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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MELVIN KORNBERG,)	
)	
Plaintiff(s),)	Case No. 2:14-cv-02165-JCM-NJK
)	
vs.)	ORDER
)	
UNITED STATES OF AMERICA, et al.,)	(Docket No. 19)
)	
Defendant(s).)	

Pending before the Court is Defendants’ motion to stay discovery, filed on October 6, 2015. Docket No. 19. To date, no response has been filed in opposition. *See* Docket. For the reasons that follow, the Court hereby **GRANTS** Defendants’ motion. Docket No. 19.

The deadline for responding to the motion has now passed. *See* Local Rule 7-2(b) (providing 14-day response deadline). No response has been filed opposing Defendants’ motion to stay. *See* Docket. Accordingly, the Court may grant the motion as unopposed. *See* Local Rule 7-2(d).

Further, the Court has reviewed the motion itself in addition to the underlying motion to dismiss, and finds good cause for granting a stay of discovery. Docket Nos. 10, 11, 14, 19. In determining whether a stay is appropriate, the Court considers the goals of Rule 1 to “secure the just, speedy, and inexpensive” determination of all cases. *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011).¹ Generally, requests to stay discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the motion can be decided without additional discovery; and

¹ Unless otherwise noted, references to “Rules” refer to the Federal Rules of Civil Procedure.

1 (3) the Court has taken a “preliminary peek” at the merits of the potentially dispositive motion and
2 is convinced that the plaintiff will be unable to state a claim for relief. *See Kor Media Group, LLC*
3 *v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).² However, where a motion to dismiss presents a
4 “critical preliminary question[,]” courts are more inclined to stay discovery. *Kabo Tool Co. v.*
5 *Porauto Indus. Co.*, 2013 U.S. Dist. LEXIS 53570, at *2 (D. Nev. Apr. 15, 2013) (quoting *AMC*
6 *Fabrication, Inc. v. KRD Trucking West, Inc.*, 2012 U.S. Dist. LEXIS 146270, at *2 (D. Nev. Oct.
7 10, 2012)).

8 With that distinction in mind, the Court has taken a “preliminary peek” at the pending
9 motion to dismiss. Plaintiff’s complaint asserts a FTCA³ claim against the VA⁴, arguing that it
10 provided Plaintiff with negligent medical care. Docket No. 11 at 2-3. Defendants’ motion to
11 dismiss counters that Plaintiff’s complaint is void *ab initio* because it is a medical malpractice claim
12 unaccompanied by a supporting expert affidavit. Docket No. 19 at 3.

13 In Nevada, claims alleging medical malpractice must be filed with a supporting medical
14 expert affidavit. *See Poppe v. United States*, 2015 U.S. Dist. LEXIS 128395 *8-9 (D. Nev. Sept.
15 23, 2015) (“Pursuant to NRS 41A.071, a complaint filed without a supporting medical expert
16 affidavit is void *ab initio* and must be dismissed”); *Swails v. United States*, 406 Fed. Appx. 124,
17 125-26 (9th Cir. 2010). Plaintiff’s complaint lacks a supporting medical expert affidavit. *See*
18 Docket No. 1. Plaintiff addresses this omission by contending that the VA is not a medical care
19 provider within NRS 41A.017, and, therefore, Nevada law does not require a medical expert
20 affidavit. Docket No. 11 at 4.

21 The Court finds that this issue presents a critical preliminary question akin to the
22 jurisdictional dispute in *Kabo Tool Co.* Considering the three *Kor Media* factors, the Court
23

24 ² Conducting this preliminary peek puts the undersigned in an awkward position because the
25 assigned district judge who will decide the motion to dismiss may have a different view of its merits.
26 *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion
is not intended to prejudice its outcome. *See id.*

27 ³References to “FCTA” refer to the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b), 2671,
et seq.

28 ⁴References to the “VA” refer to the United States Department of Veteran Affairs.

1 concludes that objectives of Rule 1 would be best served by a stay of discovery pending the outcome
2 of Defendants' motion to dismiss. *See Poppe v. United States*, 2015 U.S. Dist. LEXIS 109586 (D.
3 Nev. Aug. 18, 2015) (granting stay of discovery pending motion to dismiss FTCA claim against the
4 VA). In the event resolution of the above motion to dismiss does not result in the disposition of this
5 case, the parties shall file a joint discovery plan within seven days of the issuance of the order
6 resolving that motion.

7 IT IS SO ORDERED.

8 DATED: October 26, 2015

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12 NANCY J. KOPPE
13 United States Magistrate Judge
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