

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNIVERSITY OF NEVADA SCHOOL
OF MEDICINE; WILLIAM ZAMBONI,
M.D.; AND HIMANSU R. SHAH, M.D.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JESSIE ELIZABETH WALSH,
DISTRICT JUDGE,

Respondents,

and

JUSTIN BEIL,

Real Party in Interest.

No. 61058

FILED

OCT 23 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
DEPUTY CLERK

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks to compel the district court to enter partial summary judgment in a medical malpractice case.

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether a writ of mandamus will be considered is within this court's sole discretion. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Extraordinary relief is generally not available when there is a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; Smith, 107 Nev. at 677, 679, 818 P.2d at 851, 853. The right to an appeal following a final judgment generally constitutes an adequate legal remedy precluding writ

relief. International Game Tech., 124 Nev. at 197, 179 P.3d at 558. Although we generally will not exercise our discretion to consider writ petitions challenging orders denying summary judgment, an exception to this rule exists when judgment in petitioner's favor is clearly required by statute. Smith v. District Court, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997).

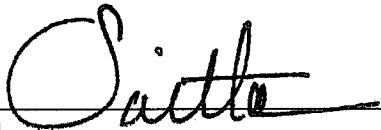
After reviewing the petition, answer, and the parties' supporting documents, we conclude that because real party in interest's complaint alleges only a negligent supervision claim against William Zamboni, M.D., and Dr. Zamboni's supervision of employees, including Dr. Shah, is a discretionary function entitled to immunity, the district court was required to enter summary judgment in Dr. Zamboni's favor. NRS 41.032; Martinez v. Maruszczak, 123 Nev. 433, 446, 168 P.3d 720, 730 (2007) (adopting the two-prong Berkovitz-Gaubert test in deciding whether a discretionary act qualifies for immunity); see Neal-Lomax v. Las Vegas Metropolitan Police Dept., 574 F. Supp. 2d 1170, 1192 (D. Nev. 2008) (holding that under the standards set forth in Martinez, supervision of employees qualifies as a discretionary act entitled to immunity).

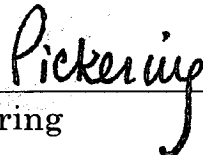
As to petitioners Dr. Shah and the University of Nevada School of Medicine, we are not persuaded that writ relief is warranted. In particular, we conclude that petitioners have an adequate legal remedy in the form of an appeal from any final judgment. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

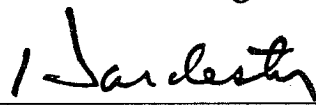
Accordingly, we order the petition granted in part and denied in part and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying the motion for

summary judgment as to William Zamboni, M.D., and to enter summary judgment in favor of Dr. Zamboni.

It is so ORDERED.¹


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge
Lauria Tokunaga Gates & Linn, LLP/Las Vegas
Lauria Tokunaga Gates & Linn, LLP/Sacramento
Ralph J. Rohay
The Medler Law Firm, LLC
Eighth District Court Clerk

¹Petitioners' motion for a stay is denied as moot in light of this order.