that because the testimony at trial pointed to Eva Fowler's head being on the perineum at the time of delivery, the only possible conclusion was that Dr. DeLee did not breach the standard of care. They argue that had the jury obeyed the instructions, they would have found in favor of Dr. DeLee.

Plaintiff counters Defendant's contention by arguing that Defendant cannot meet the standard for a jury manifestly disregarding jury instructions. They argue that there is more than enough evidence to sustain the jury verdict as is, and that Plaintiff provided evidence of a variety of alleged breaches in the standard of care, including poor pre-natal care, poor record keeping, failing to recognize risk factors, and so on.

Under Nevada law, the relevant inquiry as to whether or not a jury manifestly disregarded jury instructions is, "whether we are able to declare that, had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached." *Jaramillo v. Blackstone*, 101 Nev. 316, 318, 704 P.2d 1084 (1985) (emphasis added). The Court agrees with Plaintiff that there was evidence from both the witnesses and documents which provided an ample basis for the jury to reach the determination that it did. Thus, it was not impossible for the jury to reach the verdict they reached particularly in light of the missing documentation notations brought out in the nurses and Dr. De Lee's testimony, as well as the expert testimony of Plaintiff's witnesses. In so ruling, the Court takes note that the jury engaged in lengthy deliberations prior to reaching its verdict.

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4. **Excessive Damages Award**

As another of its arguments in support of its request for a new trial, Defendant argues that arguments by Plaintiff's Counsel during closing arguments, asking the jury to 'send a message' led to an extremely large award of damages. They argue that the size of the verdict is evidence of jury nullification.

Plaintiff argues that the determination of money damages rests squarely within the province of the jury and shouldn't be disturbed in this case. They maintain that the verdict, though large in its own right, was less than Plaintiff sought. They argue that the difference in the two values is evidence that it was not reached in the heat of passion or under color of prejudice. They maintain that each aspect of the award was appropriate, including the award for future pain and suffering.

In Nevada, the valuation of damages for pain and suffering are "peculiarly within the province of the jury." *Canterino v. The Mirage Casino-Hotel*, 16 P.3d 415, 418 (Nev. 2001). To set aside a jury's damage award, the result must be "flagrantly improper." *Stackiewicz v. Nissan Motor Corporation*, 686 P.2d 925, 932 (Nev. 1984). The Court's analysis on this issue is set forth above. In sum, the circumstances of the trial do not support Defendant's contention under current case law. While the award may be viewed as large in light of the statutory medical malpractice limitations, it was consistent with the evidence presented by Plaintiff via expert testimony and in light of *Canterino.*

5. **Objected-to Errors in Law**

Defendant finally contends that the Court admitted evidence at trial in violation of NEV. REV. STAT. §§ 48.015, 48.025, and 48.035. Specifically, Defendant contends that the admission of the ACOG Bulletin #22 was highly prejudicial and confusing to the jury. They

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also reiterate their arguments as to the video clip and deposition testimony of Dr. Pasimio.

Plaintiff maintains that Defendant's arguments regarding objected-to errors of law at trial have no merit as the Defendant failed to object to the admission of evidence, such as the ACOG Bulletin. They also point to Defense Counsel's involvement in stipulating to the admissibility and subsequent use of the video of Ava Fowler, and the redaction and reading into evidence of Dr. Pasimio's deposition.

NEV. REV. STAT. § 48.015 defines relevant evidence as any evidence having a tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without evidence. Under NEV. REV. STAT. § 48.025, irrelevant evidence is inadmissible. Further, relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the jury, undue delay, etc. NEV. REV. STAT. § 48.035.

In the present case, the Court evaluated all evidence that was proposed and/or admitted; taking into account what was and what was not objected to. Taking into consideration all the evidence, the objections raised, the curative instructions given and offered, as well as applicable law, the Court finds that there are no errors of law that would merit a new trial pursuant to applicable law.

REQUEST FOR REMITTITUR

The Court Granted Defendant DeLee's Motion to Reduce Judgment in the intervening time between when the instant Motion was filed and the instant written Order. The Court, in accordance with applicable law, after taking into consideration all of the arguments raised by Plaintiff, reduced the future pain and suffering award in accordance with Nevada statutes. Therefore, Defendant's Request for Remittitur is moot.

CONCLUSION

Based upon the foregoing, the Court hereby DENIES Defendant DeLee's Motion for a Judgment as a Matter of Law and Motion for a New Trial as set forth above. The Court further finds that the Request for Remititur is Moot.

Dated this 25th day of February, 2013

JOANNA S. KISHNER
DISTRICT COURT JUDGE

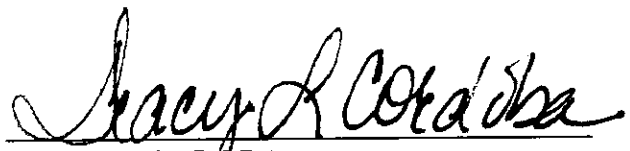
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DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through email, or a copy of this ORDER was placed in the attorney's folder in the Clerk's Office and/or mailed to the proper party as follows:

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John H. Cotton, Esq.
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TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

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Attorneys for Defendant, Frank J. DeLee, M.D.

DISTRICT COURT
* * *
CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor Plaintiffs, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC.; DOES I through V, DOE EMPLOYEES VI thorugh XXVI; and ROES I through V, inclusive, Defendants.	Case No.: A-08-568152-C Dept. No.: XXXI **NOTICE OF ENTRY OF DECISION ON DEFENDANT DELEE'S NRCP 50 RENEWED MOTION FOR DIRECTED VERDICT, NRCP 50 MOTION FOR JNOV, NRCP 59 MOTION FOR NEW TRIAL AND NRCP 59 MOTION ALTER OR AMEND JUDGMENT**

TO: PLAINTIFF AND HER COUNSEL OF RECORD:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered in the above entitled matter on the 27th day of February 2013, a copy of which is attached hereto.

Dated this 4th day of March 2013.

COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
CHRISTOPHER G. RIGLER, ESQ.
Attorneys for Defendant, Frank J. DeLee, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March 2013, I served the foregoing **NOTICE OF ENTRY OF DECISION ON DEFENDANT DELEE'S NRCP 50 RENEWED MOTION FOR DIRECTED VERDICT, NRCP 50 MOTION FOR JNOV, NRCP 59 MOTION FOR NEW TRIAL AND NRCP 59 MOTION ALTER OR AMEND JUDGMENT** upon the following parties by placing a true and correct copy thereof in the United States Mail at Las Vegas, Nevada with first class postage fully prepaid thereon and by facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, this date by faxing a true and correct copy of the same to each party as follows:

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Christensen Law Office, LLC.
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Facsimile: (702)792-9647

Breen Arntz, Esq.
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An Employee of Cotton, Driggs, Walch, Holley, Woloson & Thompson

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian ad Litem for AVA FOWLER, a minor, PLAINTIFF(S), vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, DEFENDANT(S).	CASE NO.: 08-568152 ~~A-11-653529-C~~ DEPT. NO.: XXXI **DECISION ON DEFENDANT DELEE'S NRCP 50 RENEWED MOTION FOR DIRECTED VERDICT, NRCP 50 MOTION FOR JNOV, NRCP 59 MOTION FOR NEW TRIAL AND NRCP 59 MOTION ALTER OR AMEND JUDGMENT**

On October 22, 2012, the Court held a hearing regarding Defendant DeLee's NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial, and NRCP 59 Motion to Alter or Amend Judgment. The hearing was held before Department XXXI of the Eighth Judicial District Court in and for Clark County, Nevada, and was presided over by the Honorable Joanna S. Kishner. Present at the hearing were Thomas F. Christensen, Esq., Breen Arntz, Esq., and Jennifer M. Gooss, Esq. on behalf of the Plaintiff Tonya Fowler as Guardian ad Litem for Ava Fowler, a minor (hereinafter "Plaintiff"), and John H. Cotton, Esq., on behalf of Defendant Frank DeLee. At the

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DISTRICT JUDGE
DEPARTMENT XXXI
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conclusion of the hearing, Mr. Arntz requested additional time to supplement his brief before the Court made its ruling. The Court allowed both parties to provide supplemental briefing if they wished, and ordered that any supplements were due November 1, 2012, and any response to that supplement due November 7, 2012. Subsequently, on November 13, 2012, the parties stipulated to continue the hearing on other post trial motions to December 10, 2012, and provided new scheduling dates for their supplements on Defendant's new trial motions to November 26, 2012, and any reply to the supplement due December 3, 2012. The parties subsequently agreed to continue the consolidated hearing to January 8, 2013. It was further agreed that the Court would provide its oral ruling on Defendant DeLee's NRCP 50 Renewed Motion for Directed Verdict, NRCP 50 Motion for JNOV, NRCP 59 Motion for New Trial, and NRCP 59 Motion to Alter or Amend Judgment at the January 8th hearing.

On January 8, 2013, Department XXXI held the consolidated hearing of the outstanding motions. The hearing was presided over by the Honorable Joanna S. Kishner. Present at the hearing were Thomas F. Christensen, Esq., Breen. Arntz, Esq., and Dennis Prince, Esq. on behalf of the Plaintiff Tonya Fowler as Guardian ad Litem for Ava Fowler, a minor (hereinafter "Plaintiff"), and John H. Cotton, Esq., on behalf of Defendant Frank DeLee. At the January hearing, the Court read its findings and allowed each party to seek clarification and/or additional discussion on the Motion. Having reviewed the pleadings, supplemental briefing, and oral argument before this Court, and the merits of the Motion and the positions of the Parties, and good cause appearing, the Court finds and rules as follows.

I. NRCP MOTION FOR JUDGMENT AS A MATTER OF LAW

NEV. R. CIV. P. 50 provides that:

> (a) Judgment as a Matter of Law.
>
> (1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a

sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at the close of the evidence offered by the nonmoving party or at the close of the case. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion the court may:

(1) if a verdict was returned:
  (A) allow the judgment to stand,
  (B) order a new trial, or
  (C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:
  (A) order a new trial, or
  (B) direct entry of judgment as a matter of law.

As the commentary to the statute notes, "[t]he revised rule (2005) takes the same approach as the federal rule, as amended in 1963 and 1991, that a post-verdict motion for judgment as a matter of law is a renewal of an earlier motion made before or at the close of evidence. Thus, a "Renewed Motion" filed under subdivision (b) must have been preceded by a motion filed at the time permitted by subdivision (a) (2). In the present case, Defendant did not seek a Rule 50 Motion, either pursuant to (a)(1) or (a)(2), and thus, although the instant Motion is titled a "Renewed Motion," it is the first time the motion or issues therein were presented to the Court. Consequently, neither the purported request for Directed Verdict or JNOV (as provided for in the pre-2005 amendments), nor the relief pursuant to

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NEV. R. CIV. P. 50(b), is available to Defendant. Instead, the Court can only treat Defendant's Motion as a Motion for a New Trial.

Further, at the October and January hearings on the Motion, the Court noted that though the Motion was filed as a "Renewed Motion for a Directed Verdict" and a "Motion for JNOV", (what is now referred to as a NEV. R. CIV. P. 50(a)(2) Motion), that no such Motion was initially made during the trial at the close of either party's case-in-chief. Defense Counsel confirmed for the Court that the Motion should only be heard as a Motion for New Trial and as a Motion to Alter or Amend Judgment.

II. MOTION FOR NEW TRIAL

The Court may grant a new trial where an aggrieved party's substantial rights were materially affected by any of the grounds stated in NEV. R. CIV. P. 59. *Edwards Indus. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1035-36, 923 P.2d 569, 575-76 (1996). The decision to grant a motion for a new trial is within the sound discretion of the trial court. *Id.* Under NEV. R. CIV. P. 59, the grounds for a new trial include:

> (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion.

Defendant alleged violations under subparts 2, 5 and 7. Specifically, Defendant asserts that there was misconduct by Plaintiff's Counsel, manifest disregard for the jury instructions, and errors of law which resulted in an erroneous jury verdict.

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1. **Alleged Procedural Irregularities – Improper Expert Disclosures**

NEV. R. CIV. P. 16.1(a)(2)(b) sets forth the requirements for expert reports, stating that such reports "shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore . . ." NEV. R. CIV. P. 26(e)(1) defines the requirements for supplements to expert reports.

> With respect to testimony of an expert from whom a report is required under Rule 16.1(a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 16.1(a)(3) are due.

NEV. R. CIV. P. 16.1(a)(3) mandates that pretrial disclosures must be made thirty days prior to the commencement of trial. Defendant argued that Plaintiff failed to satisfy the discovery burdens when they first did not appropriately supplement Dr. Pine's deposition testimony to reflect a change in his position on the need for a cesarean section; and second, when they did not disclose that Dr. Clauretie was going to testify to an amount which was different than the amount of damages originally requested via the life care plan.

a. Dr. Pine's Testimony

Defendant argues that Dr. Pine's deposition testimony differed so substantially from the testimony offered at trial that it violated NEV. R. CIV. P. 16.1(a)(2)(b), 16.1(a)(3), and 26(c)(1). Plaintiff contends that the deposition testimony and the trial testimony did not differ as to the expert opinions offered by Dr. Pine. Plaintiff concludes that there was no obligation to supplement the report because the testimony was consistent between the deposition and Pine's trial testimony. The Court finds that it properly allowed Dr. Pine's testimony and that it was not so inconsistent with the opinions offered previously as to violate NEV. R. CIV. P.16.

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Further, the Court notes, in so holding, that Defendant did not object to the testimony at the time of trial. Thus, the Court finds that the failure to object was critical and the objection was waived as there was no plain error.

b. Dr. Pasimio's Testimony via deposition and Dr. Clauretie's Testimony on Dr. Pasimio's Life Care Plan

Defendant argues that the Court improperly allowed portions of the deposition of Dr. Pasimio to be read at trial asserting that it prevented Defendant from cross-examining Dr. Pasimio in front of the jury. In response, Plaintiff argues that Dr. Pasimio testimony was properly elicited via deposition testimony as he was unavailable. As the parties are aware, the Court made a lengthy inquiry into whether Dr. Pasimio was "unavailable " within the meaning of the rules, and what efforts had been made to secure his attendance. The Court also made an inquiry as to whether the Defense had a full opportunity to cross-examine Dr. Pasimio at his deposition and whether there were any subsequent reports or disclosures provided after the deposition took place to ensure that the Defense had full knowledge of the scope of the testimony.

The parties then fully argued the propriety of allowing the deposition testimony to be read due to Dr. Pasimio's unavailability. To ensure both parties had the opportunity to use the portions of the deposition they wished, after the Court ruled that the portions of the deposition could be read both by Plaintiff and Defendant, the parties met and agreed upon the portions to be read without Defendant waiving his initial objection. On the portions that were still at issue, the Court held a hearing and Plaintiff withdrew the portions of the deposition that Defendant objected to and Defendant also removed some proposed portions. As Dr. Pasimio was unavailable in accordance with the rules, and given the procedural

safeguards in place, the Court did not err in allowing the reading of Dr. Pasimio's testimony and thus there is no basis for a new trial[1].

With respect to Mr. Clauretie, Defendant asserts that it was error to allow him to provide the present value calculation based on the interest rates in effect as of the timeframe of the trial, in addition to the present value calculation that he provided at the time of his report, which was based on the interest rates a few years earlier. Defendant does not contend that the calculation was incorrect or that the witness changed the value of the life care plan. Instead, he challenges that Mr. Clauretie was allowed to present both the present value calculation of future life plan as set forth in his report, but also the updated figure utilizing the current interest rates. Defendant asserted that the aforementioned discovery rules required Plaintiff to disclose a supplemental report when the value of the life care plan changed, and the failure to disclose the updated value warrants a new trial due to the procedural irregularity.

Plaintiff contends that Mr. Clauretie employed his expertise in taking the figures originally disclosed in Dr. Pasimio's report and recalculating them given present economic data. They further argue that the discovery rules did not require the Plaintiff to supplement the life care's dollar value, as the value was never a fixed number in time; instead, the life care plan's value was a fluid representation of a given formula that required recalculation at or near the time of trial to reflect the most current economic conditions.

At the time of trial, Defendant did not object to Mr. Clauretie's calculations. Defendant also had an opportunity to fully cross-examine him on the figures he set forth.

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[1] The Court notes that over the objection of Plaintiff, the Court did not allow Plaintiff to admit the records relied upon by Dr. Pasimio through his deposition testimony; but instead, required that the documents be introduced through other witnesses who were present live and could lay a foundation.

The Court finds that Plaintiff did not properly disclose that his witness was intending to provide a present value calculation based on the economic data in place at the time of trial in addition to the calculation that had been provided previously. The Court finds, however, that this failure alone does not rise to the level of an irregularity that would dictate that Defendant did not have a fair trial.

In so holding, the Court takes into account that Defendant did not object to the introduction of the updated calculation and instead cross-examined the witness to the extent he chose to do so. The Court also notes that Mr. Clauretie clearly stated to the jury that the future life care plan figure remained the same, but that in order to demonstrate how economic factors played into the present value calculation, he was providing them with the present value calculation as of the time he prepared his expert report, and then an updated one which reflected the present value amount about the time of trial. He told the jury that the updated calculation was provided at the request of Plaintiff's Counsel right before trial, so there was no confusion as to why and when the alternative calculation was prepared. His testimony also set forth that the present value calculation was based on economic data at a particular time demonstrating that at any given time the present value calculation could fluctuate. In light of how the testimony was characterized and explained to the jury, and given that there was no objection at the time of trial to the testimony, the Court finds that although the updated number should have been disclosed, there was not a substantial impairment of justice or denial of a fundamental right.

c. Undisclosed ACOG Bulletin

Defendant's also alleged that there was procedural irregularity due to Plaintiff not complying with the discovery rules through her allegedly improper use of the ACOG

Practice Bulletin #22. It is Defendant's contention that the particular Bulletin had no relevance other than to show that a cesarean section was not required because the child was not macrosomic (less than 4500 grams in a non-diabetic mother.) They contend that since Dr. Pine substantially changed his testimony regarding the need for a cesarean section, this particular document became irrelevant and Plaintiff Counsel's use of it, over objection from Defendant DeLee's Counsel, confused the jury. Defendant, in their Reply, also contended that the Bulletin was referred to in the examination of Defendant DeLee. Defendant concedes, however, that he did not object when Plaintiff sought to admit the Bulletin as an exhibit.[2]

Plaintiff offers two justifications why the nondisclosure of the Bulletin does not constitute sufficient grounds for a new trial. First, they argue that expert witnesses for both sides relied on a variety of Bulletins from ACOG. Moreover, they contend that both parties had notice from the outset that ACOG would govern the standard of care in this case. Second, Plaintiff argues that it properly used Bulletin 22 as rebuttal evidence during the cross-examination of Defendant's expert witness, Dr. Iriye. They argue that these justifications are sufficient to find that the Bulletin's admission was not a procedural irregularity justifying a new trial.

The Court finds that both parties and their experts used the ACOG Bulletin as well as other ACOG Bulletins; the report was then jointly introduced as an exhibit. The Court does not find any procedural irregularity sufficient to warrant a new trial.

[2] Defendant also references in the Reply that Plaintiff erroneously cited ACOG 22 rather than ACOG 40 in his opening statement. The Court finds that Plaintiff's statement did not appear to be an intention to mislead the jury but instead an inadvertent slip of the tongue which was harmless. There was no objection at the time of opening.

2. Alleged Procedural Irregularity – Individual Misconduct

Defendant argues that Plaintiff's Counsel and experts engaged in a pattern of misconduct throughout the trial, severe enough to cause jury nullification and justify a new trial. Among the alleged transgressions are: a) the pre-trial failure to properly disclose experts; b) attempts by Plaintiff's Counsel to improperly argue informed consent issues to the jury; c) the improper introduction of ACOG Bulletin 22; d) the improper bolstering of expert testimony by reference to Dr. Lu; e) alleged improper arguments asking the jury to 'send a message'; f) Plaintiff's Counsel inappropriately offering opinions of Defendant's witnesses and their credibility; g) alleged conclusory opinions offered by Plaintiff's Counsel; h) Dr. Pine's improper assessment of Nurse Mayes' credibility; and i) the showing of the agreed upon demonstrative video clip at closing.

Lioce v. Cohen sets forth the standards for a new trial stemming from attorney misconduct. 124 Nev. 1, 174 P.3d 970 (Nev. 2008). Under *Lioce*, the "standards should vary depending on whether the purported misconduct was objected to and admonished, objected to and unadmonished, i.e., the objection was overruled, or sustained but not admonished, repeated or persistent, or un-objected-to." *Id.* at 16. Under *Lioce*, "a party moving for a new trial bears the burden of demonstrating that the [objected-to] misconduct is so extreme that the objection and admonishment could not remove the misconduct's effect." *Id.* at 17. For ongoing, objected-to misconduct, the Court is obligated to weigh the offending attorney's conduct and that the offending attorney accepted the risk that the jury would be improperly influenced by his misconduct. *Id.* at 17.

When the alleged attorney misconduct is not objected to:

> (1) the district court shall first conclude that the failure to object is critical and the district court must treat the attorney misconduct

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

> issue as having been waived, unless plain error exists. In deciding whether there is plain error, the district court must then determine whether the complaining party met its burden of demonstrating that its case is a rare circumstance in which the attorney misconduct amounted to irreparable and fundamental error. In the context of un-objected-to attorney misconduct, irreparable and fundamental error is error that results in a substantial impairment of justice or denial of fundamental rights such that, but for the misconduct, the verdict would have been different.

The *Lioce* Court defined jury nullification as:

> [a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness.

Id. at 20-21.

In its analysis, the Court looked first at each of the individual instances of alleged misconduct. It then looked at the totality of the misconduct alleged to determine if the legal standard for a new trial is met. Each of the instances of alleged misconduct is set forth below.

a. Improperly Disclosed Expert Opinions

Defendant reiterated its arguments set forth in Section II(1)(a)-(b) above. Plaintiff's response to Defendant's contention, in addition to the arguments set forth above, was that they presented sufficient additional evidence at trial to show that there was no substantial impairment of justice or denial of the Defendant's fundamental rights. Moreover, they argue that there is insufficient evidence to prove that but for the alleged misconduct, the verdict would have been for the Defendant. As set forth in Section II(1)(a)-(b) above, the Court did not find that the assertions set forth by Defendant merit a new trial. Pursuant to the standards of *Lioce,* the Court's evaluation of the alleged conduct would also not merit a new trial.

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b. Dr. Pine's Testimony and the Alleged Informed Consent Arguments

Defendant incorporated its prior analysis regarding Dr. Pine's alleged testimony about informed consent, arguing that Plaintiff's Counsel brought those arguments forward when their own expert did not support that position. Plaintiff responded by arguing that Defendant objected when Plaintiff began to address informed consent at trial. They contend that under *Lioce*, because Defendant did object to the conduct at issue, the Defendant is required to show that the alleged misconduct was "so extreme that the objection and admonishment could not remove the misconduct's effect." 124 Nev. at 17-18.

The Court finds that when Plaintiff raised what could be considered the issue of informed consent, the Court sustained the objection raised by Defendant and gave a proper instruction to the jury. Thereafter, Plaintiff chose not to have a hearing outside the presence of the jury, but instead, in her Counsel's words "moved on." The Court also denied Plaintiff's proposed jury instruction. Due to the factual circumstances, the Court does not find that there was error impinging upon Defendant's rights.

c. Improper Introduction of the ACOG Bulletin

Defendant reiterated its arguments set forth above. Plaintiff stated that throughout the trial, both sides held up ACOG as the gold standard for laying out the standard of care as well as the arguments set forth above.

The Court, for the reasons set forth above, does not find that there was attorney misconduct. Further, even if the ACOG Bulletins were used prior to the agreement that it be introduced as an exhibit, there was no harm as the Bulletin came into evidence and was relied upon by both parties. Accordingly, there is no basis for a new trial.

d. Allegedly Improper Bolstering of Dr. Pine's Credibility.

Defendant argues that Plaintiff's use of Dr. Lu's prior involvement with the case unfairly bolstered Dr. Pine's credibility with the jury. They argue that expert witnesses are central to medical malpractice litigation, and once the jury knew of Dr. Lu's connections to President Obama's administration, the trial moved outside of the facts and towards the political arena.

Plaintiff argued that the statement about Dr. Lu was "completely innocuous and [could not] be shown as being extreme or outrageous." The Court concurs with Plaintiff's position. There was one passing reference to Dr. Lu and when Counsel was cautioned by the Court, he said it was inadvertent. Given the reference was fleeting and there was a plethora of doctors names mentioned by both parties, the Court does not find that that the mention of Dr. Lu was prejudicial to Defendant.

e. Alleged Improper Arguments Asking the Jury to 'Send a Message'

Defendant contends that Plaintiff's Counsel, in his closing statements, inappropriately asked the jury to "send a message" when he implied that the jury should harbor disdain against the medical community. Defendant points to the *Lioce* Court, which found the act of asking a jury to 'send a message' to constitute improper jury nullification and grounds for a new trial.

In Opposition, Plaintiff argues that the arguments made during the closing statements were not made to incite the jury to penalize Dr. DeLee for his actions; rather, the statements were intended to give context to the damages issues in this case by invoking the opinions of those responsible for setting the ACOG standards about the monetary impact of these kinds of injuries. Next, Plaintiff argues that when Defendant's Counsel objected to the statements,

Defendant's Counsel declined a curative admonition, opting instead to attempt to cure the mistake himself in his closing. Plaintiff contends that there was no extreme or outrageous conduct that prejudiced the Defendant's rights.

Plaintiff's Counsel erred when he made a statement which could be viewed as asking the jury to send a message. However, the Court admonished Counsel at bench and then Plaintiff's Counsel clearly stated to the jury that he was not asking them to "punish" Defendant and that the case was to make Plaintiff "whole". The Court, at the bench, also specifically offered to admonish the jury regarding the prior comment, insert a jury instruction, or provide some other curative. Defense Counsel, however, declined the Court's offer. In light of the curatives offered, and the subsequent clarifying statements of Plaintiff's Counsel, the Court does not find that the alleged conduct which was objected to merits a new trial under *Lioce*.

f. Plaintiff's Counsel inappropriately offering opinions of Defendant's witnesses and their credibility

Defendant also argues that Plaintiff's Counsel compared Defense expert Dr. Iriye to a wind-up toy pounding cymbals, thereby violating Nevada Rules of Professional Conduct 3.4(e), which prohibits Counsel from "[stating] a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused." Defendant argued that even though there was no objection at the time the remarks were made, the conduct constituted plain error so severe that the new trial provisions of *Lioce* should trigger.

Plaintiff responds by arguing that any analogies made by Counsel during closing arguments were only illustrative; they were a metaphor for Dr. Iriye's repetitious and seemingly non-responsive answers regarding the necessity of a C-Section regardless of what

question Counsel asked. Plaintiff's position is that the statements made during closing arguments about Dr. Iriye did not "clearly provid[e] a personal opinion as to the credibility of a witness."

The Court analyzes the issue under *Lioce* for un-objected-to conduct. Looking at the two-step process under *Lioce*, the Court would find that the un-objected-to conduct is waived. Even if the Court evaluated the issue as plain error, looking at the second step of the analysis, the Court does not find that the statements, while improper, rise to the level of conduct that affects Defendant's fundamental rights.

g. Alleged Conclusory Opinions Offered by Plaintiff's Counsel

Defendant also contended a new trial was warranted since throughout Plaintiff's closing arguments, her Counsel used the phrase "I think" in an impermissible attempt to substitute his opinions for conclusions supported by the evidence. Defendant objected to some of Plaintiff's Counsel's behavior during the closing argument, though as above, Defense Counsel did not request a curative instruction.

Plaintiffs contended that the phrase "I think" was not an attempt to improperly influence the jury. Instead, Plaintiff argued that the phrase was merely a linguistic gap-filler and did not have an improper prejudicial effect on the jury.

During closing, Counsel did use the term "I think" in the context of his closing argument. When an objection was raised, the Court cautioned and subsequently admonished Plaintiff and then gave a curative instruction to the jury. While the phrase was used more than once, the Court did not find that the comments were a personalization or a personification of Counsel's opinion. Hence, given the facts, including the caution and

curative instruction offered by the Court, the Court does not find that the conduct rises to a level to warrant a new trial under *Lioce*.

h. Dr. Pine's improper assessment of Nurse Mayes' credibility

Defendant, in its Reply, contended that Dr. Pine, one of Plaintiff's experts, made an impermissible statement regarding the credibility of Nurse Mayes. Plaintiff contends that the statement was about the testimony she offered, not her credibility, and fell within Dr. Pine's area of expertise.

The Court takes into consideration that the statement was not objected to and was raised for the first time in Defendant's Reply. Pursuant to *Lioce*, such un-objected-to conduct does not rise to the level to constitute plain error even if the statement could be considered error at all.

i. The showing of the agreed upon demonstrative video clip at closing

Defendant asserts that Plaintiff improperly showed a video clip of the Plaintiff during closing argument. Plaintiff argues that since the video clip was agreed upon to be shown during the evidentiary phase for demonstrative purposes, it was proper to show it during closing argument.

The video clip at issue was shown during Plaintiff's case-in-chief only for demonstrative purposes as had been originally agreed upon by the parties. At the time the same video clip was shown at closing, there was no objection by Defendant. Taking into consideration that there was no objection to showing the video clip, and given it was the same video clip that had been shown previously by initial agreement of the parties, the Court does not find that there was plain error in the showing of the demonstrative video clip.

After addressing each of the individualized conduct, the Court also looked at the

totality of the circumstances to determine if the cumulative effect of the alleged transgressions would warrant a new trial. The Court finds that the totality of the circumstances does not merit a new trial. While there were errors as noted herein, the totality of those errors did not result in jury nullification or the other factors that would warrant a new trial. Throughout the trial, the Court sustained almost all objections raised by Defense Counsel and properly instructed the jury to disregard certain statements made by Plaintiff's Counsel. Most of the issues raised by Defendant in the Motion were not objected to at the time of trial. There were also various incidents where there was an objection and the Court offered curative instructions or other remedies but they were declined by Defendant. Looking at the totality of the alleged misconduct, both evaluating the objected-to conduct as well as the non-objected-to conduct under each applicable standard under *Lioce*, the Court does not find that the alleged misconduct was so extreme that the Court sustaining the objection(s) and admonishment(s) could not remove the misconduct's effect. 124 Nev. at 17.

For ongoing, objected-to misconduct, the Court is obligated to weigh the offending attorney's conduct and that the offending attorney accepted the risk that the jury would be improperly influenced by his misconduct. *Id.* After an evaluation of the objected-to conduct, the Court finds that the error to the extent it occurred, there was not manifest injustice as the Court sustained the applicable objections and provided (or offered curative) instructions.

In evaluating the non-objected-to conduct, the Court undertakes the *Lioce* analysis. After analyzing the alleged misconduct, the Court does not find irreparable and/or fundamental errors that result in a substantial impairment of justice or denial of fundamental rights such that, but for the misconduct, the verdict would have been different.

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3. Manifest Disregard of the Jury Instructions

Defendant argues that the jury ignored Jury Instruction No. 17, which dictated that the jury must find Defendant DeLee breached the standard of care to sustain liability. Defendant contends that because the testimony at trial pointed to Eva Fowler's head being on the perineum at the time of delivery, the only possible conclusion was that Dr. DeLee did not breach the standard of care. They argue that had the jury obeyed the instructions, they would have found in favor of Dr. DeLee.

Plaintiff counters Defendant's contention by arguing that Defendant cannot meet the standard for a jury manifestly disregarding jury instructions. They argue that there is more than enough evidence to sustain the jury verdict as is, and that Plaintiff provided evidence of a variety of alleged breaches in the standard of care, including poor pre-natal care, poor record keeping, failing to recognize risk factors, and so on.

Under Nevada law, the relevant inquiry as to whether or not a jury manifestly disregarded jury instructions is, "whether we are able to declare that, had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached." *Jaramillo v. Blackstone*, 101 Nev. 316, 318, 704 P.2d 1084 (1985) (emphasis added). The Court agrees with Plaintiff that there was evidence from both the witnesses and documents which provided an ample basis for the jury to reach the determination that it did. Thus, it was not impossible for the jury to reach the verdict they reached particularly in light of the missing documentation notations brought out in the nurses and Dr. De Lee's testimony, as well as the expert testimony of Plaintiff's witnesses. In so ruling, the Court takes note that the jury engaged in lengthy deliberations prior to reaching its verdict.

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4. **Excessive Damages Award**

As another of its arguments in support of its request for a new trial, Defendant argues that arguments by Plaintiff's Counsel during closing arguments, asking the jury to 'send a message' led to an extremely large award of damages. They argue that the size of the verdict is evidence of jury nullification.

Plaintiff argues that the determination of money damages rests squarely within the province of the jury and shouldn't be disturbed in this case. They maintain that the verdict, though large in its own right, was less than Plaintiff sought. They argue that the difference in the two values is evidence that it was not reached in the heat of passion or under color of prejudice. They maintain that each aspect of the award was appropriate, including the award for future pain and suffering.

In Nevada, the valuation of damages for pain and suffering are "peculiarly within the province of the jury." *Canterino v. The Mirage Casino-Hotel*, 16 P.3d 415, 418 (Nev. 2001). To set aside a jury's damage award, the result must be "flagrantly improper." *Stackiewicz v. Nissan Motor Corporation*, 686 P.2d 925, 932 (Nev. 1984). The Court's analysis on this issue is set forth above. In sum, the circumstances of the trial do not support Defendant's contention under current case law. While the award may be viewed as large in light of the statutory medical malpractice limitations, it was consistent with the evidence presented by Plaintiff via expert testimony and in light of *Canterino*.

5. **Objected-to Errors in Law**

Defendant finally contends that the Court admitted evidence at trial in violation of NEV. REV. STAT. §§ 48.015, 48.025, and 48.035. Specifically, Defendant contends that the admission of the ACOG Bulletin #22 was highly prejudicial and confusing to the jury. They

JOANNA S. KISHNER
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DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

also reiterate their arguments as to the video clip and deposition testimony of Dr. Pasimio.

Plaintiff maintains that Defendant's arguments regarding objected-to errors of law at trial have no merit as the Defendant failed to object to the admission of evidence, such as the ACOG Bulletin. They also point to Defense Counsel's involvement in stipulating to the admissibility and subsequent use of the video of Ava Fowler, and the redaction and reading into evidence of Dr. Pasimio's deposition.

NEV. REV. STAT. § 48.015 defines relevant evidence as any evidence having a tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without evidence. Under NEV. REV. STAT. § 48.025, irrelevant evidence is inadmissible. Further, relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the jury, undue delay, etc. NEV. REV. STAT. § 48.035.

In the present case, the Court evaluated all evidence that was proposed and/or admitted; taking into account what was and what was not objected to. Taking into consideration all the evidence, the objections raised, the curative instructions given and offered, as well as applicable law, the Court finds that there are no errors of law that would merit a new trial pursuant to applicable law.

REQUEST FOR REMITTITUR

The Court Granted Defendant DeLee's Motion to Reduce Judgment in the intervening time between when the instant Motion was filed and the instant written Order. The Court, in accordance with applicable law, after taking into consideration all of the arguments raised by Plaintiff, reduced the future pain and suffering award in accordance with Nevada statutes. Therefore, Defendant's Request for Remittitur is moot.

CONCLUSION

Based upon the foregoing, the Court hereby DENIES Defendant DeLee's Motion for a Judgment as a Matter of Law and Motion for a New Trial as set forth above. The Court further finds that the Request for Remititur is Moot.

Dated this 25th day of February, 2013

JOANNA S. KISHNER
DISTRICT COURT JUDGE

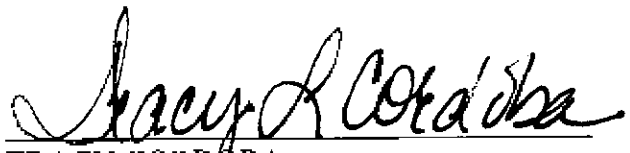
JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through email, or a copy of this ORDER was placed in the attorney's folder in the Clerk's Office and/or mailed to the proper party as follows:

Thomas Christensen, Esq.
Christensen Law Offices, LLC
1000 S. Valley View Blvd.
Las Vegas, NV 89107

John H. Cotton, Esq.
Cotton, Driggs, Walch, Holley, Woloson & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101



TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

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CLERK OF THE COURT

JUDG
THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorneys for Plaintiff
AVA FOWLER

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., Defendant.	Case No.	A568152
	Dept. No.	XXXI

JUDGMENT ON JURY VERDICT

This matter having come on regularly for jury trial before this Court, the jury having heard and considered the testimony and proof offered by the respective parties and arguments of the respective parties and the cause having been submitted to the jury for decision, the Court being fully advised in the premises, it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiff TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, have judgment against the Defendant FRANK J. DELEE, M.D., as follows:

1. Past Pain and Suffering:	$300,000.00
2. Future Pain and Suffering:	$3,000,000.00
3. Future Medical Treatment:	$1,500,000.00

☐ Voluntary Dis	☐ Stip Dis	☐ Sum Jdgmt
☐ Involuntary (stat) Dis	☐ Stip Jdgmt	☐ Non-Jury Trial
☐ Jdgmt on Arb Award	☐ Default Jdgmt	☒ Jury Trial
☐ Mtn to Dis (by deft)	☐ Transferred	

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For a total amount of $4,800,000.00 in damages.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Plaintiffs have pre-judgment interest on past damages ($300,000.00) from October 14, 2008, the date the complaint and summons was served, to the present date, August 31, 2012, totaling $61,101.33, and calculated as follows:

Current Legal Interest Rate: 5.25%

October 14, 2008 – December 31, 2008 (.0525 x 300,000 ÷ 365 x 78)	= $3,365.72
January 1, 2009 – December 31, 2009 (.0525 x 300,000)	= $15,750.00
January 1, 2010 – December 31, 2010 (.0525 x 300,000)	= $15,750.00
January 1, 2011—December 31, 2011 (.0525 x 300,000)	= $15,750.00
January 1, 2012—August 17, 2012 (.0525 x 300,000 ÷ 365 x 243)	= $10,485.61
TOTAL	= $61,101.33

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs and attorney fees are to be determined by Motion.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total Judgment will bear interest at the legal rate from August 29, 2012 until paid.

DATED this 5 day of ~~August~~ September, 2012.

JOANNA S. KISHNER
DISTRICT JUDGE

Submitted by:

CHRISTENSEN LAW OFFICES, LLC

#12485

THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
(702) 870-1000
Attorneys for Plaintiffs

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CLERK OF THE COURT

ERR

THOMAS CHRISTENSEN, ESQ.
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CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorney for Plaintiffs,
AVA FOWLER

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	)	Case No. A568152 Dept. No. XXXI

ERRATA TO NOTICE OF ENTRY OF JUDGMENT

COMES NOW Plaintiff, TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, by an through her counsel of record, THOMAS CHRISTENSEN, ESQ., of the law firm of CHRISTENSEN LAW OFFICES, LLC, and submits this Errata to Plaintiff's Notice of Entry of Judgment.

On September 7, 2012, Plaintiff filed and served her Notice of Entry of Judgment. Plaintiff's counsel mistakenly attached the non file-stamped copy of the Judgment on Jury Verdict. To remedy said error, Plaintiff hereby files this Errata with the filed Notice of Entry of

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Judgment and appropriately attached file stamped copy of the Judgment on Jury Verdict. *See* attached Notice of Entry of Judgment and file stamped copy of Judgment on Jury Verdict.

DATED THIS 11th day of September, 2012.

CHRISTENSEN LAW OFFICES, LLC

#12456

BY: _____
THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC, and that on this 11th day of September, 2012, I served a copy of the foregoing **ERRATA TO NOTICE OF ENTRY OF JUDGMENT** as follows:

X U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

X Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

Hand Delivery—By hand-delivery to the addresses listed below.

JOHN COTTON, ESQ.
400 S. 4TH St., 3rd Flr.
Las Vegas, NV 89101
Fax: (702) 791-1912
Attorneys for Defendant

An employee of CHRISTENSEN LAW OFFICES, LLC

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CLERK OF THE COURT

NOTC

THOMAS CHRISTENSEN, ESQ.
Nevada Bar #2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 216-1451 Phone
(702) 870-6152 Fax
courtnotices@injuryhelpnow.com
Attorneys for Plaintiff,
AVA FOWLER

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	Case No.	A568152
	Dept. No.	XXXI

NOTICE OF ENTRY OF JUDGMENT

TO: Defendant, FRANK J. DELEE, M.D. and

TO: His attorney, JOHN COTTON, ESQ.

PLEASE TAKE NOTICE that a Judgment against the defendant, FRANK J. DELEE, M.D., was entered in the above-entitled matter on September 5, 2012.

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A copy of said Judgment is attached hereto.

DATED THIS 7th day of September, 2012.

CHRISTENSEN LAW OFFICES, LLC

BY: _____ #12456

THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC, and that on this 7th day of September, 2012, I served a copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

X U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

X Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

Hand Delivery—By hand-delivery to the addresses listed below.

JOHN COTTON, ESQ.
400 S. 4TH St., 3rd Flr.
Las Vegas, NV 89101
Fax: (702) 791-1912
Attorneys for Defendant

An employee of CHRISTENSEN LAW OFFICES, LLC

JUDG
THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorneys for Plaintiff
AVA FOWLER

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor,	)	
Plaintiff,	)	Case No. A568152
vs.	)	Dept. No. XXXI
FRANK J. DELEE, M.D.,	)	
Defendant.	)	

JUDGMENT ON JURY VERDICT

This matter having come on regularly for jury trial before this Court, the jury having heard and considered the testimony and proof offered by the respective parties and arguments of the respective parties and the cause having been submitted to the jury for decision, the Court being fully advised in the premises, it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiff TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, have judgment against the Defendant FRANK J. DELEE, M.D., as follows:

1. Past Pain and Suffering: $300,000.00

2. Future Pain and Suffering: $3,000,000.00

3. Future Medical Treatment: $1,500,000.00

☐ Voluntary Dis	☐ Stip Dis	☐ Sum Jdgmt
☐ Involuntary (stat) Dis	☐ Stip Jdgmt	☐ Non-Jury Trial
☐ Jdgmt on Arb Award	☐ Default Jdgmt	☒ Jury Trial
☐ Mtn to Dis (by deft)	☐ Transferred	

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RCVD

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For a total amount of $4,800,000.00 in damages.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Plaintiffs have pre-judgment interest on past damages ($300,000.00) from October 14, 2008, the date the complaint and summons was served, to the present date, August 31, 2012, totaling $61,101.33, and calculated as follows:

Current Legal Interest Rate: 5.25%

October 14, 2008 – December 31, 2008 (.0525 x 300,000 ÷ 365 x 78)	= $3,365.72
January 1, 2009 – December 31, 2009 (.0525 x 300,000)	= $15,750.00
January 1, 2010 – December 31, 2010 (.0525 x 300,000)	= $15,750.00
January 1, 2011—December 31, 2011 (.0525 x 300,000)	= $15,750.00
January 1, 2012—August 17, 2012 (.0525 x 300,000 ÷ 365 x 243)	= $10,485.61
TOTAL	= $61,101.33

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs and attorney fees are to be determined by Motion.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total Judgment will bear interest at the legal rate from August 29, 2012 until paid.

DATED this 5 day of ~~August~~ September, 2012.

JOANNA S. KISHNER
DISTRICT JUDGE

Submitted by:

CHRISTENSEN LAW OFFICES, LLC

#12485

THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
(702) 870-1000
Attorneys for Plaintiffs

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CLERK OF THE COURT

JUDG
THOMAS CHRISTENSEN, ESQ.
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(702) 870-1000
Attorneys for Plaintiff
AVA FOWLER

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., Defendant.	Case No.	A568152
	Dept. No.	XXXI

JUDGMENT ON JURY VERDICT

This matter having come on regularly for jury trial before this Court, the jury having heard and considered the testimony and proof offered by the respective parties and arguments of the respective parties and the cause having been submitted to the jury for decision, the Court being fully advised in the premises, it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiff TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, have judgment against the Defendant FRANK J. DELEE, M.D., as follows:

1. Past Pain and Suffering:	$300,000.00
2. Future Pain and Suffering:	$3,000,000.00
3. Future Medical Treatment:	$1,500,000.00

☐ Voluntary Dis	☐ Stip Dis	☐ Sum Jdgmt
☐ Involuntary (stat) Dis	☐ Stip Jdgmt	☐ Non-Jury Trial
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☐ Mtn to Dis (by deft)	☐ Transferred	

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For a total amount of $4,800,000.00 in damages.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Plaintiffs have pre-judgment interest on past damages ($300,000.00) from October 14, 2008, the date the complaint and summons was served, to the present date, August 31, 2012, totaling $61,101.33, and calculated as follows:

Current Legal Interest Rate: 5.25%

October 14, 2008 – December 31, 2008 (.0525 x 300,000 ÷ 365 x 78)	= $3,365.72
January 1, 2009 – December 31, 2009 (.0525 x 300,000)	= $15,750.00
January 1, 2010 – December 31, 2010 (.0525 x 300,000)	= $15,750.00
January 1, 2011—December 31, 2011 (.0525 x 300,000)	= $15,750.00
January 1, 2012—August 17, 2012 (.0525 x 300,000 ÷ 365 x 243)	= $10,485.61
TOTAL	= $61,101.33

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs and attorney fees are to be determined by Motion.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total Judgment will bear interest at the legal rate from August 29, 2012 until paid.

DATED this 5 day of ~~August~~ September, 2012.

JOANNA S. KISHNER
DISTRICT JUDGE

Submitted by:

CHRISTENSEN LAW OFFICES, LLC

#12485

THOMAS CHRISTENSEN, ESQ.
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Attorneys for Plaintiffs

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CLERK OF THE COURT

ORDR

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Sunrise Hospital and Medical Center

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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

ORDER ON DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S MOTION TO STRIKE PLAINTIFF'S EXPERT AND MOTION FOR PARTIAL SUMMARY JUDGMENT ON AN ORDER SHORTENING TIME AND DEFENDANT FRANK J. DELEE, M.D.'S JOINDER THERETO

On July 3, 2012, Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (hereinafter "Sunrise Hospital") filed its Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time. On July 3, 2012, Defendant FRANK J. DELEE, M.D. (hereinafter "Dr. DeLee") filed his Joinder to this Motion. Plaintiff TONYA

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FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor (hereinafter "Plaintiff") filed her Opposition to Sunrise Hospital's Motion and Dr. DeLee's Joinder on July 17, 2012. Sunrise Hospital and Dr. DeLee filed their separate Replies on July 18, 2012.

On July 23, 2012, the Court heard oral argument from all counsel. Jonquil L. Whitehead, Esq., of the law firm HALL PRANGLE & SCHOONVELD, appeared on behalf of Sunrise Hospital. Chris Rigler, Esq., of the law firm COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, appeared on behalf of Dr. DeLee. Plaintiff was represented by E. Breen Arntz, Esq., of the law firm CHRISTENSEN LAW OFFICES, LLC.

FINDINGS OF FACT

Having considered all pleadings on file and argument of counsel, this Honorable Court made the following findings of fact:

1. Dr. Pine does not state in his Affidavit that the nurses fell below the standard of care or that their actions caused the injury to Plaintiff.

2. In his deposition, Dr. Pine failed to provide an opinion that met the requirements of NRS 50.275, *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492 (2008). Dr. Pine could not state to a reasonable degree of medical probability that fundal pressure was applied, that a shoulder dystocia occurred, or that the conduct of the nurses caused Plaintiff's alleged injury. Specifically, Dr. Pine testified twice that the nurses did not cause this injury (Deposition Transcript of Dr. Pine, 41:19-20 and 45:2-6), and when questioned by Plaintiff testified that he was only critical "if it was documented that it really happened." (Deposition Transcript of Dr. Pine, 42:20-21). Dr. Pine testified that he was retracting the opinion that a shoulder dystocia occurred. (Deposition Transcript of Dr. Pine, 33:7-9)

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3. Dr. Pine's deposition testimony that "if" something happened (Deposition Transcript of Dr. Pine, 45:17-23) does not rise to the level of certainty required by *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492 (2008). His opinion was admittedly based on speculation, assumption and generalization. (Deposition Transcript of Dr. Pine, 47:4-12 and 35:14-21).

4. Dr. Pine's testimony does not meet the standard set forth in NRS 41A.100, NRS 50.275, *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492 (2008), and thus cannot as a matter of law support a medical malpractice claim against Sunrise Hospital through the nurses.

5. While the Court recognizes Dr. Pine stated he is "speculating" during his deposition regarding care provided by Dr. DeLee, the speculative nature of his opinion testimony did not rise to the same level of uncertainty as that stated against Sunrise Hospital, thus the Court was unable to make this determination as a matter of law.

CONCLUSIONS OF LAW

1. NRS 50.275 governs the admissibility of expert opinions at trial.

2. Pursuant to *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008):

> "To testify as an expert witness under NRS 50.275, the witness must satisfy the following three requirements: (1) he or she must be qualified in an area of "scientific, technical or other specialized knowledge" (the qualification requirement); (2) his or her specialized knowledge must "assist the trier of fact to understand the evidence or to determine a fact in issue" (the assistance requirement); and (3) his or her testimony must be limited "to matters within the scope of [his or her specialized] knowledge" (the limited scope requirement)."

Hallmark stated "An expert's testimony will assist the trier of fact only when it is relevant and the product of reliable methodology." *Id.* at 500. In order for the court to determine

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whether the opinion is "based on reliable methodology", the court must consider whether the opinion is:

> (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization.

Id. at 501.

3. *Morsicato v. Sav-on*, 121 Nev. 153 (2005) stated that in a medical malpractice case, the medical expert "is expected to testify only to matters that conform to the reasonable degree of medical probability standard." *Id.* at 158. The Court specifically stated "this court has observed that expert testimony regarding causation must also rise to this level of certainty." *Id.* (emphasis added) (citing to *Fitzgerald v. Manning*, 679 F.2d 341, 350 (4th Cir.1982) (in order to qualify on causation, the medical expert opinion cannot be stated in general terms but must be stated in terms of a reasonable degree of medical certainty); quoting *McMahon v. Young*, 442 Pa. 484, 276 A.2d 534, 535 (1971) ("if the plaintiff's medical expert cannot form an opinion with sufficient certainty so as to make a medical judgment, there is nothing on the record with which a jury can make a decision with sufficient certainty so as to make a legal judgment.")).

4. The trial court judge is the gatekeeper to determining the admissibility of expert testimony. *Higgs v. State*, 222 P.3d 648, 656 (Nev. 2010).

5. Medical expert testimony is required to establish the accepted standard of care, a breach of that standard and causation. NRS 41A.100(1); *Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 840, 102 P.3d 52, 64 (2004); *Perez v. Las Vegas Medical Center,* 107 Nev. 1, 4, 805 P.2d 589, 591 (1991) ("that the alleged medical malpractice actually caused the harm complained of.").

6. Dr. Pine's opinion testimony as to the nurses at Sunrise Hospital does not rise to the standard for admissibility of a medical expert in a medical malpractice lawsuit pursuant to *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008) as a matter of law. Therefore, Dr. Pine's opinion testimony as to the nurses at Sunrise Hospital is stricken.

7. Subsequently, summary judgment is proper as a matter of law as to any and all allegations of medical malpractice/professional negligence against the nurses at Sunrise Hospital. NRS 41A.100(1).

ORDER

Pursuant to the foregoing, and good cause appearing therefore,

1. IT IS HEREBY ORDER, ADJUDGED AND DECREED, that Defendant Sunrise Hospital and Medical Center LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time is hereby GRANTED.

. . .

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. . .

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2. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Frank J. DeLee, M.D.'s Joinder to Defendant Sunrise Hospital and Medical Center LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time is hereby DENIED WITHOUT PREJUDICE.

DATED this 9 day of August, 2012.

DISTRICT COURT JUDGE

Respectfully Submitted by:

DATED this 6th day of August, 2012.

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
777 North Rainbow Blvd., Ste. 225
Las Vegas, Nevada 89107
Attorneys for Defendant
Sunrise Hospital and Medical Center

Approved as to Form and Content:

DATED this 9th day of August, 2012.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

John H. Cotton, Esq.
Christopher G. Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorneys for Defendant Dr. Frank DeLee

Approved as to Form and Content:

DATED this _____ day of _____, 2012.

CHRISTENSEN LAW OFFICES

Thomas Christensen, Esq.
CHRISTENSEN LAW OFFICES
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

4821-0454-2736, v. 1

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CLERK OF THE COURT

NEO
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JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
JOHN F. BEMIS, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardain Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order on Defendant Sunrise Hospital and Medical Center, LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on

an Order Shortening Time and Defendant Frank J. DeLee, MD's Joinder thereto was entered in the above-entitled Court on the 14th day of August, 2012, a copy of which is attached hereto.

DATED this 16th day of August, 2012.

HALL PRANGLE & SCHOONVELD, LLC

By: _____
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
JOHN F. BEMIS, ESQ.
Nevada Bar No. 9509
777 North Rainbow Blvd., Ste. 225
Las Vegas, Nevada 89107
Attorneys for Defendant
Sunrise Hospital and Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 16th day of August, 2012, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via U.S. Mail, first class postage pre-paid to the following parties at their last known address:

Thomas Christensen, Esq.
1000 South Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff

John H. Cotton, Esq.
Christopher G. Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY,
WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorneys for Defendant Dr. Frank DeLee

_____
An employee of HALL PRANGLE & SCHOONVELD, LLC

4849-8447-1824, v. 1

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CLERK OF THE COURT

ORDR

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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

ORDER ON DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S MOTION TO STRIKE PLAINTIFF'S EXPERT AND MOTION FOR PARTIAL SUMMARY JUDGMENT ON AN ORDER SHORTENING TIME AND DEFENDANT FRANK J. DELEE, M.D.'S JOINDER THERETO

On July 3, 2012, Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (hereinafter "Sunrise Hospital") filed its Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time. On July 3, 2012, Defendant FRANK J. DELEE, M.D. (hereinafter "Dr. DeLee") filed his Joinder to this Motion. Plaintiff TONYA

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FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor (hereinafter "Plaintiff") filed her Opposition to Sunrise Hospital's Motion and Dr. DeLee's Joinder on July 17, 2012. Sunrise Hospital and Dr. DeLee filed their separate Replies on July 18, 2012.

On July 23, 2012, the Court heard oral argument from all counsel. Jonquil L. Whitehead, Esq., of the law firm HALL PRANGLE & SCHOONVELD, appeared on behalf of Sunrise Hospital. Chris Rigler, Esq., of the law firm COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, appeared on behalf of Dr. DeLee. Plaintiff was represented by E. Breen Arntz, Esq., of the law firm CHRISTENSEN LAW OFFICES, LLC.

FINDINGS OF FACT

Having considered all pleadings on file and argument of counsel, this Honorable Court made the following findings of fact:

1. Dr. Pine does not state in his Affidavit that the nurses fell below the standard of care or that their actions caused the injury to Plaintiff.

2. In his deposition, Dr. Pine failed to provide an opinion that met the requirements of NRS 50.275, *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492 (2008). Dr. Pine could not state to a reasonable degree of medical probability that fundal pressure was applied, that a shoulder dystocia occurred, or that the conduct of the nurses caused Plaintiff's alleged injury. Specifically, Dr. Pine testified twice that the nurses did not cause this injury (Deposition Transcript of Dr. Pine, 41:19-20 and 45:2-6), and when questioned by Plaintiff testified that he was only critical "if it was documented that it really happened." (Deposition Transcript of Dr. Pine, 42:20-21). Dr. Pine testified that he was retracting the opinion that a shoulder dystocia occurred. (Deposition Transcript of Dr. Pine, 33:7-9)

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3. Dr. Pine's deposition testimony that "if" something happened (Deposition Transcript of Dr. Pine, 45:17-23) does not rise to the level of certainty required by *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492 (2008). His opinion was admittedly based on speculation, assumption and generalization. (Deposition Transcript of Dr. Pine, 47:4-12 and 35:14-21).

4. Dr. Pine's testimony does not meet the standard set forth in NRS 41A.100, NRS 50.275, *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492 (2008), and thus cannot as a matter of law support a medical malpractice claim against Sunrise Hospital through the nurses.

5. While the Court recognizes Dr. Pine stated he is "speculating" during his deposition regarding care provided by Dr. DeLee, the speculative nature of his opinion testimony did not rise to the same level of uncertainty as that stated against Sunrise Hospital, thus the Court was unable to make this determination as a matter of law.

CONCLUSIONS OF LAW

1. NRS 50.275 governs the admissibility of expert opinions at trial.

2. Pursuant to *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008):

> "To testify as an expert witness under NRS 50.275, the witness must satisfy the following three requirements: (1) he or she must be qualified in an area of "scientific, technical or other specialized knowledge" (the qualification requirement); (2) his or her specialized knowledge must "assist the trier of fact to understand the evidence or to determine a fact in issue" (the assistance requirement); and (3) his or her testimony must be limited "to matters within the scope of [his or her specialized] knowledge" (the limited scope requirement)."

Hallmark stated "An expert's testimony will assist the trier of fact only when it is relevant and the product of reliable methodology." *Id.* at 500. In order for the court to determine

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whether the opinion is "based on reliable methodology", the court must consider whether the opinion is:

> (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization.

Id. at 501.

3. *Morsicato v. Sav-on*, 121 Nev. 153 (2005) stated that in a medical malpractice case, the medical expert "is expected to testify only to matters that conform to the reasonable degree of medical probability standard." *Id.* at 158. The Court specifically stated "this court has observed that expert testimony regarding causation must also rise to this level of certainty." *Id.* (emphasis added) (citing to *Fitzgerald v. Manning*, 679 F.2d 341, 350 (4th Cir.1982) (in order to qualify on causation, the medical expert opinion cannot be stated in general terms but must be stated in terms of a reasonable degree of medical certainty); quoting *McMahon v. Young*, 442 Pa. 484, 276 A.2d 534, 535 (1971) ("if the plaintiff's medical expert cannot form an opinion with sufficient certainty so as to make a medical judgment, there is nothing on the record with which a jury can make a decision with sufficient certainty so as to make a legal judgment.")).

4. The trial court judge is the gatekeeper to determining the admissibility of expert testimony. *Higgs v. State*, 222 P.3d 648, 656 (Nev. 2010).

5. Medical expert testimony is required to establish the accepted standard of care, a breach of that standard and causation. NRS 41A.100(1); *Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 840, 102 P.3d 52, 64 (2004); *Perez v. Las Vegas Medical Center,* 107 Nev. 1, 4, 805 P.2d 589, 591 (1991) ("that the alleged medical malpractice actually caused the harm complained of.").

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6. Dr. Pine's opinion testimony as to the nurses at Sunrise Hospital does not rise to the standard for admissibility of a medical expert in a medical malpractice lawsuit pursuant to *Morsicato v. Sav-on*, 121 Nev. 153 (2005) and *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008) as a matter of law. Therefore, Dr. Pine's opinion testimony as to the nurses at Sunrise Hospital is stricken.

7. Subsequently, summary judgment is proper as a matter of law as to any and all allegations of medical malpractice/professional negligence against the nurses at Sunrise Hospital. NRS 41A.100(1).

ORDER

Pursuant to the foregoing, and good cause appearing therefore,

1. IT IS HEREBY ORDER, ADJUDGED AND DECREED, that Defendant Sunrise Hospital and Medical Center LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time is hereby GRANTED.

. . .

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2. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Frank J. DeLee, M.D.'s Joinder to Defendant Sunrise Hospital and Medical Center LLC's Motion to Strike Plaintiff's Expert and Motion for Partial Summary Judgment on an Order Shortening Time is hereby DENIED WITHOUT PREJUDICE.

DATED this 9 day of August, 2012.

DISTRICT COURT JUDGE

Respectfully Submitted by:

DATED this 6th day of August, 2012.

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JONQUIL L. WHITEHEAD, ESQ.
Nevada Bar No. 10783
777 North Rainbow Blvd., Ste. 225
Las Vegas, Nevada 89107
Attorneys for Defendant
Sunrise Hospital and Medical Center

Approved as to Form and Content:

DATED this 9th day of August, 2012.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

John H. Cotton, Esq.
Christopher G. Rigler, Esq.
COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101
Attorneys for Defendant Dr. Frank DeLee

Approved as to Form and Content:

DATED this _____ day of _____, 2012.

CHRISTENSEN LAW OFFICES

Thomas Christensen, Esq.
CHRISTENSEN LAW OFFICES
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

4821-0454-2736, v. 1

HALL PRANGLE & SCHOONVELD, LLC
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CLERK OF THE COURT

ORDR
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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION TO CONTIUE TRIAL ON AN ORDER SHORTENING TIME

On January 26, 2012, Plaintiff TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor (hereinafter "Plaintiff") filed her Emergency Motion to Continue Trial on an Order Shortening Time. This Motion was heard on January 27, 2012 in Department XXXI before Honorable Judge Joanna Kishner. Jonquil L. Urdaz, Esq. of Hall, Prangle & Schoonveld appearing on behalf of Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC

HALL PRANGLE & SCHOONVELD, LLC
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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

(hereinafter "Sunrise Hospital"), Christopher G. Rigler, Esq. of John H. Cotton & Associates appearing on behalf of Defendant FRANK J. DELEE, M.D. (hereinafter "Dr. DeLee") and E. Breen Arntz, Esq. appearing on behalf of Plaintiff. Sunrise Hospital and Dr. DeLee orally opposed this Motion and requested sanctions at the aforesaid hearing.

ORDER

Pursuant to the foregoing, and good cause appearing therefore,

1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Emergency Motion to Continue Trial on an Order Shortening Time is GRANTED and the current trial date of January 30, 2012 is VACATED.

2. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendants will provide a memorandum of fees and costs in support of Defendants' Oral Motion for Sanctions on or before February 29, 2012, Plaintiff will respond by March 9, 2012, and the Decision on Defendants' Oral Motion for Sanctions will be heard in chambers on March 21, 2012.

3. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that:

   i. Plaintiff may either re-designate Dr. Lu as her causation/liability expert on or before March 27, 2012, OR

   ii. Plaintiff may designate according to the requirements of NRCP 16.1(a)(2)(B) a new medical doctor expert in the field of obstetrics to opine as to causation/liability only, on or before March 27, 2012.

4. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that if Plaintiff designates a new expert pursuant to Part 3(ii) of this Order above:

i. Plaintiff shall make this new expert available for deposition on or before April 27, 2012, AND

ii. Defendants may designate a rebuttal expert according to the requirements of NRCP 16.1(a)(2)(B) on or before May 14, 2012.

IT IS SO ORDERED.

DATED this 13 day of Feb, 2012.

DISTRICT COURT JUDGE

Respectfully Submitted by:

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
JONQUIL J. URDAZ, ESQ.
777 North Rainbow Blvd., Ste. 225
Las Vegas, Nevada 89107
Attorneys for Defendant
Sunrise Hospital and Medical Center

Approved as to Form and Content:

CHRISTENSEN LAW OFFICES

#12489

THOMAS CHRISTENSEN, ESQ.
E. BREEN ARNTZ, ESQ.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Approved as to Form and Content:

JOHN H. COTTON & ASSOCIATES

10/2/12

JOHN H. COTTON, ESQ.
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CHRISTOPHER G. RIGLER, ESQ.
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2300 West Sahara Avenue
Suite 420, Box 15
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Attorneys for Defendant Dr. Frank DeLee

4839-7659-2910, v. 1

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CLERK OF THE COURT

NEO
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Nevada Bar No. 10783
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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardain Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

NOTICE OF ENTRY OF ORDER

Date of Hearing: January 27, 2012
Time of Hearing: 9:00 a.m.

PLEASE TAKE NOTICE that an Order Granting Plaintiff's Emergency Motion to Continue Trial on an Order Shortening Time was entered in the above-entitled Court on the 14th

day of February, 2012, a copy of which is attached hereto.

DATED this 16th day of February, 2012.

HALL PRANGLE & SCHOONVELD, LLC

By: _____
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
JOHN F. BEMIS, ESQ.
Nevada Bar No. 9509
JONQUIL L. URDAZ, ESQ.
Nevada Bar No. 10783
777 North Rainbow Blvd., Ste. 225
Las Vegas, Nevada 89107
Attorneys for Defendant
Sunrise Hospital and Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 16th day of February, 2012, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via U.S. Mail, first class postage pre-paid to the following parties at their last known address:

Thomas Christensen, Esq.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

John H. Cotton, Esq.
Christopher G. Rigler, Esq.
John H. Cotton & Associates, Ltd.
2300 West Sahara Avenue
Suite 420, Box 15
Las Vegas, Nevada 89102
Attorneys for Defendant Dr. Frank Delee

_____
An employee of HALL PRANGLE & SCHOONVELD, LLC

4832-8604-8014, v. 1

HALL PRANGLE & SCHOONVELD, LLC
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CLERK OF THE COURT

ORDR
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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION TO CONTIUE TRIAL ON AN ORDER SHORTENING TIME

On January 26, 2012, Plaintiff TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor (hereinafter "Plaintiff") filed her Emergency Motion to Continue Trial on an Order Shortening Time. This Motion was heard on January 27, 2012 in Department XXXI before Honorable Judge Joanna Kishner. Jonquil L. Urdaz, Esq. of Hall, Prangle & Schoonveld appearing on behalf of Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC

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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

(hereinafter "Sunrise Hospital"), Christopher G. Rigler, Esq. of John H. Cotton & Associates appearing on behalf of Defendant FRANK J. DELEE, M.D. (hereinafter "Dr. DeLee") and E. Breen Arntz, Esq. appearing on behalf of Plaintiff. Sunrise Hospital and Dr. DeLee orally opposed this Motion and requested sanctions at the aforesaid hearing.

ORDER

Pursuant to the foregoing, and good cause appearing therefore,

1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Emergency Motion to Continue Trial on an Order Shortening Time is GRANTED and the current trial date of January 30, 2012 is VACATED.

2. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendants will provide a memorandum of fees and costs in support of Defendants' Oral Motion for Sanctions on or before February 29, 2012, Plaintiff will respond by March 9, 2012, and the Decision on Defendants' Oral Motion for Sanctions will be heard in chambers on March 21, 2012.

3. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that:

   i. Plaintiff may either re-designate Dr. Lu as her causation/liability expert on or before March 27, 2012, OR

   ii. Plaintiff may designate according to the requirements of NRCP 16.1(a)(2)(B) a new medical doctor expert in the field of obstetrics to opine as to causation/liability only, on or before March 27, 2012.

4. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that if Plaintiff designates a new expert pursuant to Part 3(ii) of this Order above:

i. Plaintiff shall make this new expert available for deposition on or before April 27, 2012, AND

ii. Defendants may designate a rebuttal expert according to the requirements of NRCP 16.1(a)(2)(B) on or before May 14, 2012.

IT IS SO ORDERED.

DATED this 13 day of Feb, 2012.

DISTRICT COURT JUDGE

Respectfully Submitted by:

HALL PRANGLE & SCHOONVELD, LLC

KENNETH M. WEBSTER, ESQ.
JONQUIL J. URDAZ, ESQ.
777 North Rainbow Blvd., Ste. 225
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Attorneys for Defendant
Sunrise Hospital and Medical Center

Approved as to Form and Content:

CHRISTENSEN LAW OFFICES

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Attorneys for Plaintiff

Approved as to Form and Content:

JOHN H. COTTON & ASSOCIATES

2/21/12

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Las Vegas, Nevada 89102
Attorneys for Defendant Dr. Frank DeLee

4839-7659-2910, v. 1

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CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE; HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, ROE I through X, inclusive, Defendants.	CASE NO.: A-08-568152-C DEPT. NO.: XXXI **DECISION AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

On October 22, 2012, the Court held a hearing regarding Defendant Frank DeLee MD's Motion to Retax Costs and Motion to Reduce Judgment.[1] The hearing was held before Department XXXI of the Eighth Judicial District Court in and for Clark County, Nevada, and was presided over by the Honorable Joanna S. Kishner. Present at the hearing were Breen Arntz, Esq., Thomas F. Christensen, Esq., and Jennifer M. Gooss, Esq.

[1] It should be noted that although Defendant's Motion was titled as a Motion to Retax Costs and Reduce Judgment, the parties at the October 22nd hearing agreed to postpone the portion of the Motion as to retaxing costs so as to allow the parties an opportunity to see if they could resolve the amount of costs at issue. In the intervening time between when Defendant first filed its Motion to Retax Costs and Reduce Judgment and the hearing date, Plaintiff also filed a Motion for Attorney Fees, Costs and Prejudgment Interest. The parties at the previous October 22nd hearing asked that the pending motions relating to fees, costs, and interest be consolidated for hearing and the Court granted that request. Accordingly, the Motion for Reconsideration only addressed the portion of the October 22nd Motion relating to reduction of the Judgment as the Court GRANTED that portion of Defendant's Motion on October 22nd.

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CLERK OF THE COURT

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

(hereinafter "Plaintiff") and John H. Cotton, Esq., on behalf of Defendant Frank DeLee, M.D. (hereinafter "Defendant".) At the conclusion of the hearing, the Court detailed its findings and GRANTED Defendant's Motion to Reduce Judgment. Subsequently, on November 28, 2012, Plaintiff filed a Motion for Reconsideration. The Motion for Reconsideration was filed prior to an Order being submitted and entered on the underlying Motion to Reduce. Prior to the agreed upon date for the hearing, the parties agreed that they would provide the Court with a proposed Order and have it filed before the hearing so that the Court could hear the Motion for Reconsideration on the January 8, 2013, the date selected by the parties for hearing on various consolidated motions. Thereafter, on January 7th, Plaintiff provided and filed the Order and Notice of Entry on the underlying Motion to Reduce Judgment.

Having reviewed the pleadings, having reviewed the merits of the motion and the positions of the parties, the oral argument on January 8th, and good cause appearing, the Court finds and rules as follows:

MOTION FOR RECONSIDERATION

A Court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). Pursuant to *Masonry & Tile Contractors Ass'n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997), the trial court may reconsider a previously decided issue if substantially different evidence is subsequently introduced, or if the prior decision is clearly erroneous.

Within the Eighth Judicial District Court, when a party seeks reconsideration of a Court's previous order, the party must comply with EDCR 2.24(b). EDCR 2.24(b) requires "[a] party seeking reconsideration of a ruling of the court, other than any order which may be

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

addressed by motion pursuant to NEV. R. CIV. P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment[.]" EDCR 2.24(b). Pursuant to EDCR 2.24(b), Plaintiff filed a Motion for Reconsideration pursuant NRCP 60(b) of the Court's Order granting Defendant Frank DeLee MD's Motion to Reduce Judgment.[2]

In evaluating a Motion for Reconsideration, the Court engages in a two-step process. First the Court determines, in accordance with NRCP 60(b)'s provisions, if there is "mistake, inadvertence, surprise or excusable neglect[.], "If the first step is met, then the Court reviews the evidence to determine if a different result should occur." In Nevada, "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P2d 447,450 (1996).

In the present matter, Plaintiff has sought reconsideration from the Court's previous Order granting Defendant's Motion to Reduce Judgment, wherein the Court found that NEV. REV. STAT. § 41A.035 was Constitutional and thus the reduction was proper. In their Motion for Reconsideration, Plaintiff asks the Court to overturn its prior ruling re-asserting that the statute is Unconstitutional. In support of her claim, Plaintiff first contends that NEV. REV. STAT. § 41A.035 is an unconstitutional violation of the right to a jury trial as stated in Article 1, Section 3 of the Nevada Constitution and that NEV. REV. STAT. § 41A.035 is not "substantially and rationally related to a legitimate government interest" and, therefore, violates the Equal Protection clause. In the Motion for Reconsideration, Plaintiff reiterates

[2] As noted infra, Plaintiff had filed her Motion for Reconsideration prematurely, as the parties had not yet filed the Order or Notice of Entry of Order on the underlying Motion. Given the parties waived the procedural timing of the filing of the Motion for Reconsideration and agreed to have the Motion for Reconsideration heard on January 8, 2013, the Court heard the Motion.

its assertion that the Court could address the Constitutionality issue even though Plaintiff did not provide notice to the Attorney General of Nevada regarding the Constitutional argument.

In the present case, after a review of all the pleadings, oral argument, as well as applicable law, the Court finds that there are not "new issues of fact or law" that would support a different ruling from the Court. In so ruling, the Court finds that the Constitutionality of the statute was specifically raised by Plaintiff in its Opposition to Defendant's Motion to Reduce Judgment and addressed by Defendant in its Reply. The issue was also fully argued at the hearing before the Court made its ruling granting Defendant's Motion to Reduce Judgment. When the Court granted the Motion to Reduce Judgment, it was after the Court had fully read all the pleadings, researched applicable law, as well as allowed the parties to fully argue the matter. In sum, the Court fully considered all arguments and assertions raised regarding the Constitutionality issue prior to setting forth its ruling. Further, at the time of the hearing on Motion for Reconsideration, the Court inquired of both of Plaintiff's Counsel, who was arguing the Motion, if there were any new facts or law that the Court should consider. No new evidence or law was presented to the Court.

In the absence of new evidence or law, the Court also determined whether it made an error of law in ruling that the reduction was proper. Given the Court fully analyzed the Constitutional arguments, and found the statute Constitutional in the given setting, the Court then properly, in accordance with applicable statutory authority, reduced the judgment in accordance with the statute. As such, there was no error of law.

In the Motion for Reconsideration, Plaintiff reiterates its position that she felt she had no duty to notify the Nevada Attorney General's office. While the issue of whether the Attorney General should have been notified would not provide a basis to reconsider the

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

granting of Defendant's Motion to Reduce, given the Court addressed the merits of the Constitutional argument raised by Plaintiff, the Court will still address the issue.

At the October 22nd hearing of the underlying Motion to Reduce Judgment, Defendant raised the issue that the Attorney General had not been contacted by Plaintiff at the time he raised the Constitutional argument in his Opposition to the underlying Motion to Reduce Judgment. Plaintiff asserted that such notification was not necessary. After hearing the argument of both counsel, and based upon the record and applicable law, the Court addressed the merits of the Motion to Reduce Judgment and fully took into consideration the Constitutional challenge. The Court then set forth a summary of its Findings of Facts and Conclusions of Law and held that the Motion to Reduce Judgment was granted and thereby reduced the judgment to reflect the statutory caps for future pain and suffering.

After Plaintiff filed its Motion for Reconsideration, the issue of notifying the Attorney General was raised again. In order to address the position taken by Defendant that the Court should not have considered Plaintiff's Constitutional Challenge in the underlying motion and should not consider it in the Motion for Reconsideration, the Court notified the parties and the Attorney General on or about December 18, 2012, that the Court would consider any pleading or argument the Attorney General may wish to provide. The Court also set forth that it was willing to continue the hearing date if the Attorney General wished so as to provide it appropriate time to participate. The Notice also directed Plaintiff to notify the Attorney General and provide it with all appropriate pleadings. The Notice also asked the Attorney General to notify the Court whether it wished or declined to participate.

At the January 8th hearing, the Court informed the parties that it had been informed via its law clerk that the Attorney General declined to participate. Given the Court had not

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

received written confirmation of their disinterest, the Court asked each party whether it wished to go forward with the hearing or if either had any objection to proceeding.

Plaintiff's Counsel had no objection to move forward with the hearing without written response from Attorney General's Office. Defendant's Counsel objected arguing that the Plaintiff, not the Court, was required to notify the Attorney General's Office. Plaintiff's Counsel argued that they informed the Attorney General's Office of the pending issues of Constitutionality in writing, after the original Order came out, but in advance of the hearing. Plaintiff's Counsel again asserted that there was no procedural defect. Defense Counsel again argued that Plaintiff's Counsel should have notified the Attorney General before the October 22, 2012, hearing before Court made its initial ruling, and thus, Plaintiff's subsequent notification was insufficient to cure the procedural defects.

The Court then asked its Law Clerk to contact the Attorney General's Office while Counsel was present in the court to confirm whether or not the Attorney General intended to participate or appear. Ms. Beaver, Assistant to Solicitor General C. Wayne Howle, informed the Law Clerk to let the Court know that they did not intend to participate and that written confirmation of that position would follow post haste.[3]

Thereafter, the Motion for Reconsideration was fully argued and submitted to the Court. The Court inquired as to both the procedural and substantive basis of the Motion. The Court, having found that it had fully considered the applicable law and facts, including the Constitutional arguments raised by Plaintiff in their Opposition to the Motion to Retax Costs and Reduce Judgment, as well as those raised in the Motion for Reconsideration, and there being no new facts or law or other basis to reconsider its prior ruling, there are no

---

[3] The Court received a letter from the Attorney General's Office on January 9, 2013 confirming this position.

sufficient grounds to support a different ruling from the Court.

Although it does not appear that Plaintiff is asserting that her failure to notify the Attorney General provides a basis for the Court to reconsider its ruling, if she was, she could not. It was only Defendant who raised the issue and Plaintiff asserted notice was not necessary. Accordingly, when the Court ruled on the merits of the Motion to Reduce, taking into consideration the Constitutional claims raised by Plaintiff, the Court mooted any claim by Plaintiff that it did not consider the Constitutional grounds due to Plaintiff's failure to notify the Attorney General.

Moreover, the Court re-considered the notification issue at the time of the hearing on the Motion for Reconsideration. At the hearing the Court found that it had properly addressed the Constitutional claim of Plaintiff without the Attorney General's office being notified.

CONCLUSION

Based upon the foregoing, the Court hereby DENIES Plaintiff's Motion for Reconsideration and affirms its prior ruling GRANTING Defendant's Motion to Reduce Judgment.

Dated this 25th day of February, 2013.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

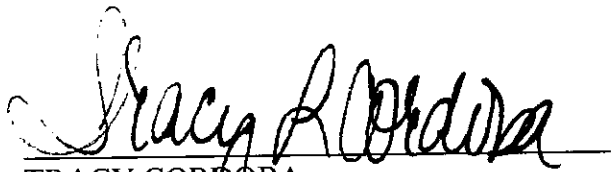
JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through email, or a copy of this ORDER was placed in the attorney's folder in the Clerk's Office and/or mailed to the proper party as follows:

Thomas F. Christensen, Esq.
1000 S. Valley View Blvd.
Las Vegas, NV 89107

John H. Cotton, Esq.
400 South Fourth Street, Third Floor
Las Vegas, NV 89101



TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

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CLERK OF THE COURT

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CHRISTOPHER G. RIGLER, ESQ.
Nevada Bar No. 010730
CRigler@cdwnvlaw.com
COTTON, DRIGGS, WALCH,
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400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant, Frank J. DeLee, M.D.

DISTRICT COURT
* * *
CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor Plaintiffs, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC.; DOES I through V, DOE EMPLOYEES VI thorugh XXVI; and ROES I through V, inclusive, Defendants.	Case No.: A-08-568152-C Dept. No.: XXXI **NOTICE OF ENTRY OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

TO: PLAINTIFF AND HER COUNSEL OF RECORD:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered in the above entitled matter on the 27th day of February 2013, a copy of which is attached hereto.

Dated this 4th day of March 2013.

COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON

JOHN H. COTTON, ESQ.
CHRISTOPHER G. RIGLER, ESQ.
Attorneys for Defendant, Frank J. DeLee, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March 2013, I served the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION** upon the following parties by placing a true and correct copy thereof in the United States Mail at Las Vegas, Nevada with first class postage fully prepaid thereon and by facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, this date by faxing a true and correct copy of the same to each party as follows:

Thomas Christensen, Esq.
Christensen Law Office, LLC.
3627 South Eastern Avenue
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Facsimile: (702)792-9647

Breen Arntz, Esq.
Arntz Associates, Inc.
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CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE; HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, ROE I through X, inclusive, Defendants.	CASE NO.: A-08-568152-C DEPT. NO.: XXXI **DECISION AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

On October 22, 2012, the Court held a hearing regarding Defendant Frank DeLee MD's Motion to Retax Costs and Motion to Reduce Judgment.[1] The hearing was held before Department XXXI of the Eighth Judicial District Court in and for Clark County, Nevada, and was presided over by the Honorable Joanna S. Kishner. Present at the hearing were Breen Arntz, Esq., Thomas F. Christensen, Esq., and Jennifer M. Gooss, Esq.

[1] It should be noted that although Defendant's Motion was titled as a Motion to Retax Costs and Reduce Judgment, the parties at the October 22nd hearing agreed to postpone the portion of the Motion as to retaxing costs so as to allow the parties an opportunity to see if they could resolve the amount of costs at issue. In the intervening time between when Defendant first filed its Motion to Retax Costs and Reduce Judgment and the hearing date, Plaintiff also filed a Motion for Attorney Fees, Costs and Prejudgment Interest. The parties at the previous October 22nd hearing asked that the pending motions relating to fees, costs, and interest be consolidated for hearing and the Court granted that request. Accordingly, the Motion for Reconsideration only addressed the portion of the October 22nd Motion relating to reduction of the Judgment as the Court GRANTED that portion of Defendant's Motion on October 22nd.

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DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

(hereinafter "Plaintiff") and John H. Cotton, Esq., on behalf of Defendant Frank DeLee, M.D. (hereinafter "Defendant".) At the conclusion of the hearing, the Court detailed its findings and GRANTED Defendant's Motion to Reduce Judgment. Subsequently, on November 28, 2012, Plaintiff filed a Motion for Reconsideration. The Motion for Reconsideration was filed prior to an Order being submitted and entered on the underlying Motion to Reduce. Prior to the agreed upon date for the hearing, the parties agreed that they would provide the Court with a proposed Order and have it filed before the hearing so that the Court could hear the Motion for Reconsideration on the January 8, 2013, the date selected by the parties for hearing on various consolidated motions. Thereafter, on January 7th, Plaintiff provided and filed the Order and Notice of Entry on the underlying Motion to Reduce Judgment.

Having reviewed the pleadings, having reviewed the merits of the motion and the positions of the parties, the oral argument on January 8th, and good cause appearing, the Court finds and rules as follows:

MOTION FOR RECONSIDERATION

A Court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). Pursuant to *Masonry & Tile Contractors Ass'n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997), the trial court may reconsider a previously decided issue if substantially different evidence is subsequently introduced, or if the prior decision is clearly erroneous.

Within the Eighth Judicial District Court, when a party seeks reconsideration of a Court's previous order, the party must comply with EDCR 2.24(b). EDCR 2.24(b) requires "[a] party seeking reconsideration of a ruling of the court, other than any order which may be

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

addressed by motion pursuant to NEV. R. CIV. P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment[.]" EDCR 2.24(b). Pursuant to EDCR 2.24(b), Plaintiff filed a Motion for Reconsideration pursuant NRCP 60(b) of the Court's Order granting Defendant Frank DeLee MD's Motion to Reduce Judgment.[2]

In evaluating a Motion for Reconsideration, the Court engages in a two-step process. First the Court determines, in accordance with NRCP 60(b)'s provisions, if there is "mistake, inadvertence, surprise or excusable neglect[.], "If the first step is met, then the Court reviews the evidence to determine if a different result should occur." In Nevada, "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P2d 447,450 (1996).

In the present matter, Plaintiff has sought reconsideration from the Court's previous Order granting Defendant's Motion to Reduce Judgment, wherein the Court found that NEV. REV. STAT. § 41A.035 was Constitutional and thus the reduction was proper. In their Motion for Reconsideration, Plaintiff asks the Court to overturn its prior ruling re-asserting that the statute is Unconstitutional. In support of her claim, Plaintiff first contends that NEV. REV. STAT. § 41A.035 is an unconstitutional violation of the right to a jury trial as stated in Article 1, Section 3 of the Nevada Constitution and that NEV. REV. STAT. § 41A.035 is not "substantially and rationally related to a legitimate government interest" and, therefore, violates the Equal Protection clause. In the Motion for Reconsideration, Plaintiff reiterates

[2] As noted infra, Plaintiff had filed her Motion for Reconsideration prematurely, as the parties had not yet filed the Order or Notice of Entry of Order on the underlying Motion. Given the parties waived the procedural timing of the filing of the Motion for Reconsideration and agreed to have the Motion for Reconsideration heard on January 8, 2013, the Court heard the Motion.

its assertion that the Court could address the Constitutionality issue even though Plaintiff did not provide notice to the Attorney General of Nevada regarding the Constitutional argument.

In the present case, after a review of all the pleadings, oral argument, as well as applicable law, the Court finds that there are not "new issues of fact or law" that would support a different ruling from the Court. In so ruling, the Court finds that the Constitutionality of the statute was specifically raised by Plaintiff in its Opposition to Defendant's Motion to Reduce Judgment and addressed by Defendant in its Reply. The issue was also fully argued at the hearing before the Court made its ruling granting Defendant's Motion to Reduce Judgment. When the Court granted the Motion to Reduce Judgment, it was after the Court had fully read all the pleadings, researched applicable law, as well as allowed the parties to fully argue the matter. In sum, the Court fully considered all arguments and assertions raised regarding the Constitutionality issue prior to setting forth its ruling. Further, at the time of the hearing on Motion for Reconsideration, the Court inquired of both of Plaintiff's Counsel, who was arguing the Motion, if there were any new facts or law that the Court should consider. No new evidence or law was presented to the Court.

In the absence of new evidence or law, the Court also determined whether it made an error of law in ruling that the reduction was proper. Given the Court fully analyzed the Constitutional arguments, and found the statute Constitutional in the given setting, the Court then properly, in accordance with applicable statutory authority, reduced the judgment in accordance with the statute. As such, there was no error of law.

In the Motion for Reconsideration, Plaintiff reiterates its position that she felt she had no duty to notify the Nevada Attorney General's office. While the issue of whether the Attorney General should have been notified would not provide a basis to reconsider the

granting of Defendant's Motion to Reduce, given the Court addressed the merits of the Constitutional argument raised by Plaintiff, the Court will still address the issue.

At the October 22nd hearing of the underlying Motion to Reduce Judgment, Defendant raised the issue that the Attorney General had not been contacted by Plaintiff at the time he raised the Constitutional argument in his Opposition to the underlying Motion to Reduce Judgment. Plaintiff asserted that such notification was not necessary. After hearing the argument of both counsel, and based upon the record and applicable law, the Court addressed the merits of the Motion to Reduce Judgment and fully took into consideration the Constitutional challenge. The Court then set forth a summary of its Findings of Facts and Conclusions of Law and held that the Motion to Reduce Judgment was granted and thereby reduced the judgment to reflect the statutory caps for future pain and suffering.

After Plaintiff filed its Motion for Reconsideration, the issue of notifying the Attorney General was raised again. In order to address the position taken by Defendant that the Court should not have considered Plaintiff's Constitutional Challenge in the underlying motion and should not consider it in the Motion for Reconsideration, the Court notified the parties and the Attorney General on or about December 18, 2012, that the Court would consider any pleading or argument the Attorney General may wish to provide. The Court also set forth that it was willing to continue the hearing date if the Attorney General wished so as to provide it appropriate time to participate. The Notice also directed Plaintiff to notify the Attorney General and provide it with all appropriate pleadings. The Notice also asked the Attorney General to notify the Court whether it wished or declined to participate.

At the January 8th hearing, the Court informed the parties that it had been informed via its law clerk that the Attorney General declined to participate. Given the Court had not

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

received written confirmation of their disinterest, the Court asked each party whether it wished to go forward with the hearing or if either had any objection to proceeding.

Plaintiff's Counsel had no objection to move forward with the hearing without written response from Attorney General's Office. Defendant's Counsel objected arguing that the Plaintiff, not the Court, was required to notify the Attorney General's Office. Plaintiff's Counsel argued that they informed the Attorney General's Office of the pending issues of Constitutionality in writing, after the original Order came out, but in advance of the hearing. Plaintiff's Counsel again asserted that there was no procedural defect. Defense Counsel again argued that Plaintiff's Counsel should have notified the Attorney General before the October 22, 2012, hearing before Court made its initial ruling, and thus, Plaintiff's subsequent notification was insufficient to cure the procedural defects.

The Court then asked its Law Clerk to contact the Attorney General's Office while Counsel was present in the court to confirm whether or not the Attorney General intended to participate or appear. Ms. Beaver, Assistant to Solicitor General C. Wayne Howle, informed the Law Clerk to let the Court know that they did not intend to participate and that written confirmation of that position would follow post haste.[3]

Thereafter, the Motion for Reconsideration was fully argued and submitted to the Court. The Court inquired as to both the procedural and substantive basis of the Motion. The Court, having found that it had fully considered the applicable law and facts, including the Constitutional arguments raised by Plaintiff in their Opposition to the Motion to Retax Costs and Reduce Judgment, as well as those raised in the Motion for Reconsideration, and there being no new facts or law or other basis to reconsider its prior ruling, there are no

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[3] The Court received a letter from the Attorney General's Office on January 9, 2013 confirming this position.

sufficient grounds to support a different ruling from the Court.

Although it does not appear that Plaintiff is asserting that her failure to notify the Attorney General provides a basis for the Court to reconsider its ruling, if she was, she could not. It was only Defendant who raised the issue and Plaintiff asserted notice was not necessary. Accordingly, when the Court ruled on the merits of the Motion to Reduce, taking into consideration the Constitutional claims raised by Plaintiff, the Court mooted any claim by Plaintiff that it did not consider the Constitutional grounds due to Plaintiff's failure to notify the Attorney General.

Moreover, the Court re-considered the notification issue at the time of the hearing on the Motion for Reconsideration. At the hearing the Court found that it had properly addressed the Constitutional claim of Plaintiff without the Attorney General's office being notified.

CONCLUSION

Based upon the foregoing, the Court hereby DENIES Plaintiff's Motion for Reconsideration and affirms its prior ruling GRANTING Defendant's Motion to Reduce Judgment.

Dated this 25th day of February, 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 email, or a copy of this ORDER was placed in the attorney's folder in the Clerk's Office and/or mailed to the proper party as follows:

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Tracy R Cordoba

TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardain Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

ORDER ON DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER LLC AND DEFENDANT FRANK J. DELEE, M.D.'S MOTIONS FOR SUMMARY JUDGMENT

On July 26, 2010, Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC (hereinafter "Sunrise Hospital") filed its Motion for Summary Judgment regarding negligence of the nurses/staff at Sunrise Hospital and ostensible agency claims against Sunrise Hospital for conduct by Defendant Frank J. DeLee, M.D. On July 26, 2010, Defendant FRANK J. DELEE, M.D. (hereinafter "Dr. DeLee") filed his Motion for Summary Judgment regarding violation of

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the statute of limitations. Sunrise Hospital joined Dr. DeLee's Motion on August 4, 2010. Plaintiff TONYA FOWLER, as Guardian Ad Litem for AVA FOWLER, a minor (hereinafter "Plaintiff") filed her Opposition to Sunrise Hospital's Motion on August 11, 2010 and to Dr. DeLee's Motion on August 17, 2010.

The hearing on both Sunrise Hospital's and Dr. DeLee's Motions were originally scheduled for August 31, 2010, in Department XX. Both Sunrise Hospital and Dr. DeLee filed separate requests with Department XX to vacate the August 31, 2010 hearing date on August 20, 2010 and August 23, 2010, respectively. Plaintiff filed an Objection to Defendants' Notice of Vacating Hearing on Motions for Summary Judgment on August 30, 2010, arguing forum shopping by the defendants. The Court granted defendants' request and vacated the hearing on August 31, 2010.

On January 3, 2011, Dr. DeLee Re-Noticed the hearing on his Motion for Summary. On January 4, 2011, Sunrise Hospital did the same. On January 26, 2011, Plaintiff filed an Objection to the Re-Notice of Hearing on Sunrise Hospital and Dr. DeLee's Motions for Summary Judgment. On February 10, 2011, Dr. DeLee filed his Reply in Support of his Motion for Summary Judgment. On February 11, 2011, Sunrise Hospital filed its Reply in Support of its Motion for Summary Judgment.

On February 18, 2011, the Court heard oral argument from all counsel. Jonquil L. Urdaz, Esq., of the law firm HALL PRANGLE & SCHOONVELD, appeared on behalf of Sunrise Hospital. Michael D. Navratil, Esq., of the law firm JOHN H. COTTON & ASSOCIATES, appeared on behalf of Dr. DeLee. Plaintiff was represented by Kristine Jensen, Esq., of the law firm CHRISTENSEN LAW OFFICES, LLC.

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FINDINGS OF FACT

Having considered all pleadings on file and argument of counsel, this Honorable Court made the following findings of fact:

As to Plaintiff's Objection to Hearing the Motions for Summary Judgment:

1. Sunrise Hospital correctly filed its Motion for Summary Judgment on July 26, 2010.

2. Department XX took the action of vacating the hearing on August 31, 2010, for Sunrise Hospital and Dr. DeLee's Motions for Summary Judgment.

3. The dispositive motion deadline was extended to January 6, 2011, through Report and Recommendation of the Discovery Commissioner.

4. Sunrise Hospital and Dr. Lee timely re-noticed the hearing on the respective Motions for Summary Judgment prior to the dispositive motion deadline.

5. The hearing on this matter was not scheduled before this Court until following the medical malpractice status check on February 1, 2011.

6. The Court noted Plaintiff's Objection to hearing the Motions for Summary Judgment based on alleged forum shopping.

Dr. DeLee's Motion for Summary Judgment:

7. Plaintiff had knowledge of Ava Fowler's medical status as of June, 2007.

8. There is an issue of fact as to Plaintiff's knowledge of a possible cause of action as of June, 2007.

Sunrise Hospital's Motion for Summary Judgment:

9. There is an issue of fact as to whether a shoulder dystocia occurred.

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10. The Court makes no determination as to document destruction and/or concealment.

11. The Court determined it is undisputed that Dr. DeLee is not an actual agent of Sunrise Hospital.

12. It is also undisputed that Plaintiff signed the consent forms as referenced in Sunrise Hospital's Motion for Summary Judgment.

13. There is an issue of fact as what Plaintiff knew due to the documentation of Baby Your Baby program in Plaintiff's medical records for the delivery of Ava Fowler.

CONCLUSIONS OF LAW

1. NRS 41A.097 is the applicable statute of limitations.

2. The discovery rule as articulated in *Massey v. Litton*, 99 Nev. 723 (1983) is not clear as to knowledge of a possible cause of action.

3. *Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 28 (1996) is the applicable authority for determining ostensible agency in this matter.

ORDER

Pursuant to the foregoing, and good cause appearing therefore,

1. IT IS HEREBY ORDER, ADJUDGED AND DECREED, the hearing on August 31, 2010, was properly vacated by Department XX.

2. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that this Court is the proper court to hear Defendant SUNRISE HOSPITAL AND MEDICAL CENTER LLC's Motion for Summary Judgment and Defendant FRANK J. DELEE M.D.'s Motion for Summary Judgment.

3. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FRANK J. DELEE M.D.'S Motion for Summary Judgment is DENIED WITHOUT PREJUDICE.

4. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendant SUNRISE HOSPITAL AND MEDICAL CENTER LLC'S Motion for Summary Judgment is DENIED WITHOUT PREJUDICE.

DATED this 1st day of April, 2011.

DISTRICT COURT JUDGE

Respectfully Submitted by:

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3. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FRANK J. DELEE M.D.'S Motion for Summary Judgment is DENIED WITHOUT PREJUDICE.

4. IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendant SUNRISE HOSPITAL AND MEDICAL CENTER LLC'S Motion for Summary Judgment is DENIED WITHOUT PREJUDICE.

DATED this _____ day of _____, 2011.

_____
DISTRICT COURT JUDGE

Respectfully Submitted by:

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4850-1690-8296, v. 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

TONYA FOWLER, as Guardain Ad Litem for AVA FOWLER, a minor, Plaintiff, vs. FRANK J. DELEE, M.D., SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, DOES I through V, DOE EMPLOYEES VI through XXVI, and ROES I through V, inclusive, Defendants.	CASE NO. A568152 DEPT NO. XXXI

NOTICE OF ENTRY OF ORDER

Date of Hearing: February 18, 2011
Time of Hearing: 10:00 a.m.

PLEASE TAKE NOTICE that an Order on Defendant Sunrise Hospital and Medical Center, LLC and Defendant Frank J. DeLee, M.D.'s Motions for Summary Judgment was

. . .

entered in the above-entitled Court on the 4th day of April, 2011, a copy of which is attached hereto.

DATED this 12th day of April, 2011.

HALL PRANGLE & SCHOONVELD, LLC

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 12th day of April, 2011, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via U.S. Mail, first class postage pre-paid to the following parties at their last known address:

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4843-5503-7705, v. 1