

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC WOLFSON, D.O.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE DOUGLAS
SMITH, DISTRICT JUDGE; AND THE
HONORABLE JAMES M. BIXLER,
DISTRICT JUDGE,

Respondents,

and

ANTONIO DURON,
Real Party in Interest.

No. 54982

FILED

FEB 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK


ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

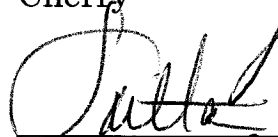
This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss a medical malpractice action, as well as an order denying reconsideration. As directed, real party in interest has filed an answer.


Having reviewed the pleadings and documents submitted, we grant the writ petition. The district court erred in not granting summary judgment in favor of petitioner on the real party in interest's medical malpractice claims. The district court was required to dismiss the medical malpractice complaint without prejudice, as the complaint was filed without the necessary medical affidavit, and therefore, was void ab initio. NRS 41A.071; Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006). The unsworn letter from real party in interest's expert was insufficient to meet the requirement. Accordingly, we direct the clerk of this court to issue a writ of mandamus directing the district

court to enter an order dismissing the real party in interest's complaint without prejudice.

It is so ORDERED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Hutchison & Steffen, LLC
Neil G. Galatz & Associates
Eighth District Court Clerk

¹In light of this order we deny as moot petitioner's motion to stay the district court proceedings.