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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Allan S. MacDonald,

Plaintiff,

vs.

Dora Schiro, et al.,

Defendants.

) No. CV 04-1001-PHX-SMM (MHB)

) **ORDER**

On July 17, 2008, the Court denied Defendant Jabczynski’s Motion for Summary Judgment. (Doc. # 249.) Before the Court is Jabczynski’s Motion for Reconsideration of that Order (Doc. # 251.) The Court will deny the motion.

**I. Background**

Plaintiff alleged that Jabczynski was deliberately indifferent to his serious medical need—Plaintiff’s knee injury. Plaintiff further claimed that Jabczynski’s actions constituted medical malpractice. Jabczynski moved for summary judgment on the grounds that he did not act with deliberate indifference, he did not commit medical malpractice, and that Plaintiff suffered no harm as a result of Jabczynski’s actions. (Doc. # 110.)

In ruling on the motion, the Court found that material issues of fact precluded summary judgment for Jabczynski on the claims of deliberate indifference and medical malpractice. Specifically, the Court determined that a reasonable jury could conclude that in November 2003, Jabczynski *purposefully* refused to listen to Plaintiff’s reported symptoms and refused to read his June 2003 MRI report, even after Plaintiff told him about it and tried

1 to read it to him. (Doc. # 249 at 6.) Moreover, the Court concluded that a reasonable jury  
2 could find that when Jabczenski decided in May 2006 that Plaintiff needed surgery, he relied  
3 on information readily available to him in November 2003. (Id. at 7.) And finally, the Court  
4 determined that Plaintiff could proceed with his medical malpractice claim without expert  
5 testimony because a lay person could comprehend the issues. (Id. at 9.)

6 Jabczenski seeks reconsideration of the Court’s Order on the grounds that expert  
7 testimony is required to prove medical malpractice under A.R.S. § 12-563. (Doc. # 251.)  
8 The Local Rules of Civil Procedure do not provide for a response to a motion for  
9 reconsideration unless specifically ordered by the Court. LRCiv 7.2(g). Here, no response  
10 was ordered.

## 11 **II. Motion for Reconsideration**

12 Motions for reconsideration should be granted only in rare circumstances. Defenders  
13 of Wildlife v. Browner, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). Mere disagreement with  
14 a previous order is an insufficient basis for reconsideration. See Leong v. Hilton Hotels  
15 Corp., 689 F. Supp. 1572, 1573 (D. Haw. 1988). Reconsideration is only appropriate if the  
16 district court “(1) is presented with newly discovered evidence, (2) committed clear error or  
17 the initial decision was manifestly unjust, or (3) if there is an intervening change in  
18 controlling law.” School Dist. No. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255,  
19 1263 (9th Cir. 1993). “No motion for reconsideration shall repeat in any manner any oral or  
20 written argument made in support of or in opposition to the original motion.” Motorola, Inc.  
21 v. J.B. Rogers Mechanical Contractors, Inc., 215 F.R.D. 581, 586 (D. Ariz. 2003).

## 22 **III. Analysis**

23 Jabczenski places great emphasis on the argument that this case will require a jury to  
24 understand complex medical evidence, thereby requiring expert testimony pursuant to A.R.S.  
25 § 12-563. But this argument ignores the critical element of the Court’s ruling—the Court  
26 *determined* that a reasonable jury could conclude that Jabczenski deliberately ignored the  
27 medical evidence available to him in November 2003 and relied on *that same evidence* in  
28 May 2006 when scheduling Plaintiff’s surgery. Consequently, it is irrelevant that the

1 substance of the medical evidence is complex. Moreover, to the extent that Jabczenski  
2 argues the Court “assume[d] that the 2003 MRI was the basis for [the] decision to perform  
3 surgery,” that argument is flawed because Jabczenski did not present any other probative  
4 evidence to suggest that anything other than the 2003 MRI was the impetus behind Plaintiff’s  
5 2006 surgery. At trial, Jabczenski is free to argue that other factors influenced his decision  
6 to recommend surgery in 2006. But on summary judgment, the evidence did not support  
7 such a conclusion. Finally, to the extent that Jabczenski again claims that Plaintiff did not  
8 suffer harm as a result of a three year delay in surgery, that contention has been addressed.  
9 (Doc. # 249 at 7-8.) Ultimately, Jabczenski is merely requesting the Court to rethink what  
10 it already thought through. United States v. Rezzonico, 32 F. Supp. 2d 1112, 1116 (D. Ariz.  
11 1998). These arguments were presented and rejected on summary judgment. The motion  
12 for reconsideration will be denied. Accordingly,

13 **IT IS HEREBY ORDERED** that Defendant Jabczenski’s Motion for  
14 Reconsideration (Doc. # 251) is **denied**.

15 DATED this 17th day of September, 2008.

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Stephen M. McNamee  
United States District Judge