

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASIANO R. FLAVIANO, M.D.; AND
SUSHIL R. PATEL, M.D.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE BITA
YEAGER, DISTRICT JUDGE,

Respondents,

and

ARLIS NEASON, AS HEIR OF THE
ESTATE OF JEFFREY NEASON; AND
DIGNITY HEALTH MEDICAL GROUP
NEVADA, LLC, A DOMESTIC
LIMITED-LIABILITY COMPANY,
Real Parties in Interest.

No. 83821

FILED

APR 21 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER DENYING PETITION
FOR A WRIT OF MANDAMUS*

This is an original petition for a writ of mandamus challenging a district court order denying a motion to dismiss a complaint in a medical malpractice action. Petitioner argues that writ relief is warranted because the NRS 41A.071 medical expert affidavit provided by real parties in interest was not submitted by a professional who practices or has practiced in an area that is substantially similar to petitioner's practice area. *See* NRS 41A.071(2).

“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.” *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); see NRS 34.160. Writ relief is generally not available, however, when an adequate and speedy legal remedy exists. *Int’l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. A writ of mandamus is an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within this court’s discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991).

An appeal from final judgment usually constitutes an adequate remedy at law. *Int’l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558 (“[B]ecause an appeal from the final judgment typically constitutes an adequate and speedy legal remedy, we generally decline to consider writ petitions that challenge interlocutory district court orders denying motions to dismiss.”). Here, petitioner has an adequate remedy at law by way of appeal from final judgment.

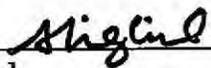
Additionally, we have reviewed the record and decline to exercise our discretion to grant extraordinary relief here. See *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004) (explaining that under NRS 41A.071 a medical expert may opine so long as “their present or former practice reasonably relates to that engaged in by the defendant at the time of the alleged professional negligence”); see generally *Staccato v. Valley Hosp.*, 123 Nev. 526, 531-32, 170 P.3d 503, 506-07 (2007) (explaining, in the context of expert witnesses, that the expert’s ability to opine to the standard of care depends upon the procedure or

treatment at issue rather than the defendant's area of practice or specific license). Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Stiglich

cc: Hon. Bitá Yeager, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
McBride Hall
Greenman Goldberg Raby & Martinez
Gordon Rees Scully Mansukhani LLP/Las Vegas
Eighth District Court Clerk