**OBJ**

ATTORNEY, ESQ.

Nevada Bar No. Bar #

Address

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.: J

) Dept. No.:

**CLIENT,** ) Courtroom:

DOB: Date of Birth )

AGE: Age YEARS OLD )

)

A MINOR. )

)

**OBJECTION TO HEARING MASTER HEARING MASTER’S FINDINGS, RECOMMENDATIONS AND ORDER**

COMES NOW, CLIENT, by and through his counsel, Attorney, Esq., of Firm, and hereby objects to the Recommendations of Hearing Master Hearing Master.

This Objection is made and based upon the following Memorandum of Points and Authorities, the exhibits attached hereto, the papers and pleadings on file herein, and such other documentary and oral evidence as may be presented at the hearing of this Motion.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**NOTICE OF OBJECTION**

TO: Attorney, Esq., Deputy District Attorney, Attorney for the Department of Family Services;

TO: Attorney, Esq., Attorney for the Natural Mother, Mother;

TO: Case Manager, Case Manager, Department of Family Services.

**PLEASE TAKE NOTICE** that the undersigned will bring the foregoing OBJECTION on for hearing before the Eighth Judicial District Court – Family Division, 601 N. Pecos Road, Las Vegas, Nevada 89101, on the Day day of Month, Year in Courtroom Courtroom **#** at Time.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

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Address

**MEMORANDUM OF POINTS AND AUTHORITIES**

CLIENT, Age, objects to the findings and recommendation made by Hearing Master Hearing Master and moves this Court for a dismissal of the abuse/neglect petition as to his mother, Mother. CLIENT does not dispute that his mother went to the hospital on Date; CLIENT contends the hospitalization, by itself, does not prove that he is in need of protection as contemplated by NRS 432B.330.

**I. STATEMENT OF FACTS**

On Date, Mother, CLIENT’s mother, was transported by ambulance to a local hospital and held on a Legal 2000. CLIENT was taken by Las Vegas Metropolitan Police to the Department of Family Services (DFS) Receiving Team at Child Haven, although a maternal cousin, Cousin, was at the scene and prepared to watch CLIENT. Cousin followed Metro to Child Haven in anticipation of taking CLIENT. *See Exhibit “A.”* CLIENT’s father, Father, resides in Louisiana, and has not been involved in CLIENT’s life for some time.

While she was hospitalized, CPS Investigator, CPS Investigator, attempted to interview Mother. Her responses to his questions were unintelligible; however, it is unknown what kind of medication was given to Mother prior to the interview. Mother was discharged four days after her admission, with instructions to follow up with a neurologist and a mental health professional. Mother followed those recommendations, starting counseling through Counseling Agency and starting treatment with Dr. Doctor, a board certified psychiatrist and neurologist. *See Exhibit “B.”*

Trial was held on Date, during which Mother and CPS Investigator testified. On Date, the Hearing Master issued Findings of Facts and Recommendations. *See Exhibit “C.”* Within the recommendation, the Hearing Master found that the State had met its burden of proof in showing that mother’s medical issues adversely affected her ability to care for CLIENT. *Id.*, p. 1. However, only two facts were listed by the Hearing Master to support the conclusion that Mother had neglected CLIENT: first, Mother was hospitalized for four days, and second, Mother was incoherent when interviewed in the hospital. *Id.*, p.2. During the trial, no evidence was elicited to show that the mother had experienced any similar medical events. In fact, CPS Investigatorstated that he was not aware of any history of mental health concerns, or prior psychiatric hospitalizations. Furthermore, there was no evidence to show that CLIENT was not being taken care of by his mother prior to her hospitalization on Date. Specifically, there were no issues regarding school, school attendance, food, shelter, income or physical abuse.

**II.** **LEGAL ARGUMENT**

**A. This Court is vested with the authority to review the Date Recommendation and modify the proposed order.**

E.D.C.R. 1.46(g) states, in pertinent part:

Within 10 days after the evidence is closed, the master must present to the presiding judge all papers relating to the case, written findings of fact and recommendations.

(1) Within the above time period, the master must serve upon the parties or their attorney of record and, if no attorney of record, the minor's parent or guardian or person responsible for the child's custodial placement, a written copy of the master's findings and recommendations and must also furnish a written explanation of the right of parties to seek review of the recommendations by the presiding judge.

. . .

(5) At any time prior to the expiration of 5 days after the service of a written copy of the findings and recommendations of a master, a party, a minor's attorney or guardian or person responsible for the child's custodial placement may file an objection motion to the supervising district court judge for the division represented by the master for a hearing. Said motion must state the grounds on which the objection is based and shall be accompanied by a memorandum of points and authorities.

(6) A supervising district judge may, after a review of the record provided by the requesting party and any party in opposition to the review, grant or deny such objection motion. The court may make its decision on the pleadings submitted or after a hearing on the merits. In the absence of a timely objection motion, the findings and recommendation of the master, when confirmed or modified by an order of the supervising district court judge, become an order of the court.

(7) All objection motion hearings of matters initially heard before a master will be before the supervising district judge who may at his or her discretion conduct a trial de novo. The court will review the transcript of the master's hearing, unless another official record is pre-approved by the reviewing judge, and (1) make a decision to affirm, modify, or remand with instructions to the master or (2) conduct a trial on all or a portion of the issues.

. . .

(9) No recommendation of a master or disposition of a juvenile case will become effective until expressly approved by the supervising district court judge.

NRS 62B.030 also sets forth this Court’s authority to modify the Date Recommendation; it states, in part:

4.  After reviewing the recommendations of a master of the juvenile court and any objection to the master’s recommendations, the juvenile court shall:

      (a) Approve the master’s recommendations, in whole or in part, and order the recommended disposition;

      (b) Reject the master’s recommendations, in whole or in part, and order such relief as may be appropriate; or

      (c) Direct a hearing de novo before the juvenile court if, not later than 5 days after the master provides notice of the master’s recommendations, a person who is entitled to such notice files with the juvenile court a request for a hearing de novo before the juvenile court.

This Court is not required to accept the Date Recommendation. The Nevada Supreme Court held that:

Although the juvenile court may adopt the master’s findings of fact unless they are *clearly erroneous*, a master’s findings and recommendations are only advisory, and the juvenile court is not obligated to adopt them. The juvenile court ultimately must exercise its own independent judgment when deciding how to resolve a case.

*See, In the Matter of A.B., a Minor,* 128 Nev. Adv. Op. 70, 291 P.3d 122, 124 (2012) (Emphasis Added). In this case, the findings are limited to the mother’s medical crisis; the findings do not include a link between the mother’s hospitalization and a threat of danger to CLIENT. As such, he is not a child in need of protection, and Nevada law permits this Court to reject the Hearing Master’s Recommendation because it is clearly erroneous.

**B. CLIENT is not a child in need of protection under NRS 432B.330.**

The simple fact that a mother is hospitalized does not mean her child is neglected or in need of protection. NRS 432B.330 describes when a child may be in need of protection; it states:

1. A child is in need of protection if:

(a) The child has been abandoned by a person responsible for the welfare of the child;

(b) The child has been subjected to abuse or neglect by a person responsible for the welfare of the child;

(c) The child is in the care of a person responsible for the welfare of the child and another child has:

(1) Died as a result of abuse or neglect by that person; or

(2) Been subjected to abuse by that person, unless the person has successfully completed a plan for services that was recommended by an agency which provides child welfare services pursuant to [NRS 432B.340](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST432B.340&originatingDoc=N03D1D400369811E5B2B5A75792492041&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=%28sc.History*oc.UserEnteredCitation%29) to address the abuse of the other child;

(d) The child has been placed for care or adoption in violation of law; or

(e) The child has been delivered to a provider of emergency services pursuant to [NRS 432B.630](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST432B.630&originatingDoc=N03D1D400369811E5B2B5A75792492041&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=%28sc.History*oc.UserEnteredCitation%29).

2. A child may be in need of protection if the person responsible for the welfare of the child:

(a) Is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(b) Fails, although the person is financially able to do so or has been offered financial or other means to do so, to provide for the following needs of the child:

(1) Food, clothing or shelter necessary for the child's health or safety;

(2) Education as required by law; or

(3) Adequate medical care;

(c) Has been responsible for the neglect of a child who has resided with that person; or

(d) Has been responsible for the abuse of another child regardless of whether that person has successfully completed a plan for services that was recommended by an agency which provides child welfare services pursuant to [NRS 432B.340](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST432B.340&originatingDoc=N03D1D400369811E5B2B5A75792492041&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=%28sc.History*oc.UserEnteredCitation%29) to address the abuse of the other child.

3. A child may be in need of protection if the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to [NRS 33.018](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST33.018&originatingDoc=N03D1D400369811E5B2B5A75792492041&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=%28sc.History*oc.UserEnteredCitation%29).

4. A child may be in need of protection if the child is identified as being affected by prenatal illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure.

In the petition, the State alleged that Mother had undiagnosed mental health issues which prevented her from appropriately caring for CLIENT. *See* Date *Petition – Abuse/Neglect, ¶*(c). The petition is silent as to how CLIENT was harmed by his mother. There are no allegations of educational neglect, environmental neglect, or failures to feed, supervise, enforce appropriate rules, nor are there allegations of physical abuse or injuries. Thus, the only applicable portion of NRS 432B.330 to this case is subsection (2)(a), which states that a child ***may*** be in need of protection if the parent is hospitalized, or otherwise incapacitated.

Because NRS 432B.330(2)(a) uses “may”, a finding that a parent is hospitalized does not require this Court automatically to find that their child is in need of protection. *See,* EDCR 1.12 (g), defining “may” as permissive. The use of “may” in NRS 432B.330(2)(a) means the determination of whether a child is in need of protection is discretionary, and thus, to be determined by the particular facts of the case. Also, because the statute provides the Court with discretion, it impliedly requires the Court to find something more than hospitalization to support a finding that a child is in need of protection. Here, no other facts were presented by the State to show that CLIENT was a child in need of protection or threatened with harm. No evidence was presented to show that CLIENT was not receiving appropriate education, medical treatment, nutrition, shelter or supervision. Instead, the only evidence involved the mother’s hospitalization. As such, the evidence was insufficient to find that CLIENT is a child in need of protection. Therefore, the Hearing Master’s ruling was clearly erroneous, and cannot be relied upon by this Court.

**III.** **CONCLUSION**

As discussed above, the only proven fact about CLIENT’s safety is the mother’s hospitalization in June that lasted four days. No other safety issues were identified or proven up. Thus, the State did not meet its burden, and CLIENT respectfully requests this Honorable Court to grant the following relief:

1. Review Hearing Master Hearing Master’s Recommendation;

2. Modify the Recommendation to find that CLIENT is not a child in need of protection at the time of removal; or

3. Alternatively, order a trial de novo on the allegations within the petition.

Respectfully submitted this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the Day day of Month, Year, I placed a true and correct copy of the forgoing **OBJECTION TO HEARING MASTER HEARING MASTER’S FINDINGS, RECOMMENDATIONS AND ORDER**, postage fully prepaid, in the United States Mail addressed as follows:

Attorney, Esq.

Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Room 470

Las Vegas, Nevada 89101

Attorney for the Department of Family Services

Attorney, Esq.

Address

Attorney for the Natural Mother, Mother

CPS Investigator, Case Manager

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

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An Employee of

Firm

Exhibit “A”

Exhibit “B”

Exhibit “C”