

ORIGINAL

FILED

OCT 18 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

In the Supreme Court of the State of Nevada

WAMBUTSA MPAMIRA and SELERIN
NTAHITAGABIRA, Co-Administrators of the
Estate of KAWAIDA ESPENRACE, Deceased,

Appellants,

vs.

A-Z WOMEN'S CENTER; and ADAM LEVY,
M. D., individually;

Respondents.

SC Case No.: 56879
DC Case No.: A574891

**DOCKETING STATEMENT
CIVIL APPEALS**

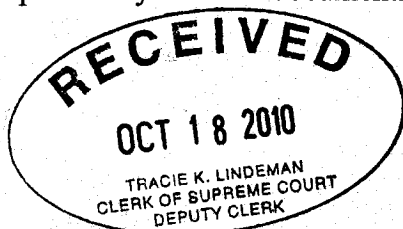
GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



10-27154

1. **Judicial District:** Eighth

Department: XVII

County: Clark

Judge: Michael Villani

District Ct. Docket No: A574891

2. **Attorney filing this docket statement:**

Attorney: Judith H. Braecklein, Esq.

Telephone: (702) 233-8683

Firm: KIRK-HUGHES & ASSOCIATES

Address: 2551 S. Ft. Apache Rd. #103, Las Vegas, Nevada 89117

Clients: Wambutsa Mpamira and Selerin Ntahitagabira

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

3. **Attorneys representing respondents:**

Attorney: John H. Cotton, Esq.; John J. Savage, Esq.

Telephone: (702) 367-9993

Firm: JOHN H. COTTON & ASSOCIATES

Address: 2300 W. Sahara Avenue, #420, Las Vegas, Nevada, 89102

Clients: A-Z Women's Center and Adam Levy, M.D.

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☒ Dismissal
- ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
 - ☐ Other (specify)

Grant/Denial of NRCP 60(b) relief
Grant/Denial of injunction
Grant/ Denial of declaratory relief
Review of agency determination
Decree of Divorce:
Original Modification
Other disposition (specify)

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

- ☐ Child custody
- ☐ Venue
- ☐ Adoption
- ☐ Termination of parental rights
- ☐ Grant/denial of injunction or TRO
- ☐ Juvenile matters

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

related to this appeal)

To the best of the Appellants' knowledge and the knowledge of their Counsel, there are no cases now pending or previously pending before this Honorable Court that are related to this case.

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

To the best of the Appellants' knowledge and the knowledge of their Counsel, there are no cases now pending or previously pending before any other Court that are related to this case.

8. **Nature of the action.** (Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below)

The Complaint below was for Wrongful Death Due to Professional Negligence. It was pled that the Doctor, nurses, and employees of Dr. Levy and of A-Z Women's Center breached their duty to provide the best care possible for their patient, KAWAIDA ESPENRACE, following an abortion. It was further pled that the standard of care was breached in the performance of the abortion on KAWAIDA ESPENRACE and in the post-operative care of the Decedent. However, this case was not decided on its merits. It was dismissed on a technicality.

9. **Issues on appeal.** (State concisely the principal issue(s) in this appeal)

Did the District Court abuse its discretion when it determined that the document, i.e., Dr. Cheryl Edwards' Affidavit/Declaration, attached to Plaintiffs'/Appellants' Complaint did not qualify as an Affidavit since it was not sworn to before a Notary Public, particularly in light of this Court's decision in Buckwalter v. District Court, 126 Nev. Adv. Op. No. 21 (2010)?

Did the District Court abuse its discretion when it granted Defendants' Motion to Dismiss Plaintiffs' Amended Complaint based in part on the fact that the Decedent's heirs were not individually named until nine (9) months after Plaintiffs learned the names of the heirs in light of the fact that it granted Plaintiffs' Countermotion to Amend Complaint to add the individual names of the Decedent's heirs five (5) months before Defendants filed their 12(b)(5) Motion to Dismiss?

Did the District Court abuse its discretion when it dismissed Plaintiffs' Amended Complaint based on a technical error in light of the fact that this Court wants all cases decided on the merits and not on technicalities? Scrimmer v. Eighth Judicial District Court, 116 Nev. 507, 998 P.2d 1190 (2000)

Was the District Court clearly erroneous in granting Defendants' 12(b)(5) Motion to Dismiss based in part on what Plaintiffs believe was a harmless error, i.e., inadvertently leaving the date off Dr. Edwards' Affidavit/Declaration, particularly since Plaintiffs contend that the date of the document could easily be determined that at the latest it was written the day before the Complaint was file. A reasonable person could easily surmise that fact as has been the case in many contract disputes.

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

Neither Appellants nor their Counsel are aware of any pending proceedings in this Court that raise the same issues as the instant case.

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

N/A ☒ Yes No

If not, explain

12. **Other issues.** Does this appeal involve any of the following issues?
- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
 - ☐ An issue arising under the United States and/or Nevada Constitutions
 - ☐ A substantial issue of first-impression
 - ☒ An issue of public policy.
 - ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
 - ☐ A ballot question

If so, explain. If the District Court's decision is affirmed, it could open a door to all defendants to find an inadvertent mistake on the part of the plaintiffs and have the Complaints dismissed on a technicality and not on the merits of the case as is this Court's policy.

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

Was it a bench or jury trial? Since the case was dismissed prior to the scheduled trial, the trial date was vacated.

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

Appellants will not be requesting any of the Justices to recuse him or herself.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from.** August 20, 2010. **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for

seeking appellate review:

16. **Date written notice of entry of judgment or order served.** August 20, 2010. **Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery _____ or by mail **XX** Defendants/Respondents mailed the Notice of Entry of Order and the Order to Plaintiffs/Appellants on August 20, 2010, as shown in the Certificate of Mailing attached and made a part of the Notice of Entry of Order.

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

No post-judgment Motions were filed.

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

NRCP 50(b)	Date served	By delivery	or by mail	Date of filing
NRCP 52(b)	Date served	By delivery	or by mail	Date of filing
NRCP 59	Date served	By delivery	or by mail	Date of filing

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion _____ Attach a copy.

(c) Date written notice of entry of order resolving motion served _____ Attach a copy,
including proof of service.

(i) Was service by delivery _____ or by mail _____ (specify).

18. **Date notice of appeal was filed.** September 20, 2010.

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

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) NRS 155,190, or other**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

NRAP 3A(b)(1) X	NRS 155.190	(specify subsection)
NRAP 3A(b)(2)	NRS 38.205	(specify subsection)

NRAP 3A(b)(3) NRS 703.376
Other (specify)

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

This is an Appeal from an Order granting Defendants' 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint on a technicality; a harmless error which did not go to the substance of the litigation. This was a final Order of the Court.

21. List all parties involved in the action in the district court:

Wambutsa Mpamira and Selerin Ntahitagabira, Co-Administrators of the Decedent's Estate, Plaintiffs.

A-Z Women's Center and Adam Levy, M.D., Defendants.

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

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

This has been answered in numbers 8, 15 and 16 above

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

This will be Plaintiffs' Amended Complaint.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

Yes and No. It was a final order of the Court but no claims were adjudicated as the Amended Complaint was dismissed on a technicality.

25. If you answered "No" to the immediately previous question, complete the following:

(a) Specify the claims remaining pending below: There are none as the Amended Complaint was dismissed.

(b) Specify the parties remaining below: There are none as the Amended Complaint was dismissed.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b): This was not necessary.

Yes No If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.

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

Yes No This was not necessary.

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

The Order is independently appealable under NRAP 3A(b)(1).

VERIFICATION

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

Wambutsa Mpamira and Selerin Ntahitagabira

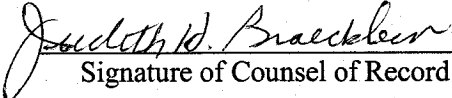
Judith H. Braecklein, Esq.

Name of Appellants

Name of Counsel of Record

October 14, 2010

Date



Signature of Counsel of Record

Clark County, State of Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14th day of October, 2010, I served a copy of this completed Docketing Statement upon all Counsel of Record and on the Settlement Judge:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following addresses:

JOHN H. COTTON, ESQ.
JOHN J. SAVAGE, ESQ.
JOHN H. COTTON & ASSOCIATES, LTD.
2300 W. Sahara Avenue, #420
Las Vegas, Nevada 89102

WILLIAM C. TURNER, ESQ.
Settlement Judge
59 Oakmarsh Drive
Henderson, Nevada 89074

Dated this 14th day of October, 2010.

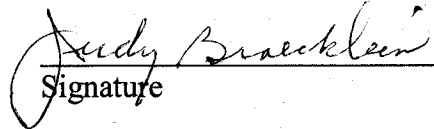

Signature

EXHIBIT 1

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Alvin L. L...
CLERK OF THE COURT

FINAL DISPOSITIONS	
<input type="checkbox"/> Time Limit Expires	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Judgment Satisfied/Paid in full	
Sum. Jgmt	
<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Jury Trial
Settle Dis	
<input type="checkbox"/> Settle Jgmt	<input type="checkbox"/> Default Jgmt
<input type="checkbox"/> Trial/Arbit	<input type="checkbox"/> Trial/Arbit
Voluntary Dis	
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Jgmt on Arbit Award
<input type="checkbox"/> Jgmt on Dis by court	<input checked="" type="checkbox"/> Jgmt on Dis by court

ORDER

John H. Cotton, Esq.
Nevada Bar Number 5268
jh cotton@jhcottonlaw.com
John J. Savage, Esq.
Nevada Bar Number 11455
jsavage@jhcottonlaw.com
JOHN H. COTTON & ASSOCIATES, LTD.
2300 W. Sahara Ave., Suite 420
Las Vegas, Nevada 89102
Phone: (702) 367-9993
Fax: (702) 367-9977
Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WAMBUTSA MPAMIRA and SELERIN
NTAHITAGABIRA, Co-Administrators of the
Estate of KAWAIDA ESPERACE,
Deceased, and the Individual HEIRS of the
Deceased,

Plaintiff,

vs.

A-Z WOMEN'S CENTER; ADAM LEVY,
M.D., individually; DOES 1 through X; and
ROE CORPORATIONS 1 through X, inclusive

Defendants.

CASE NO.: A574891
DEPT NO.: XVII

**ORDER GRANTING DEFENDANTS'
12(b)(5) MOTION TO DISMISS**

ORDER

This matter came before the Court on July 21, 2010 before the Honorable Judge Michael Villani on Defendants' 12(b)(5) Motion to Dismiss. Judith H. Braecklein, Esq., of the law firm of Kirk-Hughes & Associates, appeared on behalf of Plaintiffs. John J. Savage, Esq., of the law firm of John H. Cotton & Associates, Ltd., appeared on behalf of Defendants.

On or about November 3, 2007, Defendants provided medical treatment to Kawaida Esperance which allegedly resulted in her death. On November 3, 2008, Plaintiffs filed a

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAHARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993
FACSIMILE: 702.367.9977

RECEIVED BY
DEPT. 17 ON
AUG 17 2010

JOHN H. CUTTON & ASSOCIATES, LTD.
2300 WEST SARARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

1 Complaint For Wrongful Death Due To Professional Negligence (medical malpractice).
2 The caption of said Complaint, besides setting forth the names of two co-administrators,
3 identified other plaintiff(s) as "the individual heirs of the deceased." Nowhere in the
4 Complaint are the "individual heirs" identified in any fashion.
5

6 Attached to said Complaint is a document titled "Affidavit of Cheryl Edwards, M.D."
7 The document is not notarized and does not comply with the requirements of an Affidavit
8 pursuant to NRS 41A.071. Defendants seek to dismiss the Complaint based upon the fact
9 that an Affidavit was not attached to the Complaint. See Washoe Medical Center and NRS
10 41A.071. This Court agrees that the document attached to the Complaint does not qualify as
11 an Affidavit as it is not sworn to before an officer authorized to administer oaths.
12

13 However, in Buckwalter v. Dist. Court, 126 Nev. Adv. Op. No. 21 (2010), the
14 Supreme Court held that a declaration that complies with NRS 53.045 can fulfill NRS
15 41A.071's Affidavit requirements. NRS 53.045 provides in part "[a]ny matter whose
16 existence or truth may be established with the same effect by an unsworn declaration of its
17 existence or truth signed by the declarant under penalty of perjury, and dated, in substantially
18 the following form: . . . I declare under penalty of perjury that the following is true and
19 correct." The apparent declaration attached to the Complaint does not comply with the
20 mandatory requirements of NRS 53.045 in that it is not dated.
21

22 Generally, courts interpret statutes based on their plain meaning, which is intended to
23 reflect legislative intent. Washington v. State, 117 Nev. 735 (2001). Here, it is clear that
24 the legislature intended that declarations used in lieu of affidavits include the date. Thus,
25 Plaintiffs' proposed declaration fails to meet the statutory requirements of NRS 53.045.
26

27 Moreover, the fictitious name for the "individual heirs" does not relate back to the
28 date the Complaint was filed. To effectively utilize NRCP 10(a) so an amendment relates
back to the date of the original complaint, the movant must meet three elements. First, the

JOHN H. COTTON & ASSOCIATES, LTD.
2380 WEST SAHARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9972

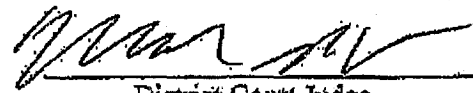
1 fictitious or Doe defendant must be pleaded in the complaint's caption; second, Plaintiffs
2 must plead the basis for naming defendants by other than their true identity; and third,
3 Plaintiffs utilizing NRCP 10(a) must exercise reasonable diligence in pursuing discovery and
4 other means of ascertaining the true identities of the defendants, then promptly amend the
5 complaint. Nuremberger Hercules-Werke GMBH v. Virotek, 107 Nev. 873 (1991).
6

7 The Court recognizes that Nuremberger Hercules-Werke GMBH involves a Plaintiff
8 seeking amendment to substitute named Defendants; however, the Court finds the analysis to
9 apply here. As such, in the instant case, Plaintiffs failed to meet these three elements,
10 First, Plaintiffs failed to state a basis for using a fictitious name in the Complaint.
11 Additionally, Plaintiffs' discovery answers indicate that they were aware of the true names of
12 the fictitious heirs as early as September 2009, but yet did not amend the Complaint until
13 June 2010. The Court finds that 9 months is not prompt under the Nuremberger
14 Hercules-Werke GMBH analysis. Therefore, even if Plaintiffs' declaration was sufficient,
15 the fictitious name for the "individual heirs" does not relate back to the date the complaint
16 was filed.
17

18 Having entertained oral argument and being fully advised of and having reviewed the
19 documents and files therein including Defendants' Motion, Plaintiffs' Opposition,
20 Defendant's Reply, and the parties' Supplemental Briefs, the Court finds good cause for and
21 therefore:
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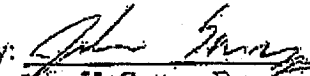
1 ...
2 ORDERS, ADJUDGES and DECREES that Defendants' 12(b)(5) Motion to Dismiss
3 this entire action for Plaintiffs' failure to comply with NRS 41A.071, NRS 53.045, and NRS
4 41A.097 is hereby GRANTED.
5

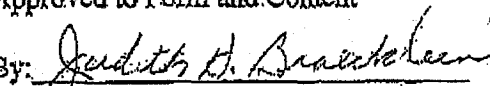
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7 DATED this 18 day of Aug 2010.
8

9 
10 District Court Judge EP
11 Honorable Michael Villani

12 Submitted this 11th day of August 2010.

Approved to Form and Content

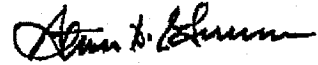
13 By: 
14 John H. Cotton, Esq.
15 Nevada Bar Number 5268
16 John J. Savage, Esq.
17 Nevada Bar Number 11455
18 2300 West Sahara Avenue, Suite 420
19 Las Vegas, Nevada 89102
20 Attorneys for Defendants
21
22
23
24
25
26
27
28

By: 
Geraldine Kirk-Hughes, Esq.
Judith H. Braecklein, Esq.
KIRK-HUGHES & ASSOCIATES
2551 S. Fort Apache Road, #103
Las Vegas, NV 89117
Attorneys for Plaintiffs

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAHARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

EXHIBIT 2

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CLERK OF THE COURT

1 NOEL

John H. Cotton, Esq.

2 Nevada Bar Number 5268

3 jhcotton@jhcottonlaw.com

John J. Savage, Esq.

4 Nevada Bar Number 11455

jsavage@jhcottonlaw.com

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

2300 W. Sahara Ave., Suite 420

6 Las Vegas, Nevada 89102

7 Phone: (702) 367-9993

8 Fax: (702) 367-9977

Attorneys for Defendants

9
10 **DISTRICT COURT**
CLARK COUNTY, NEVADA

11 WAMBUTSA MPAMIRA, and SELERIN
12 NTAHITAGABIRA, Co-Administrators of the
13 Estate of KAWADA ESPERACE,
14 Deceased, and the Individual HEIRS of the
15 Deceased,

Plaintiff,

16 vs.

17 A-Z WOMEN'S CENTER; ADAM LEVY,
18 M.D., individually; DOES 1 through X; and
19 ROE CORPORATIONS 1 through X, inclusive

Defendants.

CASE NO.: A574891

DEPT NO.: XVII

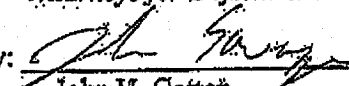
NOTICE OF ENTRY OF ORDER

20 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was
22 entered in the above entitled matter on the 20th day of August 2010, a copy of which is
23 attached hereto.

24 Dated this 20th day of August 2010.

25 **JOHN H. COTTON & ASSOCIATES, LTD.**
26 2300 West Sahara Avenue, Suite 420
27 Las Vegas, Nevada 89102
Attorneys for Defendants

28 By: 
John H. Cotton
John J. Savage

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAHARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702-367-9993 FACSIMILE: 702-367-9977

CERTIFICATE OF MAILING

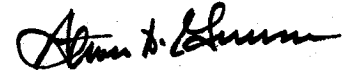
I hereby certify that on this 20th day of August 2010, I sent a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER RE: ORDER GRANTING DEFENDANTS' 12(b)(5) MOTION TO DISMISS by U.S. Mail, postage prepaid, addressed to the following:

Geraldine Kirk-Hughes, Esq.
Judith H. Bracklein, Esq.
KIRK-HUGHES & ASSOCIATES
2551 S. Fort Apache Road, #103
Las Vegas, NV 89117
Attorneys for Plaintiffs


An employee of John H. Cotton & Associates

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SABARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

EXHIBIT 3



CLERK OF THE COURT

1 **APLC**
2 **KIRK-HUGHES & ASSOCIATES**
3 **GERALDINE KIRK-HUGHES, ESQ.**
4 **Nevada Bar No. 3444**
5 **JUDITH H. BRAECKLEIN, ESQ.**
6 **Nevada Bar No. 3322**
7 **2551 S. Fort Apache Road #103**
8 **Las Vegas, Nevada 89117**
9 **(702) 233-8683; FAX: 233-8661**
10 **Attorneys for Plaintiffs**

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 *****

14 **WAMBUTSA MPAMIRA and SELERIN**)
15 **NTAHITAGABIRA, Co-Administrators of the**)
16 **Estate of KAWAIDA ESPENRACE, Deceased;**)
17 **JAPHET NDAYIKEZA, DOB:3/7/98, an**)
18 **Individual; PATIENCE NDIKUMANA, DOB:**)
19 **9/3/01, an individual; and HAPPINESS**)
20 **NDIKUMANA, DOB:4/4/04, an individual --**)
21 **the minor heirs of the Decedent,**)

22 **Plaintiffs,**)

23 **vs.**)

24 **Case No.: A574891**
25 **Dept. No.: XVII**

26 **A-Z WOMEN'S CENTER; ADAM LEVY, M. D.,**)
27 **individually; DOES I through X; and ROE**)
28 **CORPORATIONS I through X, inclusive,**)

29 **Defendants.**)

30 **NOTICE OF APPEAL**

31 **NOTICE IS HEREBY GIVEN that the Plaintiffs as named in the above caption**
32 **hereby appeal to the Nevada Supreme Court from the Order Granting Defendants'**
33 **12(b)(5) Motion to Dismiss and from the Notice of Entry of Order filed on August 19,**
34 **2010, and on August 20, 2010, respectively granting Defendants' Motion to Dismiss the**

35 **///**

1 above-captioned case, a copy of each which is attached hereto.

2
3 DATED this 20th day of September, 2010.

4 **KIRK-HUGHES & ASSOCIATES**

5
6 */s/ Judith H. Braecklein*

7 **GERALDINE KIRK-HUGHES, ESQ.**

8 Nevada Bar #3444

9 **JUDITH H. BRAECKLEIN, ESQ.**

10 Nevada Bar No. 003322

11 2551 S. Ft. Apache Road, #103

12 Las Vegas, Nevada 89117

13 (702) 233-8683

14 FAX NO.: (702) 233-8661

15 Attorney for Appellants/Plaintiffs

16 **CERTIFICATE OF MAILING**

17 I hereby certify that on the 20th day of September, 2010, I did deposit in the
18 United States Mail at Las Vegas, Nevada, true and correct copies of the above and
19 foregoing NOTICE OF APPEAL in sealed envelopes, first-class postage prepaid,
20 addressed as follows:

21 **THE HONORABLE MICHAEL VILLANI**

22 Eighth Judicial District Court

23 Department XVII

24 200 Lewis Avenue

25 Las Vegas, Nevada 89101

26 **JOHN J. SAVAGE, ESQ.**

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

28 2300 W. Sahara Avenue, Suite 420

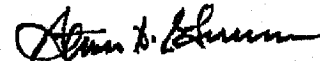
Las Vegas, Nevada 89102

DATED this 20th day of September, 2010.

Judy Braecklein

An Employee of
KIRK-HUGHES & ASSOCIATES

Electronically Filed
08/20/2010 11:27:06 AM



CLERK OF THE COURT

1 NOEL

John H. Cotton, Esq.

2 Nevada Bar Number 5268

3 jhcotton@jhcottonlaw.com

John J. Savage, Esq.

4 Nevada Bar Number 11455

jsavage@jhcottonlaw.com

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

6 2300 W. Sahara Ave., Suite 420

Las Vegas, Nevada 89102

7 Phone: (702) 367-9993

8 Fax: (702) 367-9977

Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

11 WAMBUTSA MPAMIRA, and SELERIN
12 NTAHITAGABIRA, Co-Administrators of the
13 Estate of KAWAIDA ESPEREACE,
14 Deceased, and the Individual HEIRS of the
Deceased,

Plaintiff,

15 vs.

16 A-Z WOMEN'S CENTER; ADAM LEVY,
17 M.D., individually; DOES 1 through X; and
18 ROE CORPORATIONS 1 through X, inclusive

19 Defendants.

CASE NO.: A574891

DEPT NO.: XVII

NOTICE OF ENTRY OF ORDER

20 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was
22 entered in the above entitled matter on the 20th day of August 2010, a copy of which is
23 attached hereto.

24 Dated this 20th day of August 2010.

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

26 2300 West Sahara Avenue, Suite 420

Las Vegas, Nevada 89102

Attorneys for Defendants

27 By: 

John H. Cotton

28 John J. Savage

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAHARA AVENUE, SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

CERTIFICATE OF MAILING

I hereby certify that on this 20th day of August 2010, I sent a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: ORDER GRANTING DEFENDANTS' 12(b)(5) MOTION TO DISMISS** by U.S. Mail, postage prepaid, addressed to the following:

Geraldine Kirk-Hughes, Esq.
Judith H. Braecklein, Esq.
KIRK-HUGHES & ASSOCIATES
2551 S. Fort Apache Road, #103
Las Vegas, NV 89117
Attorneys for Plaintiffs


An employee of John H. Cotton & Associates

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAGHRYN SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9953 FACSIMILE: 702.367.9977

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08/19/2010 09:53:51 AM

Alvin L. Lerner
CLERK OF THE COURT

FINAL DISPOSITIONS	
<input type="checkbox"/> Time Limit Expires	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Judgment Satisfied/Paid in Full	
<input type="checkbox"/> Summary Judgment	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Jury Trial	
<input type="checkbox"/> Trial by Stipulation	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Transferred	
<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Judgment on Arbitration Award	<input type="checkbox"/> Judgment on Remittitur

ORDER

John H. Cotton, Esq.
Nevada Bar Number 5268
jhcotton@jhcottonlaw.com
John J. Savage, Esq.
Nevada Bar Number 11455
jsavage@jhcottonlaw.com
JOHN H. COTTON & ASSOCIATES, LTD.
2300 W. Sahara Ave., Suite 420
Las Vegas, Nevada 89102
Phone: (702) 367-9993
Fax: (702) 367-9977
Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WAMBUTSA MPAMTRA and SELERIN
NTAHITAGABIRA, Co-Administrators of the
Estate of KAWAIDA ESPEREACE,
Deceased, and the Individual HEIRS of the
Deceased,

CASE NO.: A574891
DEPT NO.: XVII

Plaintiff,

vs.

A-Z WOMEN'S CENTER; ADAM LEVY,
M.D., individually; DOES 1 through X; and
ROE CORPORATIONS 1 through X, inclusive

Defendants.

**ORDER GRANTING DEFENDANTS'
12(b)(5) MOTION TO DISMISS**

ORDER

This matter came before the Court on July 21, 2010 before the Honorable Judge Michael Villani on Defendants' 12(b)(5) Motion to Dismiss. Judith H. Braecklein, Esq., of the law firm of Kirk-Hughes & Associates, appeared on behalf of Plaintiffs. John J. Savage, Esq., of the law firm of John H. Cotton & Associates, Ltd., appeared on behalf of Defendants.

On or about November 3, 2007, Defendants provided medical treatment to Kawaida Esperance which allegedly resulted in her death. On November 3, 2008, Plaintiffs filed a

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAHARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993
FACSIMILE: 702.367.9977

RECEIVED BY
DEPT. 17 ON
AUG 17 2010

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SARARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

1 Complaint For Wrongful Death Due To Professional Negligence (medical malpractice).
2 The caption of said Complaint, besides setting forth the names of two co-administrators,
3 identified other plaintiff(s) as "the individual heirs of the deceased." Nowhere in the
4 Complaint are the "individual heirs" identified in any fashion.
5

6 Attached to said Complaint is a document titled "Affidavit of Cheryl Edwards, M.D."
7 The document is not notarized and does not comply with the requirements of an Affidavit
8 pursuant to NRS 41A.071. Defendants seek to dismiss the Complaint based upon the fact
9 that an Affidavit was not attached to the Complaint. See Washoe Medical Center and NRS
10 41A.071. This Court agrees that the document attached to the Complaint does not qualify as
11 an Affidavit as it is not sworn to before an officer authorized to administer oaths.
12

13 However, in Buckwalter v. Dist. Court, 126 Nev. Adv. Op. No. 21 (2010), the
14 Supreme Court held that a declaration that complies with NRS 53.045 can fulfill NRS
15 41A.071's Affidavit requirements. NRS 53.045 provides in part "[a]ny matter whose
16 existence or truth may be established with the same effect by an unsworn declaration of its
17 existence or truth signed by the declarant under penalty of perjury, and dated, in substantially
18 the following form: . . . I declare under penalty of perjury that the following is true and
19 correct." The apparent declaration attached to the Complaint does not comply with the
20 mandatory requirements of NRS 53.045 in that it is not dated.
21

22 Generally, courts interpret statutes based on their plain meaning, which is intended to
23 reflect legislative intent. Washington v. State, 117 Nev. 735 (2001). Here, it is clear that
24 the legislature intended that declarations used in lieu of affidavits include the date. Thus,
25 Plaintiffs' proposed declaration fails to meet the statutory requirements of NRS 53.045.
26

27 Moreover, the fictitious name for the "individual heirs" does not relate back to the
28 date the Complaint was filed. To effectively utilize NRCP 10(a) so an amendment relates
back to the date of the original complaint, the movant must meet three elements. First, the

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAMARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

1 fictitious or Doe defendant must be pleaded in the complaint's caption; second, Plaintiffs
2 must plead the basis for naming defendants by other than their true identity; and third,
3 Plaintiffs utilizing NRCP 10(a) must exercise reasonable diligence in pursuing discovery and
4 other means of ascertaining the true identities of the defendants, then promptly amend the
5 complaint. Nurenberger Hercules-Werke GMBH v. Virotek, 107 Nev. 873 (1991).
6

7 The Court recognizes that Nurenberger Hercules-Werke GMBH involves a Plaintiff
8 seeking amendment to substitute named Defendants; however, the Court finds the analysis to
9 apply here. As such, in the instant case, Plaintiffs failed to meet these three elements,
10 First, Plaintiffs failed to state a basis for using a fictitious name in the Complaint.
11 Additionally, Plaintiffs' discovery answers indicate that they were aware of the true names of
12 the fictitious heirs as early as September 2009, but yet did not amend the Complaint until
13 June 2010. The Court finds that 9 months is not prompt under the Nurenberger
14 Hercules-Werke GMBH analysis. Therefore, even if Plaintiffs' declaration was sufficient,
15 the fictitious name for the "individual heirs" does not relate back to the date the complaint
16 was filed.
17

18 Having entertained oral argument and being fully advised of and having reviewed the
19 documents and files therein including Defendants' Motion, Plaintiffs' Opposition,
20 Defendant's Reply, and the parties' Supplemental Briefs, the Court finds good cause for and
21 therefore:
22

23 ...

24 ...

25 ...


26 ...

27 ...

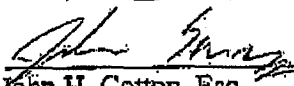
28 ...

1 ...
2 ORDERS, ADJUDGES and DECREES that Defendants' 12(b)(5) Motion to Dismiss
3 this entire action for Plaintiffs' failure to comply with NRS 41A.071, NRS 53.045, and NRS
4 41A.097 is hereby GRANTED.
5

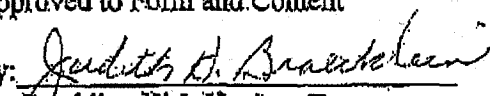
6
7 DATED this 18 day of Aug 2010.

8
9 
10 District Court Judge EP
11 Honorable Michael Villani

12 Submitted this 11th day of August 2010.

13 By: 
14 John H. Cotton, Esq.
15 Nevada Bar Number 5268
16 John J. Savage, Esq.
17 Nevada Bar Number 11455
18 2300 West Sahara Avenue, Suite 420
19 Las Vegas, Nevada 89102
20 Attorneys for Defendants

Approved for Form and Content

21 By: 
22 Geraldine Kirk-Hughes, Esq.
23 Judith H. Braecklein, Esq.
24 KIRK-HUGHES & ASSOCIATES
25 2551 S. Fort Apache Road, #103
26 Las Vegas, NV 89117
27 Attorneys for Plaintiffs
28

JOHN H. COTTON & ASSOCIATES, LTD.
2300 WEST SAHARA SUITE 420 LAS VEGAS, NEVADA 89102
TELEPHONE: 702.367.9993 FACSIMILE: 702.367.9977

EXHIBIT 4



CLERK OF THE COURT

1 **AFFT**
2 **KIRK-HUGHES & ASSOCIATES**
3 GERALDINE KIRK-HUGHES, ESQ.
4 Nevada Bar No. 003444
5 JUDITH H. BRAECKLEIN, ESQ.
6 Nevada Bar No. 003322
7 2551 S. Fort Apache Rd., Ste. 103
8 Las Vegas, Nevada 89117
9 (702) 233-8683
10 FAX NO: (702) 233-8661
11 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

10 WAMBUTSA MPAMIRA and SELERIN)
11 NTAHITAGABIRA, Co-Administrators of the)
12 Estate of KAWAIDA ESPENRACE, Deceased;)
13 JAPHET NDAYIKEZA, DOB:3/7/98, an)
14 Individual; PATIENCE NDIKUMANA, DOB:)
15 9/3/01, an individual; and HAPPINESS)
16 NDIKUMANA, DOB:4/4/04, an individual --)
17 the minor heirs of the Decedent,)

18 Plaintiffs,)

19 vs.)

Case No.: A574891
Dept. No.: XVII

20 A-Z WOMEN'S CENTER; ADAM LEVY, M. D.,)
21 individually; DOES I through X; and ROE)
22 CORPORATIONS I through X, inclusive,)

23 Defendants.)

24 **AMENDED COMPLAINT FOR WRONGFUL DEATH**
25 **DUE TO PROFESSIONAL NEGLIGENCE**

26 COME NOW the Plaintiffs as named above, by and through their attorney, Geraldine
27 Kirk-Hughes, Esq., of the Law Office of **KIRK-HUGHES & ASSOCIATES**, who make this
28 Claim against the Defendants as named above and who allege as follows:

1. That at all times relevant to these proceedings, Plaintiff WAMBUTSA
MPAMIRA, Co-Administrator of the Estate of KAWAIDA ESPENRACE, Decedent, was and
still is a resident of the City of Las Vegas, County of Clark, State of Nevada.

2. That at all times relevant to these proceedings, Plaintiff SELERIN

1 **AFFT**
2 **KIRK-HUGHES & ASSOCIATES**
3 GERALDINE KIRK-HUGHES, ESQ.
4 Nevada Bar No. 003444
5 JUDITH H. BRAECKLEIN, ESQ.
6 Nevada Bar No. 003322
7 2551 S. Fort Apache Rd., Ste. 103
8 Las Vegas, Nevada 89117
9 (702) 233-8683
10 FAX NO: (702) 233-8661
11 Attorneys for Plaintiff

12
13 DISTRICT COURT
14
15 CLARK COUNTY, NEVADA

16 WAMBUTSA MPAMIRA and SELERIN)
17 NTAHITAGABIRA, Co-Administrators of the)
18 Estate of KAWAIDA ESPENRACE, Deceased;)
19 JAPHET NDAYIKEZA, DOB:3/7/98, an)
20 Individual; PATIENCE NDIKUMANA, DOB:)
21 9/3/01, an individual; and HAPPINESS)
22 NDIKUMANA, DOB:4/4/04, an individual --)
23 the minor heirs of the Decedent,)
24)
25 Plaintiffs,)
26)
27 vs.)
28)
29 A-Z WOMEN'S CENTER; ADAM LEVY, M. D.,)
30 individually; DOES I through X; and ROE)
31 CORPORATIONS I through X, inclusive,)
32)
33 Defendants.)

Case No.: A574891
Dept. No.: XVII

34
35 **AMENDED COMPLAINT FOR WRONGFUL DEATH**
36 **DUE TO PROFESSIONAL NEGLIGENCE**

37 COME NOW the Plaintiffs as named above, by and through their attorney, Geraldine
38 Kirk-Hughes, Esq., of the Law Office of **KIRK-HUGHES & ASSOCIATES**, who make this
39 Claim against the Defendants as named above and who allege as follows:

40 1. That at all times relevant to these proceedings, Plaintiff WAMBUTSA
41 MPAMIRA, Co-Administrator of the Estate of KAWAIDA ESPENRACE, Decedent, was and
42 still is a resident of the City of Las Vegas, County of Clark, State of Nevada.

43 2. That at all times relevant to these proceedings, Plaintiff SELERIN

1 NTAHITAGABIRA, Co-Administrator of the Estate of KAWAIDA ESPENRACE, Decedent, was
2 and still is a resident of the City of Van Nuys, California.

3 3. That prior to her death, the Decedent, KAWAIDA ESPENRACE, was a
4 resident of the City of Las Vegas, County of Clark, State of Nevada.

5 4. That the above named heirs are the minor children of the Decedent, to wit:
6 JAPHET NDAYIKEZA, born March 7, 1998; PATIENCE NDIKUMANA, born September 3,
7 2001; and HAPPINESS NDIKUMANA, born April 4, 2004, whose interests will be represented
8 by WAMBUTSA MPAMIRA and SELERIN NTAHITAGABIRA, Co-Administrators herein. These
9 minor children are now living in San Diego, California, with relatives.

10 5. That at all times relevant to these proceedings, Plaintiffs are informed and
11 believe Defendant A-Z WOMEN'S CENTER is a medical facility and is authorized and duly
12 licensed to do business in the State of Nevada with its principle place of business in
13 Nevada located at 1670 E. Flamingo Road, Suite C, Las Vegas, Nevada, 89119, all
14 pursuant to NRS 449.

15 6. That at all times relevant to these proceedings, Plaintiffs are informed and
16 believe Defendant ADAM LEVY, M.D., is a physician authorized and duly licensed to practice
17 medicine in the State of Nevada with his principle place of business located at 2020
18 Goldring Avenue, Las Vegas, Nevada, 89106, all pursuant to NRS 630.

19 7. That at all times mentioned herein, the Defendants, each and every one of
20 them, breached their duty to provide the best care possible for their patient, KAWAIDA
21 ESPENRACE.

22 8. That at all times relevant to these proceedings, Defendant A-Z WOMEN'S
23 CENTER was the medical facility in which the Decedent, KAWAIDA ESPENRACE, was a
24 patient and in which she had the surgical procedure known as an abortion performed on
25 her.

26 9. That on or about November 3, 2007, DR. ADAM LEVY performed the abortion
27 on Decedent at or about 1:00 p.m. in the A-Z WOMEN'S CENTER. (Exhibit 2, pg.4)
28

1
2 10. That on or about 1:32 p.m. DR. LEVY had completed the abortion on the
3 Decedent and noted on the medical record that there was "Excessive Blood Loss". (Exhibit
4 2, pg.4) It was further noted under "Special Findings" that the Patient was bleeding heavy
5 requiring Cytotec per rectum (Exhibit 2, pg. 4)

6 11 That on or about 2:40 p.m. it was noted that the Decedent, KAWAIDA
7 ESPENRACE, bleeding had increased to heavy bleeding and that here had been continued
8 bleeding during and after the surgical procedure. (Exhibit 2, pg.5)

9 12. That the Defendant, A-Z WOMEN'S CENTER breached its duty owed to the
10 Decedent by failing to properly train its employees on the proper procedures for caring for
11 the Decedent following an abortion; that the CENTER'S employees failed to immediately
12 provide the Decedent with the medical care necessary to stop her continued bleeding and
13 waited for over an hour (at or about 2:55 p.m.) before having KAWAIDA transferred to a
14 facility with the equipment and expertise to stop her bleeding. (Exhibit 2, pgs.5 & 6)

15 13. That Defendant LEVY, as the Decedent's attending physician, breached his
16 duty to Decedent by not supervising the Staff and Nurses who were performing the
17 post-operative care of the Decedent as her bleeding continued and went from small to
18 heavy. (Exhibit 2, pg.5)

19 14. That Defendant LEVY breached his duty to the Decedent by carelessly
20 performing the abortion on KAWAIDA in such a manner that the insertion of the suction
21 tube to the uterus took a wrong direction toward the left fallopian tube and ovary area
22 instead of going toward the top of the uterus as required. (Exhibit 1)

23 15. That in pregnancy, the blood vessels are enlarged with blood flow to the
24 uterus through the uterine and paracervical arteries and veins. Because of this
25 enlargement of the blood vessels, great care must be taken in the placement of the
26 suction tube. (Exhibit 1)

27 16. That Defendant LEVY breached his duty to the Decedent in carelessly
28 allowing the perforation of the uterus to veered to the left 1.3 inches above the cervix

1 which caused a two-inch laceration to the left adnexae and paracervical vein and artery.
2 (Exhibit 1)

3 17. That Dr. Cheryl Edwards performed an independent medical review of the
4 Coroner's Report and the medical records of KAWAIDA ESPENRACE in order to render an
5 opinion as to the Standard of Care given the Decedent as it pertained to the performance
6 of the abortion and post-operative care performed on the Decedent by DR. ADAM LEVY
7 and the Staff and Nurses at the A-Z WOMEN'S CENTER; that the opinions stated by Dr.
8 Edwards are based on her own knowledge and extensive experience in the field of
9 Obstetrics and Gynecology, on her performance of several abortions and on her review of
10 the Decedent's records. (Exhibit 1)

11 18. That from the records, Dr. Edwards believes the standard of care was
12 breeched in the performance of the abortion on KAWAIDA ESPENRACE and in the post-
13 operative care of the Decedent. (Exhibit 1)

14 19. That it is the opinion of Dr. Edwards that the hemoperitoneum which
15 occurred due to the perforation of the uterus should rarely happen during the
16 performance of an abortion. (Exhibit 1)

17 20. That it is Dr. Edwards' opinion that beyond a reasonable degree of medical
18 certainty KAWAIDA ESPENRACE'S death was caused by the blood loss from the laceration
19 to the uterus and associated blood vessels and that the performance of the abortion and
20 the post-operative care of the Decedent were below the standard of care normally
21 associated with this medical procedure in any State in the United States. (Exhibit 1)

22 21 That Defendants' Staff and Nurses are either employers, independent
23 contractor or agents of the Defendant A-Z WOMEN'S CENTER.

24 22. That Defendants DOES I through X and ROE CORPORATIONS I through X
25 are fictitious names; that Plaintiffs are ignorant of the true names of the Individual,
26 Corporation, Co-partnership and/or Association so designated by said fictitious names;
27 and when the true names are discovered, the Plaintiffs will ask leave to amend this
28

1 Complaint and proceedings herein to substitute the true names of such Defendants.
2 Plaintiffs believe that each of the Defendants designated herein as DOE or ROE
3 CORPORATION are negligent or responsible in some manner for the events herein
4 referred to and negligently, carelessly, recklessly and in a manner that was grossly
5 negligent and willful and wanton, caused damages thereby to the Plaintiffs and to the
6 Decedent as herein alleged.

7 23. That Plaintiffs are informed and believe and thereupon allege that at all
8 times mentioned herein all of the above doctors, employees, servants or agents of the
9 Defendant A-Z WOMEN'S CENTER were acting within the scope of their employment,
10 servant or agency relationship with the Defendants, each to the other acting as agent of
11 the other Defendants.

12 24. That Defendants and their Staff and Nurses and DOES I-X and/or ROE
13 CORPORATIONS I through X undertook the medical care of the Decedent on or about
14 November 3, 2007, until her transfer to the University Medical Center on that same
15 date. (Exhibit 2, pg.5)

16 25. That a medical facility/doctor/patient relationship existed between the
17 Defendants and the Decedent as of November 3, 2007, and continued up to her death
18 on the night of November 3, 2007.

19 26. That on or about November 3, 2007, the Decedent, KAWAIDA
20 ESPENRACE, was admitted to the A-Z WOMEN'S CENTER for the purpose of having an
21 abortion, which is a legal surgical procedure in the State of Nevada. That prior to the
22 abortion the Defendants could find nothing physically wrong with KAWAIDA, which
23 included no history of bleeding disorders or tendencies. KAWAIDA had not complained
24 of any pain in her abdomen or on her entire body. (Exhibit 2, pg.1 & 4)

25 27. That as a result of the negligence of the Defendants, and each of them,
26 and of the Staff, Doctor and Nurses, the Decedent was subjected to the performance of
27
28

1 an abortion and post-operative care that fell below the standard of care for this
2 procedure in the State of Nevada and in any State in the United States.

3 28. That as a direct and proximate result of the negligence of the Defendants, the
4 Decedent suffered hemoperitoneum which occurred due to the perforation of the uterus.

5 29. That as a direct and proximate result of the Wrongful Death of KAWAIDA,
6 her HEIRS suffered serious emotional distress and pain as well as economic setbacks.

7 30. That due to KAWAIDA'S Wrongful Death because of the gross and wanton
8 negligence of the Defendants, KAWAIDA'S Estate suffered irreparable economic harm.

9 31. That the Plaintiffs have been required to engage the services of a funeral
10 home in Nevada and have incurred the expenses associated with the funeral of the
11 Decedent; that the present amount of the bills for these services is not known at this time
12 but is in excess of Ten Thousand Dollars (\$10,000.00).

13 32. That this Court has jurisdiction in this matter since the death of the
14 Decedent occurred on November 3, 2007, and one (1) year from that date has not expired.

15 33. That the Plaintiffs had to retained the services of an attorney in order to
16 prosecute this matter and are entitled to reasonable attorney's fees and costs.

17 WHEREFORE, the Plaintiffs as named above, pray for judgment against the
18 Defendants named above as follows:

19 1. For a sum in excess of Ten Thousand Dollars (\$10,000.00) against
20 each Defendant by way of general damages.

21 2. For funeral and related expenses incurred by Plaintiffs per proof.

22 3. For reasonable attorney's fees and costs of suit together with interest
23 as provided by Statutes.

24 ///

25 ///

26 ///

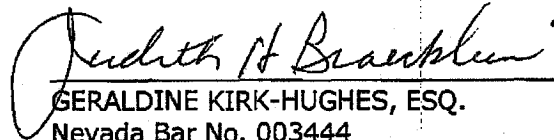
27 ///

28 ///

1
2 4. For such other and further relief as to the Court may seem just and
3 proper in the premises.

4 DATED this th12 day of February, 2010.

5 **KIRK-HUGHES AND ASSOCIATES**

6 
7 GERALDINE KIRK-HUGHES, ESQ.

8 Nevada Bar No. 003444

9 JUDITH H. BRAECKLEIN, ESQ.

10 Nevada State Bar #3322

11 2551 S. Ft. Apache Road, #103

12 Las Vegas, Nevada 89117

13 (702) 233-8683

14 FAX NO.: (702) 233-8661

15 Attorneys for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 **AFFIT**
2 **KIRK-HUGHES & ASSOCIATES**
3 **GERALDINE KIRK-HUGHES, ESQ.**
4 Nevada Bar No. 003444
5 **JUDITH H. BRAECKLEIN, ESQ.**
6 Nevada Bar No. 003322
7 2551 S. Fort Apache Rd., Ste. 103
8 Las Vegas, Nevada 89117
9 (702) 233-8683
10 FAX NO: (702) 233-8661
11 Attorneys for Plaintiff

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **WAMBUTSA MPAMIRA and SELEBIN**
15 **NTAMITAGABIRA, Co-Administrators of the**
16 **Estate of KAWAIDA ESPENRACE, Deceased;**
17 **and the individual HEIRS of the Deceased.**

18 **Plaintiffs,**

19 **vs.**

Case No.:
Dep. No.:

20 **A-Z WOMEN'S CENTER; ADAM LEVY, M. D.,**
21 **individually; DOES I through X; and ROE**
22 **CORPORATIONS I through X, inclusive,**

23 **Defendants.**

24 **AFFIDAVIT OF CHERYL E. EDWARDS, M.D.**

25 **STATE OF WYOMING**

26 **ss:**

27 **COUNTY OF CAMPBELL**

28 **CHERYL EDWARDS, M.D., being first duly sworn, deposes and states:**

1. That your Affiant is a doctor licensed to practice in the State of Wyoming and has been retained by Counsel for the above-named Plaintiffs to review the medical records of the Decedent, KAWAIDA ESPENRACE.

2. That your Affiant is a licensed physician and surgeon in the State of Wyoming.

1 and I have been in the active, full-time practice of Obstetrics and Gynecology for
2 seventeen (17) years; that I have extensive experience in the field of Obstetrics and
3 Gynecology and have personally performed over three (3) abortions.

4 3. That your Affiant has performed an independent medical review of the
5 Coroner's Report and the medical records pertaining to the Decedent, KAWADA
6 ESPENRACE in order to render an opinion as to the standard of care given the Decedent
7 as it pertained to the performance of the abortion performed on the Decedent by Dr.
8 Adam Levy; that the opinions stated are based on my own knowledge and extensive
9 experience in the field of Obstetrics and Gynecology, on my performance of several
10 abortions and on the review of the records. As to any matters therein stated upon
11 information and belief, I believe them to be true.

12 4. That from the records, your Affiant believes the Standard of Care was
13 breached in the performance of the abortion on KAWADA ESPENRACE, in that the
14 suction tube into the uterus took a wrong direction toward the left fallopian tube and
15 ovary area instead of going towards the top of the uterus as required.

16 5. That in pregnancy, the blood vessels are enlarged with blood flow to the
17 uterus through the uterine and paracervical arteries and veins. Because of this
18 enlargement of the blood vessels, great care must be taken in the placement of the
19 suction tube.

20 6. That the perforation of the uterus veered to the left 1.3 inches above the
21 cervix and caused a two-inch laceration to the left adnexal and paracervical vein and
22 artery.

23 7. That the post-operative care of the Decedent was substandard.

24 8. That it is the opinion of your Affiant that the hemoperitoneum which occurred
25 due to the perforation of the uterus should rarely happen during the performance of an
26 abortion.

27 9. That it is your Affiant's opinion that beyond a reasonable degree of medical
28

1 certainty that KAWAIDA ESPENRACE'S death was caused by the blood loss from the
2 laceration to the uterus and associated blood vessels.

3 10. That it is the further opinion of your Affiant that the performance of the
4 abortion and the post-operative care of the Decedent were below the standard of care
5 normally associated with this medical procedure in any State in the United States. I
6 certify under penalty of perjury pursuant to NRS 15.010 that the foregoing is true and
7 correct.

8 11. Further your Affiant sayeth naught.
9

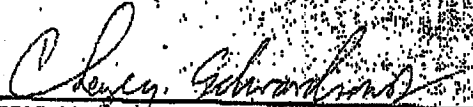
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11 
12 CHERYL Y. EDWARDS, M.D.
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EXHIBIT 2

General Information

Name: Last ESPENRACE First KAWAIDA Middle _____
 Home Address: BOSEANOVIA Apt: 6 City Las Vegas State NV Zip 89119
 Home Phone #: NO PHONE (or other # where you can be reached) 423-8660 (NICOLE)
 Occupation: N/A Telephone: (Work) N/A
 May we call you at home if necessary? YES NO May we call you at work if necessary? YES NO
 Age: 27 Date of Birth: 1980 Social Security #: NOT PROVIDED YET
 Marital Status: Single Married Divorced Separated Widowed # 047-286-044
 Education: Grades (0-12) 5th GRADE Years of College: 0
 Emergency contact: NICOLE ROGERS Phone: 423-8660 Relationship: Cousin
 How did you hear about us? (circle) friend relative yellow pages internet newspaper other Planned Parent
 Have you ever been a patient here before? YES NO When? _____ Name Used? _____

Medical Data

What was the FIRST day of your last period? 08/25/07 Was it a NORMAL period? YES NO
 Are you allergic to anything, especially medicines? YES NO If yes, what? _____
 Are you taking any medicines now? YES NO What/Why? _____
 Do you use any recreational drugs such as cocaine, heroin, methamphetamine, etc.? YES NO
 If yes, which drug(s)? _____ When did you use last? _____
 Are you or have you been addicted to any pain medication(s)? If yes, what? N/A
 Do you have or have you ever had any of the following problems? If yes, please check the appropriate box.

<input type="checkbox"/> Anemia	<input type="checkbox"/> Diabetes	<input type="checkbox"/> Kidney Disease
<input type="checkbox"/> Asthma	<input type="checkbox"/> Gonorrhea	<input type="checkbox"/> Migraine Headaches
<input type="checkbox"/> Bleeding Disorders	<input type="checkbox"/> Heart Disease	<input type="checkbox"/> Mitral Valve Prolapse
<input type="checkbox"/> Bleeding Tendencies	<input type="checkbox"/> Heart Murmur	<input type="checkbox"/> Pelvic Inflammatory Disease
<input type="checkbox"/> Blood Clots in your legs or lungs	<input type="checkbox"/> Hepatitis A, B, C	<input type="checkbox"/> Psychiatric Illness
<input type="checkbox"/> Blood Transfusions	<input type="checkbox"/> High Blood Pressure	<input type="checkbox"/> Reaction to Latex or Anesthetics
<input type="checkbox"/> Breast Lumps or Tumors	<input type="checkbox"/> HIV/AIDS	<input type="checkbox"/> Seizures or Epilepsy
<input type="checkbox"/> Chlamydia	<input type="checkbox"/> HPV	<input type="checkbox"/> Syphilis

Do you have any medical problem not listed above? YES NO If yes, what? _____

Pregnancy history: PLEASE FILL IN THE BLANK WITH "HOW MANY OF EACH"

How many times have you been pregnant (including this one)? 4 How many live births, if any? 3
 Any pregnancy complications (circle)? N/A

Ectopic pregnancy _____	Miscarriages _____	Now Deceased _____	CESAREAN SECTIONS
High blood pressure _____	Diabetes _____	Seizures _____	Excessive Bleeding _____
Other (Describe) _____			

Have you ever had an abortion (circle)? YES NO If yes, where? _____

Family Medical History:

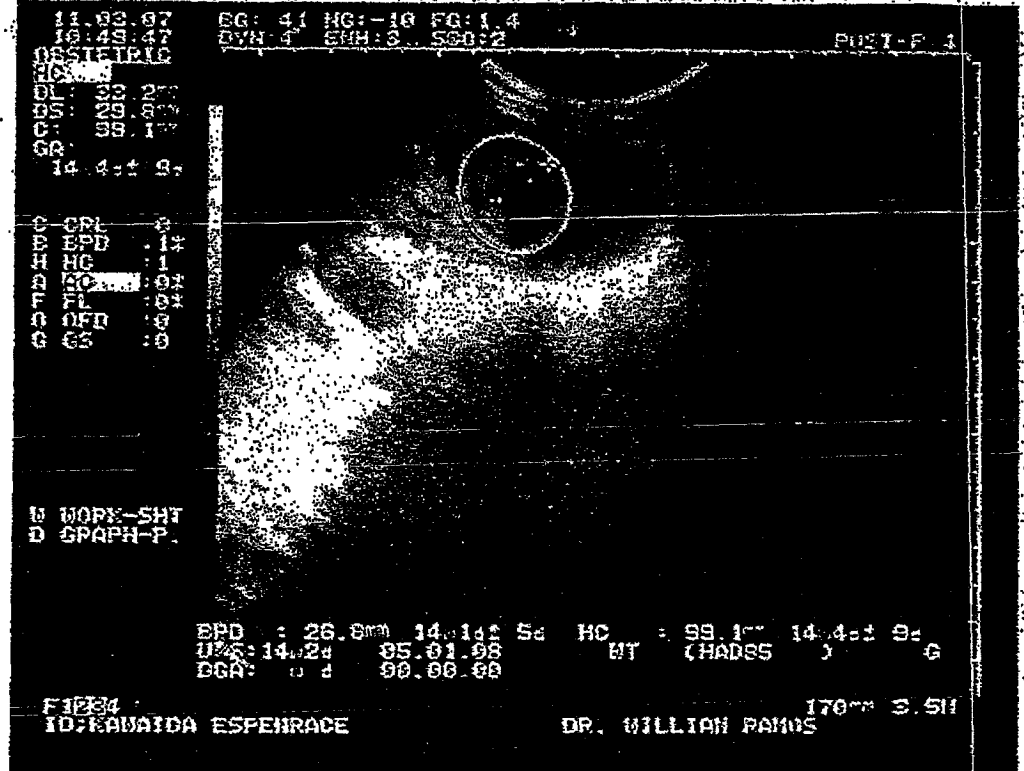
Have any of your BLOOD relatives had any of the following problems (circle)?

Diabetes	High blood pressure	Epilepsy (seizures)
Bleeding problems	Breast cancer	Cancer of Female Organs

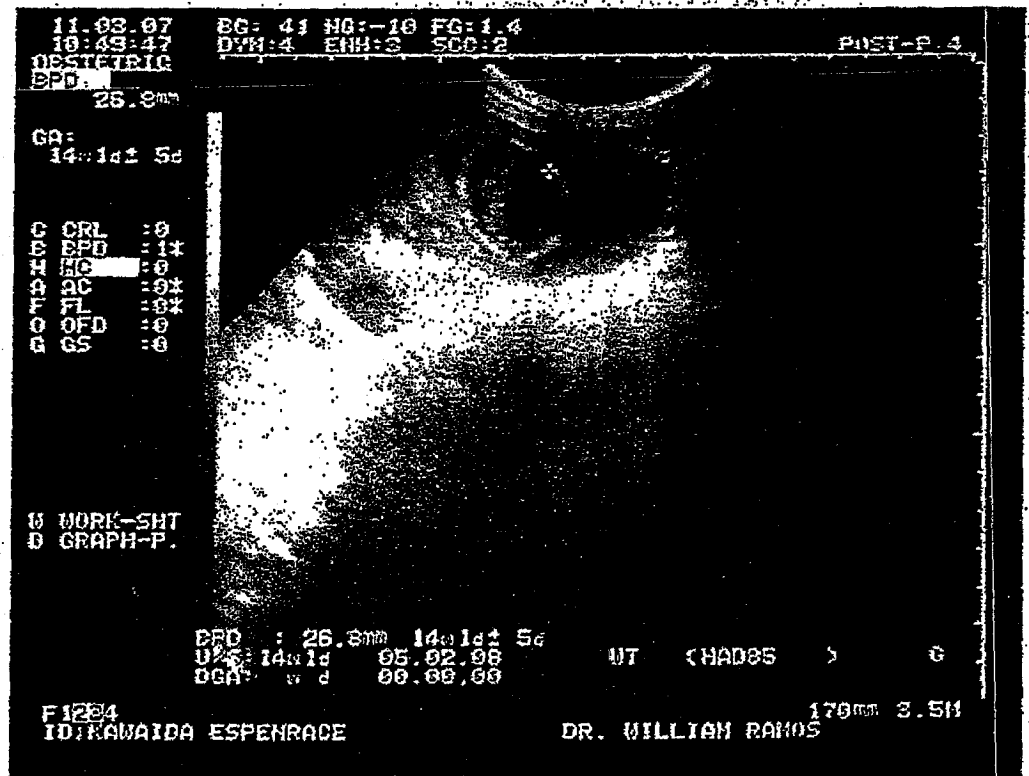
I GIVE THE INFORMATION REQUESTED ON THIS PAGE FREELY. IT IS COMPLETE AND FACTUAL TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IT IS FOR A - Z WOMEN'S CENTER USE ONLY AND WILL NOT BE RELEASED TO ANYONE ELSE WITHOUT MY WRITTEN PERMISSION EXCEPT BY COURT ORDER.

Signature: Sum

Date: 11/03/07



14.4 00



Informed Consent for Abortion Procedure

Complications of an abortion procedure can include: laceration of cervix, perforation of the uterus, injury to internal organs, hemorrhage, and infection of the uterus, tubes, or other internal organs. Furthermore, a complication might require hospitalization and possibly surgery. In some cases, hysterectomy (removal of the uterus or tubes) may be necessary. It is impossible to guarantee that complications won't happen.

There is a possibility that not all the tissue will be removed from the uterus and the procedure may need to be repeated. It is possible that the procedure may miss the pregnancy and that I may remain pregnant. This procedure will be repeated at no charge.

I desire to end my pregnancy. I request and consent to the performance upon me of a pregnancy termination procedure by a licensed physician on the staff of A - Z Women's Center or a designated physician. I fully understand that the purpose of the procedure is to terminate this pregnancy, and I affirm this to be my personal choice in light of the alternatives of continuing the pregnancy to term or adoption.

I am willing to accept the risk that complications might follow the pregnancy termination procedure. I accept financial responsibility if hospitalization or other supplemental care is deemed necessary.

I consent to the administration of paracervical block anesthetic (numbing shots around the cervix) using a local anesthetic, and/or to the administration of nitrous oxide gas and/or an intravenous sedative. I understand that if I choose to be sedated that I should NOT make any decisions requiring judgment, drive a car or use heavy machinery on the day of the procedure. I also consent to the administration of other appropriate oral, intravenous, or intramuscular medications, including Rh immune globulin (Rhogam) that might be needed before, during, or after the procedure. I understand that severe reactions including shock may result from the use of such medications. I further consent to the taking of cultures and to the performance of reasonably indicated tests and procedures in addition to pregnancy termination, whether or not relating to presently known conditions, if my medical attendants find these necessary or advisable in the course of evaluation or treatment of complications or otherwise.

I have fully and completely disclosed my medical history, including allergies, blood conditions, prior medications or drugs taken, and reactions I have had to anesthetics, medicines, and drugs. I understand that tissue and fetal parts will be removed during the procedure, and I consent to their disposal or use by the clinic and/or physician in the manner they deem appropriate.

I agree to follow the instructions given to me. I understand that it is my responsibility to bring to the attention of any symptoms, such as fever, heavy bleeding, passage of tissue, severe pain, or any other unusual symptoms. We are not responsible for any complications not reported to us. I understand that any questions I have will be answered by my physician and/or counselor, and I will ask such questions before leaving the facility. If I have questions or complications after leaving, I agree to call the physician at A - Z Women's Center immediately.

I understand I may have a free checkup in 3-6 weeks to make sure that the operation was complete and without complications.

I agree to make no claims against the physician or clinic for complications which may occur, except in the event of gross negligence on their part. If I should make any unwarranted claims, I agree to be responsible for the payment of all costs and attorney's fees incurred by the physician and/or clinic, and to post bond in advance for such sums.

I further understand that the medical practice of my physician is to be judged according to those standards reasonably acceptable to other similarly experienced physicians practicing in similar facilities in the United States.

In addition to the above mentioned complications of abortion, one of the seldom mentioned side effects of abortion is that of psychological or emotional aftermath. In some cases, patients with support from family or loved ones weather this quite well. In other cases professional help is required. We emphasize that this is an infrequent situation and that most patients do not have long term psychological complications from an abortion. Nevertheless, with your understanding of this potential complication of abortion we do not take any responsibility for either short term or long term psychological effects resulting from your decision for this abortion. By signing this consent form, I indicate that I understand that I may have short term and long term psychological effects from the procedure and in spite of this I am consenting to the termination of this pregnancy (abortion, ending of pregnancy).

I CERTIFY THAT I HAVE READ AND FULLY UNDERSTAND THE ABOVE INFORMED CONSENT, AND I AGREE IN LIGHT OF THAT CONSENT TO THE PREGNANCY TERMINATION PROCEDURE I HAVE REQUESTED.

DATE: 11/03/07 SIGNATURE OF PATIENT: [Signature] Translator
DATE: 11-3-07 SIGNATURE OF OFFICE STAFF: [Signature]

Consent for Contraception

I hereby authorize a staff physician of A - Z Women's Center to provide the following contraceptive services:

Birth Control Pills
(FREE 1 MONTH SAMPLE)

Depo-Provera Injection
(\$70.00 EVERY 3 MONTHS)

Ortho Evra Patch
(FREE 1 MONTH SAMPLE)

Nuva Ring
(FREE 1 MONTH SAMPLE)

I am aware that the most serious side effect of hormonal contraceptives (Birth Control Pills or Depo-Provera) is abnormal blood clotting which can be fatal. Other side effects may include: rapid growth of cancers of reproductive organs and breast, Hypertension (high blood pressure) that may cause stroke or heart attack, and can make diabetes and migraine headaches worse. I am aware that none of these contraceptive methods guarantees 100% protection against pregnancy. I do hereby release A - Z Women's Center from all claims which I may have by reason of their providing me this service, and I understand that it is my responsibility to bring to the attention of A - Z Women's Center any unusual symptoms and to have check-ups as recommended.

DATE: 11/03/07 SIGNATURE OF PATIENT: [Signature] Translator
DATE: 11-3-07 SIGNATURE OF OFFICE STAFF: [Signature]

Preliminary Findings

Patient: Kawaida Osperance Date: 11/3/07 N/A
 Blood Pressure: 103/72 Pulse: 84 Allergies: _____
 LMP: 8/25 Normal? YES NO YES HGB: A Temperature: 98.1
 Weeks by LMP: 14 WKS RH: POS Tech: MD
 Weeks by U/S: 14 WKS
 C-SECTIONS: 0
 CYTOTEK PROTOCOL:
400 mcg/200 mcg 30 min each dose TOO EARLY SHEET: YES NO
200 mcg 20/20/20 min each dose TOO EARLY HCG: NO Date: _____

Pelvic Exam and Procedure

Pelvic Exam

Uterine Size: 14 Weeks Gestation
 Position: AF AV MID RF RV
 Cervicitis: no yes
 Vaginitis: no yes
 Evidence PID: no yes
 Pelvic Masses: no yes
 Special Findings: no yes

Laminaria

Date: _____ PCB 1% Lidocaine _____ cc
 Dilatation: Pratt Lams: _____
 Cytotec: µgm
 Doxycycline: 100 mg bid # _____
 Percocet q 4-6h prn # _____

Procedure

Date: 11/3/07
 Start Time: 1:03 End Time: 1:32
 PCB 25 cc, 1% Lidocaine + Vasopressin & NaHCO₃
 Canula: 14 Curette #: 2 Forceps: RF
 Cervical Dilatation Difficult? no yes
 Procedure Complete? yes no
 Excessive Blood Loss? no yes
 Any Complications? no yes

Pathology Exam

Tissue Volume: Scant Adq Ample Large
 Placental Villi? yes no
 Gestational Sac? yes no
 Fetal Parts? yes no
 Fetus "Complete"? yes N/A
 Est. Gestational Age: 14 weeks
 Special Findings: _____

*Bleed neg 6 to 8 RR of
 ago, granular and vaso
 20u and 100
 Mersenger*

CESAREAN SECTIONS =

Cautioned regarding increased risk with
 Scarred uterus YES

CHEST: Clear Wheezes
 HEART: RRR Murmurs NO YES

Comments

*Ut be lower flags
 if not massive
 is atony*

Pain Level 0 1+ 2+ 3+ 4+

Level of Consciousness

Coherent Confused Deep Sedation
 Responds: Verbally Physically Ne:

TIME	11:15	1:03	1:12	1:24	2:52
NUBAIN		10mg			
DIAZEPAM	5mg				
MIDAZOLAM		5mg	5mg		
ATROPINE		0.4mg			
N ₂ O/O ₂					
PITOCIN					
METHERGINE				0.2mg	
CYTOTEK					
NARCAN					
ROMAZICON					
COMPAZINE					
IBUPROFEN	800				
FENTANYL					
Pulse Ox %	99	99.1	99.1		
MA's Initials	J	Amia	Amia	Amia	Amia

Rh Status: Pos NEG RH Immune Globulin Mini Full Lot#: _____
 Given by: _____ Site: _____ Exp: _____

Rh Immune Globulin Refusal: I fully understand the importance of this medication and the reasons why it is necessary to protect future pregnancies. However, since I choose not to receive the injection, I do hereby release Dr. Ramos/Dr. Levy and A-Z Women's Center from any responsibility or liability arising from my decision.

Date: _____ Signature: _____
 Witness: _____

Recovery Room

Name: Kawaida Espenrace Date: 11-1-07 Admit Time: 1:32

Time	1:40	2:00	2:20	2:40		
BP/Pulse	121/71/78	118/75/78	123/73/75	126/57/73	1	1
Bleeding	Sm Mod Hvy	Sm Mod Hvy	Sm Mod Hvy	Sm Mod Hvy	Sm Mod Hvy	Sm Mod Hvy
Pain/Cramps	N M M S	N M M S	N M M S	N M M S	N M M S	N M M S
Comments (Nausea, vomiting, dizziness, fainting?)						

Recovery Room & Discharge Orders

Rh immune globulin for all Rh negative patients unless refused. Discharge when vital signs stable, patient alert, and no excessive bleeding.

Notify physician if:

- 1) Diastolic > 20mm below pre-op or pulse > 110
- 2) Systolic > 160mm or Diastolic > 90mm
- 3) Excessive bleeding or pain

Medication Dispensed/Prescribed

Doxycycline	100 mg BID	#14	by <u>uhling</u>
Methergine	0.2 mg q 6h	#08	by <u>uhling</u>
Cytotec	200 mcg q 2-4h	#	by
Flagyl	500 mg BID	#	by
Ibuprofen	800 mg	#10	by <u>uhling</u>
Vicodin	5 mg q 6h	#	by
Percocet	10/650	#	by

Transport
to
hospital
UMC

Post abortion instruction sheet: YES NO Contraceptive instructions: YES NO
 Birth Control? YES NO Type VCI2 Rx given? YES NO x2RF
 Other Medication Given in Recovery/Sent Home: _____

Discharge: Time: _____ B/P: _____ Pulse: _____ PADSS: _____

I have received and been instructed to read the Post-op Instructions and to call this office if I have any problems. I understand there is 24 hour phone service. I understand that follow-up care is available at A-Z Women's Center at no cost. I agree to pay for any emergency or follow-up care from any other physician, hospital or other source.

Signature: X
 Discharged by: uhling

Refusal of Recovery Room Care: I request immediate discharge without further observation. I hereby release Dr. Ramos and A-Z Women's Center from any responsibility or liability arising from my decision.

Date: _____ Signature: _____
 Witness: _____
 Signed: _____ MD

Follow-up Examination

Date: _____

Complaints since procedure:		B/P: _____	TEMP: _____	TECH: _____
Excessive Bleeding	no yes	HCG:		
Excessive Pain	no yes	1) Negative Urine	YES NO	
Fever or chills	no yes	2) Light + Urine	YES NO	
Other complaints	no yes	3) Dark + Urine	YES NO	
Pelvic Exam:				
Vulva	WNL Abnl			
Vagina	WNL Abnl			
Cervix	Closed Open			
Uterus	WNL Abnl			
Adnexa	WNL Abnl			
Breast Exam:	WNL Abnl			
Birth Control:		Pap Smear:	Done Advised Elsewhere	
Other:				

Progress Notes

Today's Date: 11/3/07

Patient's Name: Kawaida Esperance

11/3/07 @ 1:40

re-examined; ceph closing. Bleed
marked & d, not much firmness

(A) Postop Bleed now controlled

EBL ~ 750cc or less

(B) Gross hematuria

2:55 per Dr. Levy 800mg Cytotec given oral
Bleeding

11/3/07

@ 2:55

It began bleed again &
exposure - vital signs
soft, firming up but ~ 500-600cc
blood exposure

Cyto and heparin given

Impressment

Para/Amb called for transport
to hospital since blood loss
excessive. Paras started IV
→ UMC notified and Dr. Kern
accepting

Levy

clerk

A-Z Women's Center
1670 East Flamingo Road, Suite C.
Las Vegas, Nevada 89119
Tel: (702) 892-0660 Fax: (702) 650-0549

**Consent for Second Trimester Abortion, and
Release of Liability for Non-compliance with Removal of Laminaria**

Date: 11/03/07

Name of Patient: KAWAIDA ESPENRACE

I understand that I am more than 12 weeks pregnant and that a 2 day procedure **MAY** be needed in order to gently dilate (open up) my cervix (mouth of the uterus) to perform the second trimester abortion. **This situation usually pertains to women that have NEVER had a vaginal delivery.** A-Z Women's Center can usually perform these procedures in one day for patients that are between 5 weeks and 18.6 weeks pregnant. Please be aware that we do not offer any guarantees on whether the procedure will be completed in one day or in two days. 99% of our second trimester procedures are completed in one office visit.

I understand that laminaria (cervical dilators) **MAY** be inserted into my cervix, and I realize that it is imperative that I return to have the laminaria removed and to have the second trimester abortion completed. More than one laminaria insertion may be needed. On the final day, my uterus will be emptied with a combination of instruments and vacuum aspiration. I understand that the risks of a second trimester abortion are greater than for a first trimester abortion, but are about as dangerous as continuing the pregnancy to term. The risks include (but are not limited to) the same risks explained in the general abortion consent, e.g. bleeding, infection, perforation of the uterus, and incomplete removal of the pregnancy.

I have freely chosen to proceed with the second trimester abortion, the entire procedure has been explained to me and I have had all of my questions answered. I further understand that the doctor (Dr. Ramos or Dr. Levy) is available to answer any additional questions that I may have.

Should I fail to complete the second step of the second trimester abortion procedure as scheduled, I hereby release the doctor and A-Z Women's Center of all responsibility for expenses or injury that I may incur. I have been informed that the expenses may exceed \$10,000 for hospitalization and surgical care, and that the medical consequences of not completing the second trimester abortion include the fact that I may die as a result. Furthermore, I release the A-Z Women's Center doctor from the responsibility as my physician, and I understand that it will be necessary for me to secure the services of another physician by going to any Emergency Department.

Signature: _____

Date: 11/03/07

Witness: _____

Date: 11/03/07

(Translator) _____

Please leave this form blank if you do not want or
do not need birth control of any type.

Patient's Name: KAREN S. LENKOW

Date: 11/03/01

Birth Control Questionnaire

We strongly encourage all patients to start on a form of birth control (contraception) to help avoid future unplanned pregnancies. This questionnaire will assist us to suggest the methods that we feel are best for you. If you do not want contraception, stop now.

What method do you prefer? Condoms (Pills, Patch, Vaginal Ring, Injection)

Diaphragm, IUD, Tubal Ligation or Vasectomy (Permanent Sterilization)

If you do not wish control pills, the Ortho Evra patch, the Niro Ring or the Depo Provera injection, continue the questionnaire (Be honest, these questions are important).

1. How old are you? 27 1/2 yrs

2. Do you smoke cigarettes? NO

a. How much per day? N/A

3. How much do you weigh? 105 lbs

4. What forms of contraception have you used in the past? N/A

5. Did you have any problems with those methods? N/A

6. Have you ever gotten pregnant while using contraception? N/A

With what method? N/A

7. Have you ever had: High Blood Pressure, Breast Tumor, Osteoporosis

Blood Clots in Legs, Severe Anemia, PMS, Excessive Facial Hair

Will you have to take your birth control from your partner or parents? N/A (No Partner)

KIRK-HUGHES & ASSOCIATES

A NEVADA LAW FIRM

Geraldine Kirk-Hughes, Esq.
State Bar No. 3444

Judith H. Brackley, Esq.
State Bar No. 6322

CUSTODIAN OF RECORDS DECLARATION

Now comes

JENNIFER ROONEY

1. That the deponent is the Custodian of Records of A-Z Women's Center, 1033 E. Flamingo, Las Vegas, Nevada 89119, and in such capacity, is the custodian of records of the office.
2. That on the 30 day of October, 2008, the deponent was served with a request in connection with the above entitled matter, calling for the production of medical and billing records pertaining to Kawaida Esperanza.
3. That the deponent has examined the originals of those Medical and Billing records and has made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.
4. That the originals of those records were made at or near the time of the events, conditions, or opinions, recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of the deponent or the office in which the deponent is engaged.

Signed under the pains and penalties of perjury this 30 day of October, 2008.

J.C. RB
Custodian of Records (Signature)

Jennifer C. Rooney
Print Name